
(2009) 07 UK CK 0033

In the Uttarakhand High Court

Case No : Appeal From Order No. 536 of 2007

United India insurance Company Ltd.

APPELLANT

Vs

Smt. Sheela Devi and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 07 UK CK 0033

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : K.K. Shah, for the Appellant; Pramod Tiwari, and Milind Raj, for Respondents No. 5 and 6, for the Respondent

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of Motor Vehicles Act, 1988, has been preferred by the United India Insurance Company Ltd., who is the insurer of Tanker No. U.P. 04A-0298, against the judgment and award dated 21-08-2007 passed by Motor Accident Claims Tribunal/Additional District Judge, Roorkee, District Haridwar, in MAC. Case No. 92 of 2006, Smt. Sheela Devi and Ors. v. Gauriya Filling Station and Ors.

2. Brief facts of the case as narrated in the claim petition are that on 24-2-2006 at about 12.30 p.m. when deceased-Amarjeet Singh was going to Haridwar from Rudrapur by Tata Sumo No. U.A.07G-0713. In the said vehicle Dr. V.C, Ramola, C.M.S. Haridwar, Dr. Anmol Singh, C.M.S. Roorkee and Dr. K.K. Tamta were also sitting. When the said vehicle reached in front of Maltiwai Factory, a Tanker No. U.P. 04A-0298 being driven by its driver rashly and negligently came over there from the side of Kashipur and dashed the said Tata Sumo by coming on its wrong side, as a result of which driver of Tata Sumo (Amarjeet Singh) died on the spot itself and other passengers sitting in the vehicle sustained severe injuries. Thus, the claimants claimed a sum of Rs. 18,10,000/- as compensation against the opposite parties.

3. Opposite party No. 1, owner of tanker in question, contested the claim by

filing its written statement and stated that necessary parties have not been made party in the claim petition. It took the plea that accident was caused due to the rash and negligent driving of driver-Amarjeet Singh (deceased), who was in the drunken state at the time of accident and hit the tanker, which was standing on the road side due to mechanical failure. It has also been alleged that deceased-Amarjeet Singh was not authorized to drive the private vehicle on account of the fact that he was in Govt, service. The tanker in question was insured with United India Insurance Company Ltd. on the date of the accident, therefore, the liability to pay the compensation, if any, is of insurance company.

4. Opposite party No. 2, United India Insurance Company Ltd. filed its written statement and pleaded that Tanker No. U.P. 04A-0298 was insured with it. It has denied the fact that deceased had been getting the salary of Rs. 10,153/- per month. The owner of Tata Sumo has not been made party. The claimants have to prove the fact that driver of Tata Sumo was holding valid driving licence and all the papers of the said vehicle were valid. At the time of accident drivers of both the vehicles involved in the accident were not holding valid driving licence and the said vehicles were also not having valid papers.

5. Opposite party No. 3, Madan Pal, driver of Tanker No. U.P. 04A-0298 neither filed any written statement on his behalf nor appeared before the Tribunal.

6. The Learned Tribunal on the basis of pleadings of the parties framed necessary issues in the claim petition: Parties led evidence in support of their case. The Learned Tribunal having considered the entire evidence available on record and hearing Learned Counsel for the parties decreed the claim petition for a sum of Rs. 6,50,000/- against United India Insurance Company Ltd., along with interest at the rate of 7% per annum from the date of filing the petition till the date of actual payment, vide impugned judgment and award dated 21-8-2007.

7. Feeling aggrieved by the aforesaid impugned judgment and award, the Appellant i.e. United India Insurance Company Ltd. has preferred the present appeal before this Court.

8. Heard Sri K.K. Shah, Learned Counsel for the Appellant, Sri Pramod Tiwari, Learned Counsel for Respondents No. 1 to 4, Sri Milind Raj, Learned Counsel for Respondents No. 5 & 6 and perused the record.

9. Learned Counsel for the Appellant-insurance company has submitted before this Court that Learned Tribunal has erred in fastening the total liability to pay the compensation upon the Appellant whereas it has a head-on collision between two vehicles; in assessing the income of the deceased; in adopting the multiplier on higher side.

10. On the other hand, Learned Counsel for the Respondents have supported the impugned Award.

11. As far as factum of accident is concerned, the Learned Tribunal while deciding issue No. 1 has discussed this aspect. The Learned Tribunal has taken

into consideration the site plan (paper No. 49C/2), which reveals that driver of Tanker dashed the Tata Sumo by coming to its wrong side. The Learned Tribunal further taken Into consideration the statement of PW-3 Dheerendra Singh, who was also going to Haridwar from Rudrapur after attending a marriage ceremony. This witness has deposed that at the time of accident driver of Tanker No. UP. 04A-0298 was driving the tanker very rashly and negligently and dashed the said Tata Sumo by coming to its wrong side, as a result of which driver of Tata Sumo (Amarjeet Singh) received severe injuries and succumbed to those injuries. Therefore, I am of the view that the Learned Tribunal was justified in holding that accident occurred due to rash and negligent driving of driver of Tanker in question. I do not find any force in the argument advanced by Learned Counsel for the Appellant to this effect that the accident was a result of head-on collision.

12. As far as amount of compensation to be awarded in favour of claimants is concerned, the Tribunal while deciding issue No. 7 has discussed this aspect. The Tribunal after assessing the monthly income of the deceased and deducting one-third out of the same as personal expenses of the deceased, has assessed the financial dependency of the claimants at Rs. 80,000/- per annum, but the multiplier which has been adopted by the Tribunal appears to be higher side. The age of the deceased on the date of the accident was 56 years. He was in Government job. He would have certainly retired after span of four years, thereafter he would have drawn the pension not the pay, but the dependency of the claimants has been assessed by the Tribunal on the basis of pay drawn by the deceased at the time of the accident. However, I am of the view that in this case it would be appropriate to adopt the multiplier of "6" and after adopting the multiplier of "6" the dependency of the claimants comes to Rs. $80,000 \times 6 = 4,80,000/-$. The amount awarded by the Tribunal under other different heads shall remain intact. The rate of interest indicated in the impugned judgment and award shall also remain intact.

13. For the reasons stated above, I am of the view that appeal is liable to be partly allowed.

14. Accordingly, appeal is partly allowed. The impugned judgment and award dated 21-8-2007 is modified to the extent that claimants are entitled for a sum of Rs. 4,80,000/- (Rupees four lacs eighty thousand only) as compensation (instead of Rs. 6,50,000/- as has been awarded by the Tribunal) along with interest as indicated by the Tribunal in the impugned judgment and award.

15. The statutory amount deposited with this Court be remitted to the Tribunal concerned.