
(2007) 02 UK CK 0028

In the Uttarakhand High Court

Case No : Appeal From Order No. 787 of 2001

U.P. Jal Nigam

APPELLANT

Vs

Smt. Saryu Devi and Others and Govind Prasad Mamgain

RESPONDENT

Date of Decision : 26-02-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D
Penal Code, 1860 (IPC) — Section 304A

Citation : (2007) 2 UC 1121

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Sudhir Singh, for the Appellant; Sarvesh Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This appeal, preferred u/s 110-D of the Motor Vehicles Act, 1939, is directed against the award dated 06-12-1983 passed by the Motor Accident Claims Tribunal, Pauri Garhwal, in M.A.C. Case No. 31 of 1979 whereby the claim of the claimants was allowed for an amount of compensation to the tune of Rs. 2,24,000/- with interest at the rate of Rs. 9% per annum from the date of claim petition upto the date of payment and the Appellant U.P. Jal Nigam was directed to pay the same.

2. Brief facts of the case are that claimants had filed a claim petition before the Tribunal for grant of compensation of Rs. 10,00,000/- together with interest at the rate of 9% per annum against the Appellant U.P. Jal Nigam and another alleging therein that on 19-03-1979 when Mool Chandra Gupta, Assistant Engineer of the U.P. Jal Nigam was travelling in offending Jeep No. U.T.S.-61 belonging to U.P. Jal Nigam from Pauri to Chaubattakhal on duty, the offending jeep met with an accident causing death of the occupants of the said vehicle including Mool Chandra Gupta, Assistant Engineer (except Govind Prasad Mamgain Driver-DW-2). It was further alleged that the deceased was 30 years of age at the time of the accident and his pay scale was 550-30-70 EB 40-900

EB-50-1200. His monthly emoluments were Rs. 780/- plus allowances.

3 The opposite parties filed their written statements and contested the claim petition. The Appellant-U.P. Jal Nigam had admitted the accident. It was pleaded that Govind Prasad Mamgain Driver was driving the jeep from Pauri to Chaubattakhal. It was further pleaded that inspection house was reserved for Sri Sudhakar Goel, Executive Engineer and Mool Chandra Gupta Assistants Engineer at Naugaonkhal but they did not stay (sic) started for Satpuli by the offending jeep and (sic) Executive Engineer started driving the offending jeep and little ahead of Santudhar near the curve the jeep skidded down the road and met with an accident It was further pleaded that the claimants were not entitled for compensation. The opposite party No. 2-Govind Prasad Mamgain in his written statement had stated that Sudhakar Goel, Executive Engineer was driving the jeep in question and he was sitting behind him. It was further pleaded that the accident occurred due to rash and negligent driving of Sri Sudhakar Goel, Executive Engineer. It was also pleaded that Driver-Govind Prasad Mamgain had also sustained injuries in the accident.

4. The learned Tribunal, on the evidence led by the parties, framed necessary issues in the case and held that the accident was caused due to rash and negligent driving of the driver of the offending jeep and held that the Appellant-U.P. Jal Nigam owner of the offending jeep was liable to pay the compensation. The Tribunal further directed the Appellant-U.P. Jal Nigam to pay the compensation of Rs. 2,24,000/- to the claimants with interest at the rate of 9% per annum from the date of claim petition upto the date of payment.

5. Feeling aggrieved by the impugned award, the present appeal has been filed by the Appellant.

6. We have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the Appellant-U.P. Jal Nigam contended that Sri Sudhakar Goel, Executive Engineer was driving the offending jeep at the time of the accident and Mool Chandra Gupta, Assistant Engineer was sitting by his side. The Driver Govind Prasad Mamgain of the offending jeep was sitting with Orderly peon behind them and due to rash and negligent driving by deceased Sudhakar Goel, Executive Engineer, the jeep met with an accident causing serious injuries to the occupants of the said vehicle. The offending jeep fell in the gorge and injured Mool Chandra Gupta, Assistant Engineer was taken in unconscious state by the villagers to the nearby hospital from where he was referred to Pauri Hospital. It was further contended that the offending jeep was not being driven by its driver Govind Prasad Mamgain at the time of the accident. It is admitted case of the parties that Mool Chandra Gupta, Assistant Engineer; Sudhakar Goel, Executive Engineer and Madan Singh, Orderly peon of the Appellant-Jal Nigam had gone in the offending jeep from Pauri on 19-03-1999 to Chaubattakhal. When they started from there, the offending jeep was being driven by its driver Govind Prasad Mamgain-DW2. Both the engineers were to stay at Naugaonkhal.

