
(2010) 03 AHC CK 0192

In the Allahabad High Court

Case No : First Appeal From Order No. 197 of 1997

United India Insurance Co.Ltd.

APPELLANT

Vs

Anne Swaroop & Ors.

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2010) 03 AHC CK 0192

Hon'ble Judges : Rakesh Tiwari, J and S.C.Chaurasia, J

Final Decision : Dismissed

Judgement

S.C.Chaurasia, J.—Heard Sri Anand Mohan, learned counsel for the appellant, Sri Waquar Hashim, learned counsel for the respondents and perused the record.

2. This appeal has been preferred against the impugned award dated 05051997 passed by Motor Accident Claims Tribunal/IXth Additional District Judge, Lucknow, in Claim Petition No. 207 of 1991, Smt. Anne Swaroop and another Versus Jagdish Prasad and Others as well as in Claim Petition No. 88 of 1992, Smt. Lili Swaroop and another Versus Jagdish Prasad and Others, whereby he allowed the claim petitions for payment of Rs. 10,00,000/ as compensation to the claimants.

3. The brief facts, giving rise to this appeal, are that the deceased, Vivek Swaroop, was posted as Probationary Officer, at State Bank of India, Branch Hazratganj, Lucknow. His age was about 29 years. On 30101991, he was returning from office to his house by scooter. At about 6.45 p.m., when he reached near the post office at Purania Chauraha, Aliganj, Crane no. U.P.U.4362 came from the opposite direction. The driver of the Crane was driving it rashly and negligently. The Crane dashed against the scooter of the deceased. In the meantime, a mobile van of the police came and halted at the spot. The deceased sustained injuries as a result of the accident. He was carried to Balrampur Hospital for treatment, but, he succumbed to his injuries there. The income of the deceased on the day of the accident was Rs. 5,919.23 p.m. The deceased left

behind his wife, Smt. Anne Swaroop, aged about 27 years and a baby, Chinki, aged about 1½ years. The Crane was insured with the United Insurance Company Ltd. The widow and the daughter of the deceased were dependents on the income of the deceased. The Claim Petition No. 207 of 1991 was filed by the widow and minor daughter of the deceased and the Claim Petition No. 88 of 1992 was filed by Smt. Lili Swaroop and Km. Radhika Swaroop, the mother and daughter of the deceased, respectively.

4. The opposite party no. 1, Sri Jagdish Prasad, owner of the Crane has filed written statement alleging that the deceased himself was driving the scooter rashly and negligently and on account of it, the accident in question was caused. He is the registered owner of the Crane no. U.R. U.4362, which was insured with the United India Insurance Company Ltd. w.e.f. 12041991 to 11041992. It is stated that it was not possible to drive the Crane in a high speed; that at the time of alleged accident, Sri Ram Jeevan, son of Sri Sarju Prasad, was the driver of the Crane, whose driving licence was valid from 26031990 to 25031993 and that since the Crane was insured with the United India Insurance Company Ltd; it is liable to pay the amount of compensation.

5. The opposite party no. 2, Pappu alias Rashid, has filed written statement alleging that he was neither driving the crane at the time of the accident nor any accident was caused by him. At the time of the accident, several persons had assembled at the spot and he was apprehended from there due to misunderstanding.

6. The opposite party no. 3, the Insurance Company, has filed the written statement alleging that the deceased was driving his scooter rashly and negligently and on account of it, the accident was caused.

7. On the pleadings of the parties, learned Tribunal has framed the following three issues:

(1) Whether the accident in question was caused on 31101991 at 06.45 p.m. near the post office at Purania Chauraha, Aliganj, Lucknow, due to rash and negligent driving of the vehicle no. U.R.U.4362 by its driver and the death of Vivek Swaroop, was caused as a result of the said accident ?

(2) Whether the accident in question was caused due to rash and negligent driving of the scooter no. U.P. 32/3333 by the deceased himself and the opposite party no. 3 is not liable to pay any compensation?

(3) Whether the claimants are entitled to get any amount of compensation? If so, against whom and to what extent ?

8. The petitioners have examined Anne Swaroop, P.W.1, Sri B.S.Bhasin, P.W.2 and Sri Dinesh Kumar Pathak, P.W.3, in support of their case. The opposite parties have also examined Sri Jagdish Prasad, D.W.1 and Sri Pappu alias Abdul Rashid, D.W.2. Parties have also produced documentary evidence.

9. On the basis of the evidence produced by the parties, the Tribunal has held that death of deceased Vivek Swaroop in the said accident was caused due to rash and negligent driving of the Crane by its driver and was not a result of any rash and negligent driving of the scooter by him. The Tribunal has granted compensation of Rs. 10,00,000/ to the claimants payable by United India Insurance Company Ltd. Out of the said amount of compensation, the Tribunal has ordered that Smt. Lili Swaroop and Anne Swaroop would be entitled to get a sum of Rs. 30,000/ and Rs. 70,000/ respectively, and the deceased's minor daughter, Km. Chinki alias Radhika Swaroop, would be entitled to get the remaining amount of compensation i.e. Rs. 9,00,000/

10. Learned counsel for the appellant has challenged the impugned award only on the ground that the driver was having no valid and effective driving licence to drive the Crane at the time of accident and hence, the appellant, Insurance Company, is not liable to pay any amount of compensation. On a query made by the court, during the course of arguments, learned counsel for the appellant has gone through the record of the lower court/Tribunal and has stated that no such plea was taken in the written statement. Thus, it is clear that the said plea is being taken for the first time in the Appellate Court. Since, the said plea was neither taken nor proved before the Tribunal, the appellant cannot be permitted to raise this plea in this court for the first time.

11. It has not been disputed by the learned counsel for the appellant that no permission was obtained by the Insurance Company under section 170 of the Motor Vehicles Act to contest the claim on the grounds as mentioned therein. Since, no permission was obtained by the appellant (before approaching this court) under section 170 of the Motor Vehicles Act, the present F.A.F.O. is also not maintainable.

12. No other point has been raised or argued by the learned counsel for the appellant.

13. We have gone through the impugned award dated 05051997 thoroughly, and it does not seem to suffer from any illegality or impropriety. Hence, no interference is called for in the impugned award dated 05051997. This appeal is devoid of merit and is liable to be dismissed accordingly.

14. In view of the aforesaid discussions, the appeal is dismissed with cost assessed at Rs. 5,000/. The amount of compensation deposited by the appellant including the statutory deposit, be remitted to the concerned court/Tribunal within two weeks. The Tribunal is directed to pay the amount of compensation in terms of the award dated 05051997 within a period of three weeks thereafter.