

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

**A.O. No. 1285/2001
(Old No. 507/1998)**

New India Assurance Co. Ltd.
Through its Assistant Manager,
Legal Cell, Civil Lines,
Allahabad

.....Appellant.

Versus

- 1- Dr. Chandrabhan Singh S/o Shiv Singh,
Junior Research Officer, (Animal Husbandry)
Hill Campus, Ranichauri,
Tehri Garhwal.
 - 2- Devendra Kumar Sharma S/o Gyan Ram
Sharma R/o 874, Sector -16, Faridabad
(Haryana).
 - 3- Smt. Mithlesh Sharma W/o R.D. Sharma
R/o House No. 874, Sector-16, Faridabad
Haryana.
 - 4- Vidhata D.C.M. Transport Commission Agency
13, New Market, Jivni Mandi, Agra,
through its proprietor
Munna Lal
-Respondents.

Mr. T.N.Khan, learned counsel for the appellant.
Mr. Pankaj Miglani, learned counsel for the respondents.

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

This appeal, U/s 173 of the Motor Vehicles Act, has been preferred by the New India Assurance Company, against the judgment and award dated 24-6-1998, passed by the M.A.C.T. Tehri Garhwal in MAC Case No. 31/1997, whereby the Tribunal awarded a compensation of Rs. 1,98,056-20 P. in favour of the claimant.

2. Brief facts giving rise to this appeal are that the claimant/respondent Dr. Chandrabhan Singh has filed claim petition for grant of compensation of Rs.1,98,056-20 P. due to burning of his household goods, which were booked through Vidhata DCM Transport Commission Agency, 13 New Market, Jivni Mandi, Agra, from his village to Ranichauri, Tehri in truck No. HR-29/D-4882, owned by O.Ps./respondents Devendra Kumar Sharma and Smt. Mithlesh Sharma. The claimant has been serving as Junior Research Officer at Parvatiya Parisar, Ranichauri since 5 years but his residence was small. He got a big house having 4 rooms bout 8 or 10 months ago, hence he was carrying his household goods from his native place. The said truck was booked on 12-5-1997 and on the same day the household goods were loaded on the truck from his native place Jugsana, District Mathura for Parvatiya Parisar, Ranichauri, Tehri Garhwal. On reaching of the said truck near Green Restaurant, Roorkee, at about 11.30 P.M., the truck collided with an electric pole due to rash and negligent of its driver, resulting explosion of fire due to joining of electric wires with each other and thereafter the entire household goods of the petitioner loaded therein were also burnt and destroyed. There was no arrangement for extinguishing the fire. The petitioner has also prepared the list of his household goods loaded in the truck costing Rs. 1,98,056-20 P. It is also stated that he has demanded compensation of the said articles from the opp. Parties but no compensation was paid to him.

3- The O.P./owners of the offending truck filed their written statement, denying the allegations of the claim petition except the factum of the accident. It was also

alleged that the offending truck was taken on hire through O.P. No.3 Vidhata DCM Transport Commission. It was also pleaded that the petitioner has demanded excessive cost of the articles damaged in the said accident. The truck was insured for unlimited liability with New India Assurance Company having its insurance policy No. 666648 dated 11-10-96 and the same was valid on the day of the accident and thus the liability, if any, for making payment, shall be of the insurance company and not of these contesting O.Ps.

4- The O.P./respondent Vidhata DCM Transport Commission Agency has also filed its written statement admitting the booking of the truck involved in the accident. It was also admitted that the said truck was booked by the claimant on 12-5-97 and thereafter his household goods were loaded on the said truck from his village. The O.P. also admitted that Rs. 500/-were paid by the petitioner as advance. However, the liability of compensation of the articles was not admitted in case if the articles are not insured.

5- The O.P./appellant New India Assurance Company also filed its W.S. denying the allegations of the claimant stating that the truck involved in the accident was insured with it for limited liability though the insurance policy was valid from 11-10-96 to 28-7-97. It was also alleged that the driver of the offending vehicle was not having valid driving licence, fitness certificate and other papers of the vehicle at the time of the accident. It was also alleged that the cost of the articles is shown very excessive and thus the petitioner was not entitled to any compensation for such damages.

