
(2021) 11 UK CK 0174
In the Uttarakhand High Court
Case No : AO No. 44 Of 2011

Vijay Kumar Mishra

APPELLANT

Vs

Deepak Chuphal S/o Sri Vishan Singh Chuphal (Owner Of The
Motor Cycle No. U.A. 05/2751) R/o Vivekanand Colony,
Jakhani Tehsil And District Pithoragarh

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 142, 143, 144, 163A, 166

Citation : (2021) 11 UK CK 0174

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : Neeraj Upreti

Final Decision : Partly Allowed

Judgement

S.K. Mishra, J

1. Heard Mr. Neeraj Upreti, learned counsel for the appellant. Mr. Lalit Sharma, learned counsel for the appellant is absent.
2. In this appeal, the appellant being father of the deceased Ajay Kumar Mishra, has prayed for setting aside the judgement/award dated 30.10.2010, passed by learned Motor Accident Claims Tribunal, in MACT Case No. 08 of 2008 and further to award an amount of Rs. 6 lakhs along with interest.
3. The careful examination of the judgment impugned in this case reveals that on 08.10.2007, the deceased was coming back from Ghaat to Pithoragarh after participating in a funeral procession by a motor cycle bearing no. U.A. 05/2751 and when he reached at Matela Band, the motor cycle met with an accident due to technical fault in the motor cycle and Ajay Kumar Mishra died at the spot.
4. The appellant claimed that he was a competent motor mechanic and had a workshop at Bin in Pithoragarh earning an income 8,000/- Hence, a

compensation of Rs. 6 lakhs be paid. In this case, it is admitted that the vehicle was owned by sole opposite party Mr. Deepak Chuphal and it was not ensured with the insurance company. The opposite party took the plea that he was the owner of the motorcycle bearing no. UA 05 2751 at the time of accident and he had given the motor cycle to his brother Mr. Mahesh Singh and as there was some defect in the motorcycle, therefore, Mr. Mahesh Singh gave the motorcycle in the workshop of deceased Mr. Ajay Kumar Mishra for its repair. On the date of accident Mr. Ajay Kumar Mishra had taken motor cycle to Ghaat for attending the funeral ceremony, without permission of Mr. Mahesh Singh Mehra. While coming to know that the motorcycle was driven in a rash and negligent manner, due to which, motorcycle fell into a deep gorge and the said Mr. Ajay Kumar Mishra died due to injuries sustained in the accident. Thus, it is claimed that the death of the deceased occurred due to the fault of the deceased himself.

5. The learned Additional District Judge/Presiding tribunal framed four issues and address himself to decide whether on 08.10.2007 the deceased was travelling the aforesaid motor cycle and because of technical error there was an accident and what is the effect thereon; whether the accident occurred due to own fault of the deceased; whether the deceased had taken the motor cycle without the permission of the opposite party or his representative; and to what relief the appellant is entitled to. The learned Additional Judge, Presiding the Tribunal, at paragraph 17 relied upon a judgment of Hon'ble Apex Court in Ningamma and another vs. United India Insurance Company Ltd. AIR 2009 Supreme Court 3056, and held that the deceased was driving the vehicle after borrowing it from real owner. Thus, he steps into the shoes of the owner of the vehicle. His legal heirs could not claim compensation under Section 163A of the Motor Vehicle Act. He further held that the Courts in India has held that in cases where the vehicle was being taken by the person who was not owner of the vehicle but was the borrower of the vehicle step into the shoes the owner of the vehicle and, therefore, his legal representative cannot claim compensation.

6. The learned counsel for the appellant raised only one issue i.e. the applicability of Section 140 before the amendment deleting chapter X altogether. In other words, the amending Act of 32 of 2019 was passed by the Parliament w.e.f. 01.09.2019 and the Sections 140 to 144 were deleted. In order to appreciate this case the exact provision has to be analysed. Section 140 provides for liability to pay compensation in certain cases of on principle of no fault.

"140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in

respect of the death of any person shall be a fixed sum of 1[fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of 2[twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. 3[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]"

7. The Judge Presiding Tribunal is with respect to Section 163-A of the Motor Vehicle Act, 1988 (hereinafter referred as 'the Act' of brevity) before amendment of the MV Act. Section 163-A provides for special provision for payment of compensation on a structured formula basis, it reads as follows:-

"Section 163A of the Motor Vehicles Act :

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle."

8. A careful reading of Section 163A as it stood before the amendment reveals that structured formula enacted by Parliament of the country to give special provisions regarding the calculation of compensation in no way fetters or controls the operation of Section 140 of the Act. In fact, Section 140 of the Act is a benevolent provision and mostly it is used to file applications for grant of interim maintenance in applications under Section 166 of the Act. However, it is clear from the provision of Section 140 that in case there is a motor accident and a consequent death or a permanent disablement then it shall be appropriate to award at least Rs. 50,000/- (or Rs.25,000, as the case may be), as compensation on low fault basis. The use of expression "shall not be rejected by reasons of any wrongful act, neglect or default on the persons in respect of whose death or formal desirability the claim has been made" make it clear that even if a person

who has suffered the permanent disablement or death, is guilty of some wrongful action, which led to the accident and causing of the disablement or the death then also this amount of Rs.50,000/- in case of the death and Rs.25,000/- in case of permanent disablement has to be awarded in favour of the claimant.

9. In that view of the matter, the learned Judge Presiding the Tribunal committed an error in not awarding any compensation in favour of the appellant. Hence, the appeal is allowed in part. In the result, it is held that the appellant is entitled to Rs. 50,000/- as compensation on no fault basis. The owner of the vehicle shall pay the compensation to the appellant. The respondent is therefore directed to pay a sum of Rs. 50,000/- to the appellant on no fault basis under Section 140 of the Act, but it shall not carry any interest within a period of two months. The petitioner shall issue a notice to the respondent to pay the sum within 15 days and the two months shall be calculated from the date of the sending of the notice through registered post to the respondent. If it fails to pay the amount of compensation of Rs.50,000/-within two months from the date of issuance of notice then it shall carry an interest at the Rate of 5% from the date of presentation of the claim application 31.01.2008.

10. There shall be no order as to costs.

11. Urgent certified copy of this order be granted on proper application.