(2019) 09 UK CK 0091

In the Uttarakhand High Court

Case No : Appeal From Order No. 62 Of 2015

United India Insurance Company Limited — APPELLANT

Vs

Avnish Kumar & Others — RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:
Indian Penal Code, 1860 — Section 279, 304A, 338, 427

Citation : (2019) 09 UK CK 0091

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Bikram Singh Rana

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This is an appeal filed by the Insurance Company against the award dated 24.11.2014 passed by the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar in M.A.C.P. No. 160 of 2013, whereby the claim petition of claimant no. 2 has been partly allowed against respondent nos. 1, 2 and 3 to pay the compensation of Rs. 12,94,198/- (Rupees Twelve Lakh Ninety Four Thousand One Hundred Ninety Eight only) jointly or severally and further the Insurance Company has been given the liberty to recover the amount from the owner of the vehicle.

2. Brief facts of the case are that on 17.06.2009 Alok Kumar (deceased) who was going towards his residence on his motorcycle bearing registration no. UP13L-3632. At about 09:00 P.M., when he reached near Ratiram Petrol Pump on Sikandrabad-Dadri G.T. Road, a Mini Truck bearing registration No. UP 14D-8719, which was being driven rashly and negligently by its driver, dashed on to the motorcycle. As a result of this accident, Alok Kumar sustained grievous injuries and by the time he reached the hospital, he was dead. A first information report of this incident was lodged by the brother of deceased in P.S. Sikandrabad,

District Bulandshahr on 18.06.2009 which was registered as Case Crime No. 478 of 2009 under Sections 279, 304A, 338 and 427 IPC.

3. A claim petition was filed by the claimants, who are parents of the deceased, claiming a compensation of Rs. 15,00,000/- (Rupees Fifteen Lakh only) on account of death of their son Alok Kumar in a motor accident. It was stated in the claim petition that the deceased was aged about 24 years and was working as Supervisor in Berger Paints India Limited, Industrial Area, Sikandrabad. Due to sudden death of their son, they have suffered mental, physical and monetary loss.

4. Written statements were filed by the insurance company denying the averments made in the claim petition. Since the owner of the Mini Truck, driver of the Mini Truck and the owner of the motorcycle did not appear before the Tribunal, the case proceeded ex parte against them.

5. On the basis of the pleadings of the rival parties, the Motor Accident Claims Tribunal framed the following issues:-

"1. Whether on 17.06.2009 at about 09:00 P.M. near Ratiram Petrol Pump at Sikandrabad Dadri Road, the driver of Mini Truck Tata 407 No. UP14D-8719 by driving the vehicle rashly and negligently dashed on to the motorcycle of Alok Kumar, consequent to which Alok Kumar received injuries and died?

2. Whether at the time of accident the driver of Mini Truck Tata 407 UP 14D-8719 was having valid and effective driving licence?

3. Whether at the time of accident, the insurance of Mini Truck Tata 407 No. UP 14D-8719 was validly insured?

4. Relief ?"

6. While deciding issue no. 1, the learned Tribunal recorded a categorical finding that the accident occurred due to rash and negligent driving of the driver of Mini Truck Tata 407 and as a result of this accident Alok Kumar sustained grievous injuries and he passed away. This finding of the learned Tribunal was based on the evidence placed before the Tribunal in the form of PW-3 Surendra @ Lokesh, who was an eyewitness to the accident and had also sustained injuries in the said accident.

7. So far as issue nos. 2 & 3 are concerned, the learned Tribunal came to the conclusion that the driver of the offending vehicle was not having a valid driving licence at the time of accident. However, on the basis of the documentary evidence available before the learned Tribunal in the form of insurance policy, the learned Tribunal recorded the finding that at the time of accident, the offending vehicle was validly insured with the insurance company.

8. As regarding the amount of compensation, the learned Tribunal on the basis of the records of the Berger Paints India Ltd., Sikandrabad determined the monthly income of the deceased as Rs. 10,073/- (Rupees Ten Thousand Seventy Three

only) i.e. Rs. 1,20,876/-(Rupees One Lakh Twenty Thousand Eight Hundred Seventy Six only) per annum. On this amount, the learned Tribunal added 50% amount towards future prospects and calculated the annual income of the deceased as Rs. 1,81,314/- (Rupees One Lakh Eighty One Thousand Three Hundred Fourteen only). Considering that the deceased was a bachelor, the learned Tribunal deducted one-half of the amount and calculated the annual dependency income as Rs. 90,657/- (Rupees Ninety Thousand Six Hundred Fifty Seven only). Thereafter after applying the multiplier of 14, the learned Tribunal awarded a compensation of Rs. 12,69,198/- (Rupees Twelve Lakh Sixty Nine Thousand One Hundred Ninety Eight only).

9. Apart from the above, the learned Tribunal also awarded a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses. Thus a total compensation of Rs. 12,94,198/- (Rupees Twelve Lakh Ninety Four Thousand One Hundred Ninety Eight only) has been awarded by the Tribunal.

10. Since, the learned Tribunal has recorded a finding that the driver of the offending vehicle was not having a valid driving licence, the liability to pay the amount of compensation was fixed on the driver of the vehicle, the owner of the vehicle as well as on the insurance company.

11. Aggrieved, the insurance company has preferred the present appeal.

12. The only ground taken by the insurance company is that since the learned Tribunal has categorically recorded a finding that the driver of the offending vehicle was not having a valid driving licence at the time of incident, the entire liability ought to have been fixed on the driver as well as the owner, and the insurance company was not liable to pay any compensation.

13. The fact, however, remains that the vehicle was duly insured with the insurance company and therefore the insurance company cannot escape from its liability to pay the compensation, when the insurance company has been given liberty to recover the amount of compensation from the owner of the offending vehicle.

14. In view thereof, this Court finds no ground of interference. Consequently, appeal fails and it is hereby dismissed.

15. Let the entire amount along with the interest as directed by the Tribunal be deposited by the insurance company with the concerned Tribunal after adjusting the amount already deposited. After the entire amount is deposited by the insurance company, let the same be released in favour of the claimant within three weeks from the date of production of a certified copy of this order. The statutory amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) be also remitted to the concerned Tribunal.

16. Let a copy of this judgment along with the lower court record be sent to the concerned Tribunal for onward compliance.