6- On the basis of the pleadings of parties the following issues were framed by the Tribunal:-

1. Whether the accident has occurred on 12-5-97 at 11.30 P.M. by truck No. HR 29/D-4882 driven by its driver rashly and negligently having no valid driving license, permit, fitness etc. on G.T. Road, in front of Green Restaurant, Roorkee by its collision with the electric pole resulting in burning of entire household goods loaded therein costing Rs. 1,98,056-20 Ps?. If so, its effect?.
2. To what amount of compensation is the petitioner entitled due to the burning of his household goods and from which of the opp. Parties?.
3. Any other relief to which the petitioner is entitled in the present case?.

7- The parties in support of their cases, filed relevant documents as well as produced oral evidence.

8- The Tribunal after having considered the entire material on record and hearing the learned counsel for the parties, decreed the claim petition for an amount of Rs. 1,98,056-20 P as compensation in favour of the claimant. The amount so decreed was to be paid by the New India Assurance Company.

9- Feeling aggrieved by the aforesaid impugned judgment and award, the insurance company has filed the appeal before the Allahabad High Court, which has been transferred to this court after creation of new State.

10- Heard learned counsel for the parties and perused the record.

11- Learned counsel for the appellant has raised the submission before me that the Tribunal concerned did not have any jurisdiction to award the compensation in favour of the claimant as the claimant is the owner of the goods which were being carried in the offending vehicle, therefore, the claimant being not a third party, is not entitled to any compensation.

12- My attention has been invited towards the case **M/s United India Insurance Company Ltd. and another Vs. Tiruvalluvar Transport Corporation Ltd. and others** reported in **2003 (3) T.A.C. 438 (Mad.)** and on the basis of this judgment learned counsel for the appellant has submitted that the claimant is not entitled to the compensation as has been awarded by Tribunal concerned.

13- Learned counsel for the claimant on the other hand has argued that the claimant is entitled for compensation in view of the specific provisions of Section 166 (1)(b) of the Motor Vehicles Act. He has also submitted that the authority cited by the learned counsel for the appellant does not apply to the facts and circumstances of the present case.

14- Section 166 of the Motor Vehicles Act reads as follows:-

“166. Application for compensation.- (1) *An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-*

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) *where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*

(d) *by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”

[* * * *]*

[(4) The claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]”

15- A bare perusal of the aforesaid section makes the picture clear that in view of the aforesaid provision the owner of the property is entitled for the compensation. It is not disputed that the claimant was carrying his goods in the vehicle involved in the accident. The authority which has been cited before me does not apply in the instant case, as the facts in cited authority are altogether different.

16- The Division Bench in the authority cited has discussed that M/s Annamalai Roadways Company (ARC) was not the owner of the goods being carried by the vehicle involved in the accident. The agency (A.R.C.) claimed in the cited case that they hired the lorry involved in the accident and transported the goods from Madras to Madurai. The goods belonged to third party/consignor. The A.R.C. has also claimed that they are the owners of the goods entrusted to them and A.R.C. has filed the claim petition as owner/consignor on behalf of the consignee. The Hon'ble Court observed in the aforesaid case cited before me that the A.R.C. is not the owner of the goods being carried in the vehicle in question.

17- Here, in the instant case, it is admitted that the goods were being carried in the vehicle in question by the claimant and the claimant thus is the owner of the said goods, therefore, the ruling cited by the learned counsel for the appellant before me does not apply to the facts and circumstances of the present case.

18- Learned counsel for the appellant has also cited before me another decision **Oriental Fire and General Insurance CO. Ltd. Bangalore Vs. S. Rasheed Ahammad and another** reported in **2006 (2) T.A.C.**

48 (Kant.). I have gone through the ruling cited before me and I am of the view that the controversy involved in this case has not been discussed by the Hon'ble Judge in the ruling cited before me.

19- Having considered the arguments advanced by the learned counsel for the appellant, I am of the view that the present appeal lacks merit and is liable to be dismissed.

20- Accordingly the appeal is dismissed. The impugned judgment and award dated 24-6-1998 passed by the M.A.C.T. Tehri Garhwal in MAC Case No. 31/1997, is hereby confirmed.

(B.C. Kandpal, J.)

Dated: 31st October, 2006.
ISB