They instead of staying at Naugaonkhal, the engineers, driver and peon went to Satpuli through the passage of Santudhar. The offending jeep fell down in the gorge and the occupants sustained the injuries and in consequence of the injuries Sri Mool Chandra Gupta, Assistant Engineer died. It is also pertinent that Sri Sudhakar Goel, Executive Engineer and Orderly Madan Singh also died in the said accident. The only controversy between the parties is as to whether the offending jeep was being driven by its driver Govind Prasad Mamgain-DW2 in a rash and negligent manner or whether the vehicle was being driven by Sudhakar Goel, Executive Engineer at the time of the accident as alleged in the written statement.

8. In support of the claim petition, the claimants had examined Saryu Devi wife of the deceased Mool Chandra Gupta, Assistant Engineer who had stated in her evidence that she received the information of the accident and had gone to the spot of the accident and came to know that the driver jumped away from the jeep and remaining occupants, including her husband, Mool Chandra Gupta died in the accident. The local inhabitants informed her at the spot that the accident was caused due to the rash and negligent driving by the driver of the offending jeep and there was enough wide road where the accident occurred. It was informed that her husband was moved to Pauri hospital at night and she did not receive any information in the night and she went to the spot of accident next day. The Appellant had adduced the evidence of Govind Prasad Mumgain driver-DW2 who had stated in his evidence that Sudhakar Goel, Executive Engineer and Mool Chandra Gupta, Assistant Engineer did not stay at Naugaonkhal Inspection House and they started for Satpuli through Santudhar. Sudhakar Goel, Executive Engineer started driving the offending jeep and the accident occurred due to rash and negligent driving by Sudhakar Goel, Executive Engineer. He was not driver the said vehicle at the time of the accident. It is also admitted that the accident occurred on 19-03-1979. The evidence of Govind Prasad Mamgain-DW2 reveals that an F.I.R. was lodged against him u/s 304-A I.P.C. and the case was investigated by the police. Sudama Singh-DW3 employee of the Appellant-Jal Nigam had stated that he lodged the report with the police station. He did not file the copy of the F.I.R. in claim petition. Thus the prosecution has been launched against Govind Prasad Mumgain-DW2 for rash and negligent driving and causing the death of the occupants of the offending jeep at the instance of the Appellant-Jal Nigam. The copy of the F.I.R. had not been filed by the Appellant-Jal Nigam though it was lodged by the Appellant-Jal Nigam itself through its employee. This leads to take inference that if the Appellant would have filed the copy of the F.I.R. before the Tribunal the contents of the F.I.R. would have gone against the Appellant. Thus the evidence of Govind Prasad Mamgain-DW2 cannot be relied upon. It is also in the evidence that the driver of the vehicle jumped away from the jeep and he had stated in his deposition that he remained admitted in the hospital for a pretty long period and his treatment was also made at Pauri Hospital where he remained admitted for treatment. He had further stated that the document regarding the treatment of Govind Prasad Mamgain-DW2 had been

