IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Appeal From Order No. 277 of 2007

National Insurance Co. Ltd. ...Appellant

Versus

Madan Singh Rawat & others ...Respondents

Sri Bindesh Kumar Gupta, Advocate for appellant
Sri N.K. Papnoi, Advocate holding brief of Sri M.C. Pant, Advocate for respondents no. 1 & 2
Sri G.S. Negi, Advocate for respondent no. 4

Dated: 26-02-2009

Hon'ble B.C. Kandpal, ACJ.

This appeal, under Section 173 of Motor Vehicles Act, 1988, has been preferred by the appellant i.e. National Insurance Company Limited against the judgment and award dated 15.05.2007 passed by Motor Accident Claims Tribunal/District Judge, Rudraprayag, in M.A.C.T. Case No. 60/2005, Sri Madan Singh Rawat and another versus National Insurance Co. Ltd. and others.

Brief facts of the case, as narrated in the claim petition, are that on 17.11.2005 at about 2.05 p.m. when deceased-Smt. Kamla Rawat, wife of claimant-Sri Madan Singh Rawat, was going to Gairola Nursing Home near University Gate, Srinagar at Rishikesh-Badrinath motor road, vehicle Tata 207 bearing Registration No. U.P.14-W-9809 coming from opposite direction hit the wife of claimant on account of rash and negligent driving of its driver, as a result of which deceased sustained injuries on her person. The deceased was taken to Base Hospital Srikot Srinagar in an injured condition

where she died during her treatment. The age of deceased at the time of accident was 33 years and she had been earning a sum of Rs.3000/- per month by doing the work of sewing and knitting. At the time of accident opposite party no. 1-Ravindra Kumar Sharma was the registered owner of vehicle in question, which was comprehensively insured with opposite party no. 2-National Insurance Co. Ltd. The claimants thus claimed a sum of Rs.4,44,000/- as compensation against opposite parties.

Opposite parties no. 1 and 3 i.e. insurer and driver of offending vehicle in question contested the claim and filed their written statement denying their liability to pay the compensation.

None has appeared on behalf of opposite party no. 2-Sri Ravindra Kumar Sharma-owner of vehicle in question, hence several notices were issued to him by ordinary as well as registered post but in case of non-appearance of opposite party no. 1 publication was made in daily newspaper 'Dainik Jagran' and therefore an order was passed on 23.5.2006 to proceed exparte against opposite party no. 2.

The learned Tribunal on the basis of pleadings adduced by the parties framed necessary issues.

Parties led oral as well as documentary evidence in support of their case. The learned Tribunal after having considered the entire material available on record and hearing learned counsel for the parties decreed the claim petition for a sum of Rs.1,77,000/- as compensation against National

Insurance Co. Ltd. along with interest of 6% per annum from the date of filing the petition, vide judgment and award dated 15.05.2007.

Feeling aggrieved by the aforesaid impugned judgment and award, the appellant i.e. National Insurance Co. Ltd. has preferred the present appeal before this Court.

Heard Sri Bindesh Kumar Gupta, Advocate for appellant, Sri N.K. Papnoi, Advocate holding brief of Sri M.C. Pant, Advocate for respondents no. 1 & 2, Sri G.S. Negi, Advocate for respondent no. 4 and perused the record.

Learned counsel for the appellant has submitted that insurance policy was not in existence on the date of accident as the alleged accident had occurred after cancellation of policy due to dishonour of cheque issued by owner of vehicle in question in favour of appellant-insurance company in lieu of premium of insurance due against him. He has also submitted that driver of vehicle in question was not having a valid and effective driving licence at the time of accident. He has further submitted that multiplier adopted by the Tribunal is also on higher side keeping in view the age of the deceased.

As far as factum of accident is concerned, the learned Tribunal after having considered the entire evidence adduced before it came to the conclusion that the said accident had taken place on account of rash and negligent driving of vehicle in question by its driver, in which Smt. Kamla Rawat sustained

injuries and consequently succumbed to those injuries. I do not find any illegality in the said finding recorded by the Tribunal and same deserves to be confirmed.

As far as question of validity of driving licence, insurance policy and other papers of vehicle in question is concerned, the learned Tribunal has discussed this point while deciding issue no. 2. The insurance company has taken a plea in its written statement that at the time of accident driver was not having valid driving licence; therefore the liability to pay the compensation is of owner of vehicle and not of insurance company. On the other hand, opposite party no. 3 driver of offending vehicle in question has stated in his written statement that on the date of accident all the papers of vehicle in question were valid and said vehicle was comprehensively insured. The counsel for insurance company invited the attention of the learned Tribunal towards fitness certificate (paper No. 29C), registration certificate (paper no. 30C) and driving licence (paper no. 50C), which show that driving licence was valid w.e.f. 13.1.2005 to 12.1.2008 and other papers were also valid. The insurance company, on the contrary, has failed to adduce any (oral or documentary) evidence, which may show that on the date of accident driving licence and other documents relating to vehicle in question were not valid and effective.

