(2006) 10 UK CK 0007

In the Uttarakhand High Court

Case No : Appeal From Order No. 668 of 2006

United India insurance Company Ltd. APPELLANT

Vs

Smt. Tara Devi and Others RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2006) 10 UK CK 0007

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Naresh Pant, for the Appellant; B.S. Negi, for claimants/Respondents Nos. 1 to 4, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 26.07.2006, passed by the Motor Accident Claims Tribunal / District Judge, Uttarkashi, in Motor Accident Claim Case No. 13 of 2003, whereby said Tribunal has awarded a sum of Rs. 5,40,000/- as compensation to the claimants / Respondents to be recovered from the owner of the vehicle, but directed that the insurance company should pay the amount and recover it from the legal representatives of the owner of the vehicle.

2. Heard Learned Counsel for the parties and perused the record received from the Tribunal.

3. Brief facts of the case, giving rise to this appeal, are that one Mahendra Kumar (husband of claimant/ Respondent No. 1 Tara Devi) was travelling on 26.02.2003, in a Maruti car registration No. UP 11-A/ 8363, owned by one Madan Gopal Dhiman (husband of the present Respondent No. 5). Said vehicle was being driven by the owner (Madan Gopal Dhiman). When the vehicle was on its way from Uttarkashi to Rishikesh, it met with an accident in which the owner of the vehicle (Madan Gopal Dhiman) and Mahendra Kumar (husband of the claimant / Respondent Tara Devi) died. Respondents No. 1 to 4, who are the

dependents of deceased Mahendra Kumar, travelling as a gratuitous passenger in the car, filed a claim petition u/s 166 of the Motor Vehicles Act, 1988, for a compensation of Rs. 31,45,000/ -. The claimants pleaded that the vehicle was being driven rashly and negligently. It was further pleaded that the vehicle was insured with the United India Insurance Company.

4. The Tribunal issued notices to the insurance company i.e. United India Insurance Company Ltd. (present Appellant). The insurance company contested the claim petition and denied that the vehicle was being driven rashly and negligently. It was pleaded that the accident took place due to the mechanical failure. It was further pleaded by the contesting insurance company that the claimants are not entitled to compensation for want of valid registration certificate, valid driving license for the hill area, it was further pleaded that under the policy the insurance company has Reliability to pay compensation for death of the gratuitous passenger i.e. Mahendra Kumar.

5. The legal representatives of the owner did not contest the claim petition.

6. The Tribunal framed following issues on the basis of the pleadings of the parties:

(i) Whether, on 26.02.2003, deceased Mahendra Kumar was travelling in the vehicle bearing registration No. UP 11-A / 8363, after taking lift on it, and whether the accident occurred due to the rash and negligent driving on the part of the driver (owner), who himself died in the accident? If so, its effect?

(ii) Whether, the claimants are entitled to any amount of compensation? If so, to what amount and from whom ?

(iii) Whether, the vehicle was being driven at the time of the accident with valid papers, and whether the driver did not possess the valid and effective license?

(iv) Whether, the vehicle was insured with the United India Insurance Company Ltd., at the time of the accident?

(v) Whether, the suit is bad for non-joinder of the legal representatives of the owner of the vehicle?

(vi) To what relief, if any, the claimants are entitled?

7. It appears that during the pendency of the claim petition, issue No. 5 was decided as preliminary issue and legal representatives of the deceased owner of the vehicle were added in the array of parties, who did not contest the claim petition, even after receiving the notices. On the rest of the issues, the Tribunal found, after recording the evidence and hearing the parties, that the accident had occurred due to rash and negligent driving on the part of the driver / owner of the vehicle i.e. Madan Gopal Dhiman (who himself died in the accident). It further found that the vehicle was insured with the United India Insurance Company Ltd. It also found that the deceased was a Clerk with New India Assurance Company Ltd., and he was drawing Rs. 4,441/- per month as salary,

after deductions. After applying multiplier of 15, compensation to the tune of Rs. 5,40,000/- was awarded by the Tribunal. However, the Tribunal did find that there was violation of terms and conditions of the policy, as under the policy it was only the driver-cum-owner, who was insured, and not the other passengers travelling in the vehicle. Still, the Tribunal directed the insurance company to pay the compensation to the claimants and recover the same from the legal representatives of the owner. Aggrieved by said award dated 26.07.2006, passed by the Motor Accident Claims Tribunal / District Judge, Uttarkashi, this appeal is preferred by the United India Insurance Company Ltd.

8. Learned Counsel for the Appellant drew attention of this Court to the judgment and order dated 31.08.2009, passed by the Apex court in Special Leave to Appeal (Civil) C.C. No. 10993/2009, in the case of National Insurance Company Ltd. v. Parvathneni and Anr. and argued that the Tribunal has erred in law in directing the insurance company to pay the compensation, after holding that it was not liable to pay the compensation as there was violation of the terms of the policy, and the gratuitous passenger was not covered under the policy by which the vehicle was insured. This Court finds force in the submission of Learned Counsel for the Appellant for the reason that there is no law which empowers the Tribunal to direct the insurance company to pay compensation after holding that the insurance company is not liable to pay the amount, with liberty to the company to recover it from the owner of the vehicle. In the present case, owner himself had died in the accident. Apart from this, in some of the cases in which the Apex court has given similar directions relating to payment of compensation, it appears to have exercised its constitutional power under Article 142 of the Constitution of India. The Motor Accident Claims Tribunal has no such power to direct the insurance company to pay the amount, particularly, when it is found not liable to pay the amount under the policy, if the Tribunals start issuing such directions then insurance company would be made to pay amount of compensation not only in the cases where it is liable to pay under the policy, but also even if it is not liable to pay in terms of the policy. The Legislature in the Motor Vehicles Act, 1988, nowhere intends to make the insurance company liable to pay the compensation even in cases where it is not liable to pay under the policy. The burden of getting recovered the amount of compensation, cannot be put on a party by the Tribunal unless such orders can be passed under some law. That being so, this Court finds that the Tribunal has erred in law in directing the compensation to be paid by the Appellant (United India Insurance Company Ltd.).

9. For the reasons as discussed above, this appeal is allowed to the extent it affects the Appellant, and the impugned award, passed by the Tribunal stands modified accordingly and the Appellant insurance company shall be entitled to get back amount if any deposited by it, leaving it open for the claimants to recover amount from other parties held liable to pay the compensation. No order as to costs.