submitted in the office of the Appellant. These documents have not been filed by the driver or by the Appellant before the Tribunal. These documents have not been summoned even by the Govind Prasad Mamgain Driver-DW2. If he was admitted in Pauri Hospital, these documents would have been the best evidence. It is further admitted to the parties that Govind Prasad Mamgain Driver-DW2 did not file any claim petition for compensation before the Tribunal. If he had sustained the injuries in the accident and he was not driving the vehicle, it would have been his natural conduct to file a claim petition for compensation. Non-filing of such claim petition leads to take an inference that he himself was negligent and he was driving the vehicle at the time of accident. Apart from this, if the vehicle was taken by the Sudhakar Goel, Executive Engineer before the accident, he could have complained the matter to the higher authorities later on. There is no written complaint of Govind Prasad Mamgain Driver-DW2 to his higher authorities immediately after the accident that the vehicle was taken by Sudhakar Goel, Executive Engineer from Naugaonkhal to Satpuli to drive the offending jeep and the accident occurred due to the rash and negligent driving of Sudhakar Goel, Executive Engineer. He had stated in his evidence that he only stated this fact to Sri Pandey, Superintending Engineer of the Appellant-Jal Nigam and Mr. Pandey has not been examined by the Appellant to corroborate the statement of the deponent. Govind Prasad Mamgain-DW2 had further stated in his statement that the District Magistrate, Pauri also visited him in the hospital and he narrated the entire incident to him. The District Magistrate too had not been examined by the Appellant to corroborate the evidence of Govind Prasad Mamgain-DW2. Thus the evidence of Govind Prasad Mamgain-DW2 is not credible and cogent. Apart from this, it is admitted that the offending vehicle belong to Appellant-Jal Nigam. It is not disputed that Sudhakar Goel, Executive Engineer was Executive Engineer of the department. It is not the case of the Appellant-Jal Nigam that the offending jeep was being driven by Mool Chandra Gupta who died in the accident. Mool Chandra Gupta is a third party and even if the offending jeep was being driven by Sudhakar Goel, Executive Engineer for the sake of argument, the Appellant-Jal Nigam is liable to pay the compensation to the claimants. It was further contended that Sudhakar Goel, Executive Engineer and Mool Chandra Gupta, Assistant Engineer were to stay Naugaonkhal but they did not stay there where accommodation was booked for their stay by the department. Sudhakar Goel, Executive Engineer and Mool Chandra Gupta, Assistant Engineer were not on duty at the time of the accident. It is not disputed that they were in the vehicle of the Appellant-Jal Nigam and Mool Chandra Gupta was the occupant, even then, the Appellant-Jal Nigam is liable to pay the compensation to the legal heirs of the Mool Chandra Gupta who died in the accident. It is not the case of the Appellant-Jal Nigam that Satpuli was not in their control. Even if they had not stayed at Naugaonkhal, they would have thought to visit Satpuli by the offending jeep to see the work there. Both are the field officers so it cannot be held that they were not on duty. In her statement Saryu Devi-PW1 wife of deceased Mool Chandra Gupta, Assistant Engineer had stated that there was sufficient wife road at the place where from the offending

jeep fell into the gorge. This statement remained unrebutted. Thus the circumstances also lead to take an inference that Govind Prasad Mamgain-DW2 was rash and negligent at the time of driving the vehicle. Thus we are of the view that the Tribunal had rightly held that the offending jeep by which the accident occurred was being driven by its Driver Govind Prasad Mamgain in rash and negligent manner and the Appellant-Jal Nigam was liable to pay the compensation to the claimants and the said offending jeep was not being driven by Sudhakar Goel, Executive Engineer at the time of accident.

9. Learned Counsel for the Appellant further contended that the Tribunal had awarded interest at the rate of 9% per annum from the date of the claim petition upto the payment which is highly excessive. Learned Counsel for the claimants refuted the contention. The claim petition was decided in the year 1983 and the claim petition was filed in the year 1979. When the claim petition was decided the rate of Bank interest was much higher than 9%. The rate of interest had decreased recently. Thus the rate of interest awarded is not excessive. The half of the awarded amount had already been paid to the claimants and the payment of half of the awarded amount had been stayed by High Court. The amount of Rs. 2,24,000/- was awarded in the year 1983. The remaining amount of Rs. 1,12,000/- is to be paid by the Appellant-Jal Nigam in the year 2007. The value of the money had much depreciated after the award. In view of the above, the amount which has been awarded by the Tribunal, cannot be held to be excessive. So, we do not find any reason to interfere in the rate of interest awarded by the Tribunal. Learned Counsel for the Appellant-Jal Nigam did not challenge the quantum of compensation before us.

10. In view of the above facts and circumstances, we are in agreement with the findings recorded by the learned Tribunal. The appeal filed by the U.P. Jal Nigam is liable to be dismissed.

11. Accordingly, the appeal filed by the U.P. Jal Nigam is hereby dismissed.

12. No order as to costs.