Another contention of the appellant-insurance company is that premium sent by the owner of the offending vehicle through cheque was dishonoured by the Oriental Bank of Commerce and the

insurance policy was cancelled by the insurance company. The information of cancellation of policy was sent to the owner through registered post and in this circumstance the insurance company could not have been held liable to pay the compensation.

From perusal of the impugned judgment it is quite clear that the Tribunal on the basis of the ruling *2005 (82) U.D.88, United India Insurance Company versus Narayani Devi,* has recorded a finding that although the cheque sent by the owner of the vehicle towards the premium was dishonoured and insurance policy was cancelled by the insurance company and its information was sent to the owner of the vehicle, but the insurance company is liable to pay the amount of compensation to the third party and once the insurance company has issued policy in favour of the owner of vehicle and after cancellation of the said policy the insurance company is liable to pay the compensation. Further, although the insurance company in its written statement has taken a plea that insurance policy was cancelled due to the fact that the cheque was bounced by the Bank and copy of the letter allegedly sent to the owner regarding dishonourment of premium cheque has been filed on record, but the insurance company has not got proved the documents and the plea taken by it about this fact by adducing cogent and reliable evidence. In the aforesaid facts of the case, I do not find any infirmity in the finding recorded by the Tribunal holding the insurance company liable to pay the compensation.

The Hon'ble Apex Court in the case of **Deddappa and others vs. Branch Manager, National Insurance Co. Ltd.,** reported in **(2008) 2 SCC 595,** has held in paragraph-24 which reads as follows:

> ***"24.*** *We are not oblivious of the distinction between the statutory liability of the insurance company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim."*

On the basis of the aforesaid judgment it appears that it was the liability of the insurance company to send the intimation to the insured with regard to the fact of dishonourment of the cheque. Here, in the instant case although the insurance company has taken the plea that insured was informed with regard to the fact of dishonourment of cheque but there is no evidence available on record that the insured was informed with regard to dishonourment of cheque and cancellation of policy before the date of accident. It cannot be expected from the insured to get the knowledge of the dishonourment of cheque and cancellation of policy unless he is informed by the insurer with regard to this fact.

Although counsel for the insurance company could not place any material before me as to whether insurance premium was paid by the insured after he received intimation and as to

whether any insurance premium has been paid with regard to vehicle in question as yet. The record does not indicate as to whether any insurance premium was paid by the insured after the cheque was dishonoured and policy was cancelled as well as after the intimation received by him, therefore, in these circumstances, I think it would be just and proper that insurance company although would be liable to satisfy the claim but in case if the insurance premium has not been paid by the insured as yet, the insurance company would have the recoverable rights of the amount of award from the owner of vehicle in question.

As far as amount of compensation to be awarded in favour of claimants is concerned, the Tribunal has discussed this point while deciding issue no. 3. The claimants stated that deceased had been doing the work of sewing and knitting and used to earn a sum of Rs.3000/- per month from the said job, but they have failed to adduce any cogent and reliable evidence in this regard. The learned Tribunal in absence of any cogent evidence with regard to income of deceased has taken into account the notional income of deceased as Rs.15,000/- per annum, which appears to be justified. After deducting one-third out of notional income as personal expenses of deceased, the financial dependency of claimants has been assessed at Rs.10,000/- per annum. The record reveals that date of birth of deceased is mentioned as 11.12.1972 in the Parivar Register and in this way the age of the deceased comes to 33 years. The Tribunal keeping in view of the age of deceased as 33 years selected the multiplier of ‘17’ which

appears to be just and proper and needs no interference. After adopting the multiplier of '17' in this case the amount of compensation has been worked out to Rs.10,000 x 17=Rs.1,70,000/-. The Tribunal further awarded a sum of Rs.5000/- towards funeral expenses and a sum of Rs.2000/- towards loss of love and affection, which also appears to be justified and requires no interference. Thus, the Tribunal has awarded a total amount of compensation to the tune of Rs.1,77,000/- to the claimants. I do not find any infirmity in the method of calculation adopted by the Tribunal and the finding recorded by the Tribunal in this regard deserves to be confirmed.

For the reasons stated above, appeal is liable to be partly allowed.

Accordingly, appeal is partly allowed. The impugned judgment and award is modified to the extent that appellant-insurance company although would satisfy the claim by making the payment of awarded amount, but in case if the amount of insurance premium has not been paid by the insured, then the insurance company shall recover the awarded amount of compensation from the owner of vehicle in question in the light of observations made by the Hon'ble Apex Court in Deddappa's case (supra).

The statutory amount deposited by the appellant with this Court be remitted to the Tribunal concerned.

(B.C. Kandpal, ACJ.)

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