

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL.**

A. O. No. 414/2006

National Insurance Company Ltd. Appellant.

Versus

Smt. Shanta Rani @ Kanta & others .. Respondents.

Sri B.K. Gupta, learned counsel for the appellant

Sri N. Bali, learned counsel for claimants/respondents 1 and 2.

None has appeared for respondent No.3.

[Hon'ble B.C. Kandpal, J. (Oral)]

This appeal, under Section 173 of the Motor Vehicle Act, arise out against the judgment and award dated 3-5-2006, passed by Motor Accident Claim Tribunal/ 4th F.T.C./Addl. District Judge, Haridwar in MACT Case No. 58/2003, Smt. Shanta Devi and another Vs. Rajesh Kumar and others.

2- Brief facts of the case are that on 4-6-2003 Manish Bhatia driving his Motorcycle U.A. 08-A/2955 was coming towards B.H.E.L. When the said Motorcycle was near Military Farm on Bahadarabad-Shivalik Nagar Motor Marg, Tractor No. U.P. 81-A-2113 and Trolley No. U.A. 08-B-9511 dashed the Motorcycle in a rash and negligent manner, due to which Manish Bhatia and his friend, who was pillion rider in it, sustained grievous injuries, and succumbed to the injuries. The claimants filed claim petition for compensation in lieu of death of Manish Bhatia. According to them the deceased was working as Salesman in Bhagwati Agency Roorkee and he used to earn Rs. 5,000/- per month. He was the only son of his parents.

3- The opposite party No.1, Rajesh Kumar owner of Tractor Trolley filed written statement and denied the allegations made in the petition. He, however, alleged

that the accident took place due to own negligence of the motorcyclist. He further alleged that the driver of the tractor trolley was having valid and effective driving license at the time of accident. It was further alleged that the trolley was insured with National Insurance Company and the liability, if any, to pay the compensation is of the insurance company.

4- The opposite party No.2, New India Assurance Company, insurer of the offending motorcycle, also contested the claim petition and alleged that the motorcyclist was not having valid and effective driving license. The insurance company also alleged that the accident did not occur due to rash and negligence of motorcyclist, therefore, the insurance cannot be held liable for compensation.

5- The opposite party No.3, National Insurance Company, insurer of the trolley No. UA 08-B-9511, also filed its written statement and alleged that the accident has occurred due to the negligence of the motorcyclist. The insurance company also alleged that excessive amount of compensation has been claimed. It was also pleaded that the deceased and the driver of the tractor trolley were not having valid and effective driving license.

6- On the pleading of parties the tribunal framed the following issues in the claim petition:-

- 1- Whether on 4-6-2003 at about 4-30 P.M., at Shivalik Nagar, on B.H.E.L and Bahadarabad Marg the driver of Tractor U.P. 081-A- 2113 and Trolley No. U.A. 08-B-9511 dashed the motorcycle of the deceased in a rash and negligent manner in which Manish sustained injuries and died due to these injuries?.

2- Whether at the time of the accident the driver of Tractor U.P. 081-A- 2113 and Trolley No. U.A. 08-B-9511 was having valid documents pertaining to the aforesaid vehicle? If so, its effect?.

3- To what amount of compensation the claimants are entitled to get and from whom?.

7- Thereafter parties led evidence in support of their cases. The learned tribunal after hearing learned counsel for the parties and perusing the entire evidence available on record, decreed the claim petition for a sum of Rs.3,14,000/- along with an interest of 6% per annum from the date of filing the petition till the date of actual payment. The tribunal also directed that the amount awarded shall be paid by the insurance company subject to the condition that the insurance company shall have the recoverable right from the owner of the tractor trolley.

8- Feeling aggrieved by the aforesaid judgment and award, the National Insurance Company has preferred this appeal before this court.

9- Heard Sri B.K. Gupta, learned counsel for the appellant and Sri Narendra Bali, learned counsel for respondents 1 and 2 and perused the record.

10- As far as the factum of the accident is concerned, it is evident from the record that on 4-6-2003 the Tractor No. U.P. 81-A-2113 along with Trolley No. U.A. 08-B-9511 hit with the Motorcycle which was being driven by the deceased Manish Bhatia. The first information report of the accident was lodged in this regard that Manish Bhatia deceased was coming from Roorkee and was going to Rishikesh, a tractor trolley was at the time of

accident coming from the opposite direction. It was a head-on-collision. The accident took place at about 4.30 P.M. on the road and the day light was available at that time. Therefore drivers of both the vehicles had sufficient opportunity to see the vehicles coming from the opposite direction to each other, but the manner in which the accident has taken place, it appears that the drivers of both the vehicles were rash and negligent, which resulted the accident.

