

(2011) 03 AHC CK 0377

In the Allahabad High Court

Case No : A.O. No. 667 of 2006 and A.O. No. 614 of 2006

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Nazima and Another

RESPONDENT

Date of Decision : 05-03-2011

Acts Referred:

Citation : (2011) 3 AWC 2696

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Since both these appeals arise out against the judgment and award dated 26.7.2006, passed by Motor Accident Claims Tribunal/District Judge, Chamoli in M.A.C.T. No. 70 of 2005, Smt. Nazima and Anr. v. United India Insurance Company, therefore, they are being decided by this common judgment.

2. Brief facts of the case giving rise to these appeals are that on 13.3.2004 deceased Arshad was going Karanprayag from Gauchar sitting as a pillion rider in motorcycle bearing registration No. U.A.-11-0303, belonging to his friend Vinod Rawat. When at about 4.15 p.m. they reached near Panch Pulia (Khadiyakhand), the motorcycle met with accident due to rash and negligent driving of its owner/driver Vinod Rawat and the vehicle fell in a deep ditch, due to which Arshad died at the spot. According to claimants at the time of accident the deceased Arshad was aged about 20 years and he was earning about Rs. 8,000 per month from shop business as well as from the work of contractor. The claimants are the parents of deceased. At the time of accident the motorcycle was insured with United India Insurance Company The claimants filed claim petition against the United India Insurance Company for compensation of Rs. Ten lacs.

3. The opposite party United India Insurance Company filed written statement and denied the allegations made in the claim petition. The insurance company also alleged that the motorcycle involved in the accident was not having valid registration, insurance cover and its driver was not having valid driving licence.

4. The learned Tribunal on the pleadings of parties framed following issues:

(1) Whether on 13.3.2004 at 4.15 p.m. due to rash and negligent driving of driver of motorcycle No. U.A.-11-0303, it met with accident near Panch Pulia (Khadiyakhand), within P.S. Karanprayag, in which Arshad has died? If so, its effect?.

(2) Whether the vehicle involved in accident was not being driven in accordance with the terms and conditions of insurance policy, as alleged by opposite party No. 1 in its W.S.? If so, its effect?.

(3) To what amount of compensation the claimants are entitled to get and from whom?.

5. In support of their case claimant Smt. Nazima produced herself as P.W. 1 and also filed documentary evidence. However, the opposite party did not adduce any kind of evidence.

6. The learned Tribunal after hearing counsel for parties and considering the entire evidence on record partly decreed the claim petition for a sum of Rs. 1,04,500 as compensation alongwith interest @ 5% per annum from the date of filing the petition till the date of final payment against the United India Insurance Company. The Tribunal further directed that the insurance company shall be at liberty to recover the above amount of compensation from the legal heirs of owner/driver of vehicle Vinod Singh Rawat. The Tribunal further directed that the motorcycle be seized so that proceeding of sale of the motorcycle be initiated, in case the legal heirs of Vinod Singh Rawat do not make payment of the amount of compensation to the insurance company.

7. Feeling aggrieved by the above judgment and award the United India Insurance Company has preferred A.O. No. 667 of 2006 for setting aside the award passed against it and the claimants also filed A.O. No. 614 of 2006 for enhancement of compensation.

8. I have heard Mr. R.P. Nautiyal, advocate for the claimants and Mr. Naresh Pant, advocate for the United India Insurance Company.

9. Learned Counsel appearing on behalf of the United India Insurance Company has submitted that the legal heirs of the owner/driver of the offending motorcycle were not made party to the petition, therefore, the order passed by Tribunal to recover the amount from the legal heirs of the owner/driver as well as seizure of motorcycle, is not sustainable in the eyes of law and the matter is liable to be remitted to M.A.C.T. for its disposal afresh.

10. I find force in the above submission of learned Counsel for the insurance company.

11. Since the Tribunal has given the right of recovery of the awarded amount of compensation to the insurance company against the legal heirs of the owner/driver of the motorcycle and the Tribunal also passed order for the seizure of the

motorcycle so that proceeding for sale may be initiated by insurance company, in case the legal heirs do not make payment to the insurance company, but the legal heirs of the owner/driver of the offending motorcycle were not made party to the petition, therefore, No. order could be passed by the Tribunal for recovery of amount of compensation against them. Therefore, on this ground alone the claim petition is liable to be remitted to M.A.C.T. concerned for impleading the legal heirs of the owner/driver as Respondents in the claim petition and thereafter decide the matter afresh.

12. In view of above, A.O. No. 667/2006, filed by United India Insurance Company is allowed. The impugned judgment and award is set aside and the matter is remitted to M.A.C.T. concerned for impleading the legal heirs of owner/driver of motorcycle involved in the accident as Respondents in the claim petition and thereafter decide the claim petition afresh in accordance with law expeditiously as far as possible.

13. The claimants are directed to take proper steps for impleading the legal heirs of owner/driver as party in the claim petition.

14. The amount of compensation, if any, including the statutory amount, deposited by insurance company in appeal be remitted to the Tribunal concerned, but the same shall not be disbursed till the final disposal of claim petition by the Tribunal afresh.

15. Since the impugned judgment and award has been set aside by this Court in appeal filed by insurance company, the A.O. No. 614/2006, filed by claimants for enhancement, has become infructuous and the same is dismissed as being infructuous.

16. Let a copy of this order be placed in the file of A.O. No. 614/2006.