

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal From Order No. 8 of 2006

Kalu

...Appellant

Versus

The Oriental Insurance Co. Ltd.
& others

...Respondents

Sri B.P. Nautiyal, Advocate for appellant

Sri V.K. Kohli, Senior Advocate assisted by Sri I.P. Kohli, Advocate
for respondent no. 1

Sri D.C.S. Rawat, Advocate for respondent no. 2

Dated: 30-04-2009

Hon'ble B.C. Kandpal, J.

This appeal, under Section 173 of Motor Vehicles Act, 1988, has been filed by appellant-Kalu, owner of vehicle No. H.R. 61-1495, against the judgment and award dated 18.10.2005 passed by Motor Accident Claims Tribunal/Additional District Judge/Fast Track Court II, Dehradun, in Motor Accident Claim Petition No. 116 of 2004, Shashi Shekhar @ Shalendra Shekhar Sharma versus Kamal Kishore and others.

2- Brief facts of the case, according to the claimant, are that on 2.4.2004 at 7.00 a.m., claimant-Shashi Shekhar along with his family members was going to Muzaffarnagar in his Maruti Car No. U.A.07B-0301, which was being driven by his friend Pravesh Kumar son of Manohar Lal. When the said car reached near Majra, Dehradun, Truck/Tanker No. H.R.-61-1945 which was being driven by its driver-Kamal Kishore rashly and negligently came from the side of Saharanpur and

hit the car of the claimant, due to which claimant sustained injuries and his car was damaged. At the time of this accident claimant was 30 years of age and he used to do job in Saudi Arabia and on account of injuries sustained by him in the accident he has not been able to do job and could not go again in Saudi Arabia. Opposite party no. 1 was the driver of said Truck and opposite party no. 2 is the owner of said Truck. At the time of this accident the said Truck was insured with opposite party no. 3- Oriental Insurance Co. Ltd. and therefore claimant may be awarded appropriate amount of compensation from the opposite parties.

3- Opposite parties no. 1 and 2 filed written statement admitting therein that at the time of accident Truck No. H.R.61-1945 was being driven by opposite party no. 1 who was having valid driving licence. Opposite party no. 2 is the owner of said Truck and at the time of accident this truck was insured with opposite party no. 3. But, the answering opposite parties have denied the rest of the contents of the claim petition and pleaded that driver of Maruti Car No. U.A.07B-0301 was in drunken state at the time of accident and he caused the accident by plying the vehicle rashly and negligently. The claimant did not make party to driver, owner as well as insurer of Maruti Car No. U.A.07B-0301, therefore claim petition is liable to be dismissed for non-joinder of necessary parties. It has also been stated that since at the time of accident truck in question was insured with opposite party no. 3- Insurance Company, therefore on this ground also this claim petition filed against them deserves to be dismissed.

4- Opposite party no. 3- insurance company filed its written statement denying all the contents of the claim petition and stated that at the time of accident opposite party no. 1, driver of truck, was not holding valid driving licence and this accident was caused on account of contributory negligence of driver of Maruti Car, therefore, this claim petition is liable to be dismissed.

5- The learned Tribunal on the basis of pleadings of the parties framed relevant issues in the claim petition. Parties led evidence in support of their case. The learned Tribunal after having considered the entire material evidence available on record and hearing learned counsel for the parties decreed the claim petition for a sum of Rs.5,69,378/- along with interest @ 5% per annum, vide impugned judgment and award dated 18.10.2005. The Tribunal at the same time dismissed the claim petition against the insurance company and directed the driver and the owner of Truck No. H.R.61-1945 (namely, Kamal Kishore and Kalu) to pay amount of compensation to the claimant.

6- Feeling aggrieved by the aforesaid impugned judgment and award, owner of vehicle No. H.R. 61-1495, has preferred the present appeal before this Court.

7- Heard Sri B.P. Nautiyal, learned counsel for appellant, Sri V.K. Kohli, Senior Advocate assisted by Sri I.P. Kohli, learned counsel for respondent no. 1 (insurance company), Sri D.C.S. Rawat, learned counsel for respondent no. 2 (claimant) and perused the record.

8- During the pendency of the appeal, owner of Truck in question has moved an application under Order 41 Rule 27 C.P.C. that in fact the appellant is the registered owner of Truck No. H.R.61-1495 and not the owner of Truck No. H.R. 61-1945. It has been stated in the application filed along with the affidavit that owner of Truck No. H.R. 61-1945 is one Jaibeer Singh and Jaibeer Singh is the owner of Truck No. H.R.61-1945 since the year 2003. The accident in this case has taken place in the year 2004. It is thus submitted by learned counsel for the appellant that in the year of accident Truck No. H.R. 61-1945 was in the name of Jaibeer Singh and not in the name of present appellant-Kalu.

9- Learned counsel for respondent no. 1- insurance company has invited my attention towards paragraphs 15 and 20 of the claim petition in which it has been specifically stated that Truck No. H.R.61-1945 has caused the accident. In the body of the F.I.R. number of truck involved in the accident is mentioned as H.R.61-1945.

10- On a careful scrutiny of entire documents filed on record I find that there is a lot of confusion in the number of trucks. The Tribunal would have ascertained firstly the number of truck actually involved in the accident. In the claim petition, number of truck, in the very beginning, has been mentioned as H.R.-61-1945, but in the subsequent paragraphs number of truck has been changed. The same position is in the written statement filed by the owner of truck (Kalu) as in the second paragraph he has admitted that he is the owner of

Truck No. H.R.-61-1945, but subsequently he has also admitted that he is the owner of Truck No. H.R.61-1495.

11- In the light of the aforesaid pleadings adduced by the parties as well as evidence available on record, I am surprised that how the Tribunal without verifying the number of truck actually involved in the accident has fixed the liability upon the owner of Truck No. H.R.-61-1945. The documents which has been filed by appellant-Kalu before this Court reveal that Truck No. H.R.61-1945 is in the name of one Jaibeer Singh. The authenticity of document i.e. registration certificate of Truck No. H.R.61-1945, which has been filed by the appellant-Kalu before this Court, has not been controverted by the insurance company.

12- Under the aforesaid circumstance, I think it would be just and proper to remand the matter to the Tribunal who shall firstly verify as to whether which is the truck actually involved in the accident i.e. Truck No. H.R.61-1495 or Truck No. H.R.61-1945. The parties shall adduce the evidence before the Tribunal with regard to involvement of the truck in the accident. The parties may also move the application for amendment in the pleadings filed before the Tribunal accordingly. The Tribunal shall thereafter pass the fresh award in the light of evidence to be adduced by the parties before the court on all counts including quantum.

13- The appeal is accordingly allowed. The impugned judgment and award dated 18.10.2005 is set aside. The matter is remanded back to the

Tribunal concerned for fresh trial of the case after giving opportunity to the parties to adduce the evidence in support of their claim.

14- As the matter is very old, therefore, the Tribunal is directed to dispose of the claim petition within a period of six months from the date of receiving the judgment of this Court.

15- The statutory amount deposited with this Court be remitted to the Tribunal concerned.

(B.C. Kandpal, J.)

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