(2018) 08 UK CK 0237

In the Uttarakhand High Court

Case No : Appeal From Order No. 175 Of 2017

United India Insurance Company ltd — APPELLANT

Vs

Nandi Devi & Ors — RESPONDENT

Date of Decision : 16-08-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 08 UK CK 0237

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Naresh Pant, Akhil Kumar Sah

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant against the judgment and award dated

23.02.2017 passed in M.A.C.P. no.11 of 2016, whereby learned Tribunal has partly allowed the claim petition against the appellant United India

Insurance Company Ltd. for an amount of Rs.3,65,000/- along with interest @ 9 per cent per annum from the date of filing the claim petition till the

date actual payment is made. The learned Tribunal has given recoverable rights to the appellant on the principle of â??pay and recoverâ?? and has

granted liberty to the appellant to recover the amount jointly or severally from the owner and driver of the offending car.

2. Briefly stated, facts of the case are that on 27.09.2015 deceased Rajesh Pandey, as a pillion rider, was traveling in motorcycle bearing registration

no.UK-01A-5039 and was going to Ramnagar from Kashipur. A Santro Car bearing registration no.UK06T-9505 which was coming from the side of

Kashipur and was being driven in a rash and negligent manner, near Ramnagar-Kashipur main road, dashed the motorcycle from back, due to which

deceased Rajesh Pandey sustained grievous injuries on his head and leg and was taken to Government Hospital, Ramnagar, for treatment. While

taking to the hospital, he succumbed to the injuries. Deceased was a bachelor and was the sole earning member of his family. He was working with

J.P. Cement, Rudrapur, Udham Singh Nagar and was earning Rs.16,000/- per month. With these averments, the claimants who are widow mother,

widow sister-in-law (babhi) and sister of the deceased, filed the claim petition and claimed a sum of Rs.25,00,000/- as compensation from the opposite

parties.

3. Opposite parties appeared before the trial court and contested the claim petition by filing written statements, except the driver and owner of Santro

Car who neither appeared before the Tribunal nor filed their written statement, despite service. On the basis of pleadings of parties, the Tribunal

framed the following issues:

i) Whether in the afternoon of 27.9.2015 nearby Mazar, situated at Ramnagar-Kashipur main road, a Santro Car bearing registration No.U.K. 06T-

9505 met with an accident by rash and negligent driving by its driver hitting the motorcycle bearing registration No.UK01A-5039 wherein and

whereby Rakesh Pandey as a pillion rider got grievous hurt and on the way to hospital, he died; if so, its effect?

ii) Whether on the date of incident the owner of the said motorcycle was having valid and effective registration certificate and insurance policy cover

note and other relevant documents pertaining to the vehicle; if so, its effect?

iii) Whether the driver of the said motorcycle was having valid and effective driving license on the ill fated date; if so, its effect?

iv) Whether on the date of occurrence the owner of aforesaid Santro Car was having valid and effective R.C., insurance policy cover note, fitness

etc.; if so, its effect?

v) Whether on the date of incident the driver of said Santro Car was having valid and effective driving license; if so, its effect?

vi) Whether the claimants are entitled to any compensation; if so, to what extent and from whom?

4. Thereafter, the parties led evidence. After hearing the parties and upon careful

perusal of the material available on record, learned Tribunal decided

issue no.1 in favour of the claimants. On issue nos.2 and 3, the Tribunal recorded finding that owner of the motorcycle was having valid and effective

registration certificate and insurance policy cover note and other relevant documents pertaining to the vehicle and the driver was also having valid and

effective driving licence. On issue no.5, Tribunal recorded a finding that the driving licence of the driver of Santro Car was not valid and effective on

the date of accident. Neither the driver and owner of the offending car appeared before the Tribunal as witness nor they filed any written statement

nor they filed any documentary evidence and thus the case was directed to be proceeded ex-parte against them. As the driver of the offending car

has failed to establish the fact that he was having valid and effective driving licence, the Tribunal decided issued no.5 against opposite party nos.1 and

2. On issue no.6 regarding compensation, the Tribunal awarded a sum of Rs.3,65,000/- in favour of the claimant nos.1 and 3 only along with interest

@ 9% per annum from the date of filing of the claim petition till the date actual payment is made. As the driver of the offending car was not

possessing valid and effective driving licence, the Tribunal granted liberty to the appellant to recover the amount of compensation jointly or severally

from the owner and driver of the offending car.

5. Feeling aggrieved by the impugned judgment and award, appellant United Insurance Company Ltd. has filed the present appeal.

6. Despite service, none has appeared for respondent nos.4 and 5, owner and driving of offending car in the appeal nor they have filed any appeal

against the findings recorded by the tribunal on issue no.5. Thus, the findings recorded by the Tribunal are hereby affirmed. Now the sole question

which is left for determination of this Court is whether the tribunal has wrongly directed the appellant to first satisfy the award on the principle of

â??pay and recoverâ??.

7. As observed above, the driving licence of the driver of Santro Car was not valid and effective on the date of accident, but the fact remains that the

offending car was insured with the appellant United India Insurance Company Ltd. In such circumstances, the Tribunal has rightly fastened liability

upon the appellant to first satisfy the award and thereafter to recover the same severally or jointly from the owner and driver of the offending car. The same view has also been expressed by this Court in Appeal from Order no. 441 of 2012, New India Assurance Co. Ltd. Vs. Smt. Meena Joshi and

others, decided on 14.12.2017, wherein this Court, relying upon the judgment of Honâ??ble Apex Court in the case of Manuara Khatun and others

vs. Rajesh Kr. Singh and others, 2017 (2) T.A.C. 5 (S.C.), has directed the Insurance Company to pay the awarded sum to the claimants and then to

recover the said sum from the insured by applying the principle of ""pay and recover"".

8. For the reasons recorded above, this appeal lacks merit. Same is hereby dismissed.

9. Let the statutory amount along with the interest accrued on it, if any, be remitted to the Tribunal concerned. Lower court record be also sent back.