
(2001) 05 AHC CK 0066
In the Allahabad High Court
Case No : FAFO No. 102 of 1999

United Insurance Co. Ltd.

APPELLANT

Vs

Vidya Yadav and others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)
Motor Vehicles Act, 1988 — Section 149

Citation : (2002) 1 ACC 606 : (2001) 2 ACC 667 : (2002) ACJ 606 : (2001) 2 AWC 1605 : (2001) AWC 1605

Hon'ble Judges : S.K. Sen, C.J;S. Rafat Alam, J

Bench : Division Bench

Advocate : Vineet Saran, for the Appellant;

Judgement

S. Rafat Alam, J.—This appeal arises out of the award of the Motor Accident Claims Tribunal, dated 31.10.1998 given in Motor Accident Claim Case No. 191 of 1997.

2. The short facts giving rise to the present appeal is that the deceased Santosh Kumar Yadav while going on a Tempo in the morning at 7.30 a.m. on 3.1.1997, met with an accident near St. Joseph's School. P.S. Chakeri, on account of which he sustained several injuries and ultimately died in the hospital the same evening. An F.I.R. was also lodged on the same day at about 8.30 a.m. alleging that the aforesaid tempo when reached near St. Josephs School, a tanker bearing registration No. UP 78-B/3274 coming from opposite direction, dashed into it, on account of which the deceased was badly injured. It was also alleged that the accident took place due to rash and negligent driving of the driver of the tanker. The widow, children and mother of the deceased who were dependent on him, filed Claim Case No. 191 of 1997 before the Motor Accident Claims Tribunal, Kanpur Nagar, claiming compensation of Rs. 12,90,000. The appellant who was opposite party No. 1 and the owner of the vehicle, opposite party No. 2, appeared in the proceeding and filed their written statements denying the factum

of accident.

3. The learned Tribunal having appreciated the evidence on record, found that the accident took place due to negligent and rash driving of the tanker's driver on account of which the deceased received fatal injuries which ultimately resulted in his death. The learned Tribunal also found that the age of the deceased was 25 years. On the question of income of the deceased, it was claimed before the Tribunal that the deceased was running tempo out of which he was earning Rs. 3,500 per month. The Tribunal taking into account the necessary expenses in maintenance of the tempo and the expenses of the deceased on himself, reached to the conclusion that he must be spending Rs. 1,500 every month on his family members. The learned Tribunal accordingly assessed Rs. 18,000 per annum as Income of the deceased for the purpose of calculating the compensation. Accordingly, looking to the age of the deceased and his income, the learned Tribunal applied the multiplier of eighteen and awarded a sum of Rs. 3,24,000 to the claimant. Rs. 5,000 was awarded towards the funeral expenses and Rs. 21,000 as damages.

4. The factum of accident and findings of the learned Tribunal regarding age of the deceased and his income have not been disputed before us. Besides that, it is concluded by findings of fact, which in our opinion, is based on correct appreciation of evidence.

5. The solitary point which has been urged by the learned counsel for the appellant in his lucid argument before us is that where no award is made against the owner (insured), the insurer cannot be made liable and thus, the learned Tribunal fell in error by giving award against the Insurer/appellant. He placed reliance on a Division Bench judgment of this Court in the case of *New India Assurance Company Ltd. v. Surjit Kaur and another* 1964 ACC 139.

6. We do not find any force in the submission. Admittedly, the tanker in question was insured for the period 2.8.1996 to 1.8.1997 and, therefore, appellant is liable to third parties on account of statutory compulsions due to the initial agreement entered between the insured (owner of the vehicle) and the appellant. Section 149 of the Motor Vehicles Act. 1988 provides that it is the duty of the insurer to satisfy the Judgments and awards against the person insured in respect of third party risks. Award made in the name of insured will not make any difference as the ultimate liability is of the insurer to pay the assured amount to the third party. The appellant Insurer has not denied the fact that the vehicle was covered under the policy of insurance and thus cannot question the validity of the award on the ground that it ought to have been passed in favour of the insured, and only then it would be binding on him. If the submission is accepted, it would result in frustration of the objective sought to be achieved by the Act. The Motor Vehicles Act is a social welfare legislation and has been enacted with a view to protect the interest of the dependants of the deceased who died in motor accident on account of which the dependants suffered irreparable loss and thus, the award made in favour of the dependants cannot be

defeated on technical grounds and the appellate court may not interfere with the award on these minor technicalities which will defeat the very purpose and object intended to be achieved. Hon''ble Supreme Court in the case of Chinnama George and Others Vs. N.K. Raju and Another, has held as under:

"We have to give effect to the real purpose to the provision of law relating to the award of compensation in respect of the accident arising out of the use of the motor vehicles and cannot permit the insurer to give him right to defend or appeal on grounds not permitted by law by a backdoor method. Any other interpretation will produce unjust results and open gates for the insurer to challenge any award. We have to adopt purposive approach which would not defeat the broad purpose of the Act. Court has to give effect to true object of the Act by adopting purposive approach."

In view of the exposition of law and also in view of Section 149 of the Act, the insurer shall be deemed to be the judgment debtor in respect of the claim made by the heirs and legal representatives of the deceased.

7. Reliance placed on a judgment of this Court in the case of New India Assurance Company Ltd. v. Surjit Kaur and another (supra), in our view, is of no help to the appellant for two reasons. Firstly, in that case the Tribunal had allowed the claim petition only against the Insurance company and dismissed against the owner of the vehicle and, therefore, the Division Bench held that since no award was made against the owner, the insurer cannot be made liable. Whereas in the present case the Tribunal has not dismissed the claim petition against the owner rather it has been allowed against both the parties. However, since the vehicle was covered under the policy of insurance, thus It directed the insurer to pay the amount of compensation. Secondly, in that case the deceased was travelling on a truck transporting goods which was not for carrying passengers on hire or gratuitously. Therefore, in view of Section 95 (2) (a) of the Motor Vehicles Act. 1939, it was held that the insurer is not liable for the death of a passenger travelling in a goods vehicle either on hire or gratuitously. Therefore, the authority cited is not applicable to the facts and circumstances of the present case.

8. Section 149 of the Motor Vehicles Act. 1988, lays down the grounds on which the Insurance Company can defend itself in respect of the liability of compensation and unless the Insurance Company successfully proves and establishes that the insured was guilty of infringement or violation of the promise, it cannot repudiate its statutory liability u/s 149 Reference may be made to a judgment of the Hon''ble Apex Court in the case of Skandta Insurance Company Ltd. v. Kokilaben Chandrawadan. 1987 (2) SCO 654, and in the case of Sohanlal Passi v. P. Sesh Reddi and others. 996(5) SCC 21. It is not the case of the appellant that there is any breach of any condition of the contract of insurance and thus the Insurance Company cannot absolve from its liability. This being the legal position, in our view, the award under appeal cannot be set aside merely on the ground that it ought to have been passed in favour of the insured

and thereby depriving the claimant from compensation under the provisions of the Motor Vehicles Act which is a beneficial legislation.

9. No other point has been urged by the learned counsel for the appellant.

10. Having appreciated the submissions and having gone through the award, we do not find any merit in the appeal and it is, accordingly, dismissed, but without cost.