11- Learned counsel for the claimants has also filed the copy of the judgment passed in MACT Case No. 71/2003, Smt. Snehlata and others vs. Rajesh Kumar and others. In this case the pillion rider of the motorcycle, which was being driven by Manish Bhatia, had also succumbed to the injuries in this accident and the tribunal in the judgment cited before me in the connected MACT No. 71/2003, Smt. Snehlata and others Vs. Rajesh Kumar and others, has come to the conclusion that the drivers of both the vehicles had contributed the rash and negligence in this accident. I have also gone through the judgment cited before me by the learned counsel for the claimants and I find myself in full agreement that in view of the dictum of *res ipsa liquitor* it is quite clear that the drivers of both the vehicles had contributed the rash and negligence in this accident. The tribunal has also adopted the correct approach in observing that the rash and negligence on the part of the driver of the tractor was 60%, while the rash and negligence on the part of the driver of motorcyclist, was 40%. The tribunal in the instant case while delivering the impugned judgment and award dated 3-5-2006 in MACT Case No. 58/2003, has completely ignored this aspect that it is a case of contributory negligence and the evidence available on record clearly indicates towards this aspect of the matter.

Had the drivers of both the vehicles been vigilant then they could have avoided the accident. It is not a case that there was blind turn at the place of the accident. The road at the place of the accident is quite straight. P.W.2, Kishore, who is an eye witness, has stated in his deposition that there was no traffic at the place of the accident. It is thus quite clear that the driver of tractor trolley had contributed the negligence up to an extent of 60% while the remaining negligence was on the part of the driver of the motorcycle Manish Bhatia the deceased.

12- Learned counsel for the appellant has submitted that the tractor was not insured at the time of accident and it was the trolley which insured only, therefore, the insurance company is not liable to pay the amount of compensation in any manner. Learned counsel for the appellant has cited a decision of Andhra Pradesh High Court reported in *II (2005) ACC 228 (Oriental Insurance CO. Ltd. Versus Laxmanna & Ors)*. I have gone through the judgment cited before me and I am of the view that the facts and circumstances of the cited case are quite different. The judgment cited before me cannot be said to be applicable in the instant case for the reasons that in the instant case there was specific question put by the insurance company to the eye witness, as to how the accident took place. The reply given by the eyewitness P.W.2, Kishore in his cross-examination is also very specific that he had seen the accident and the accident took place by the hit of the wheel of tractor. He has further clarified that the rear wheel of the tractor hit the motorcycle. However, I am not supposed to interfere in the finding recorded by the tribunal at this stage because the tribunal has recorded a finding that the insurance company may recover the amount of compensation from the owner of the vehicle.

13- As far as the other papers relating to the offending vehicle are concerned, the learned counsel for the insurance company could not show me any evidence which may suggest that the offending vehicle involved in the accident had invalid or ineffective documents at the time of accident. As regards the driving license of the driver of offending tractor trolley is concerned again learned counsel for the insurance company could not show me any provision which may suggest that the driver of the tractor trolley was not holding valid and effective driving license at the time of accident.

14- As I have already observed in this case the driver of the motorcycle contributed the negligence upto an extent of 40%, therefore, the insurance company who had insured the trolley on the date of accident is not liable to make the payment of compensation upto the extent of 40%. The record further reveals that the motorcycle was insured with New India Assurance Company at the time of accident.

15- The learned counsel for the claimants has thus submitted that the amount of compensation upto an extent of 40% is to be paid by the insurer of the motorcycle i.e. New India Assurance Company.

16- I fail to appreciate the argument advanced by the learned counsel for the claimants. It is not disputed that Manish Bhatia deceased was driving the motorcycle, therefore, the claimants cannot be said to be authorized to get the compensation on account of own negligence on the part of Manish Bhatia, deceased/ driver of motorcycle. The claimants are thus not entitled for remaining 40% out of the total amount of compensation awarded in favour of the claimants.

17- For the reasons stated above, I am of the view that the claimants are authorized only to get a sum of Rs. 3,14,000/- X 60 = Rs. 1,88,400/-, which is to be paid by

100

the National Insurance Company, the insurer of the tractor trolley, to the claimants along with interest indicated in the impugned judgment and award, with the condition that the insurance company may recover the same from the owner of the tractor trolley.

18- Accordingly, the appeal is partly allowed. The impugned judgment and award is modified upto the extent that the claimants are entitled to get a sum of Rs. 1,88,400/- as compensation from the National Insurance Company along with the interest @ 6% per annum from the date of filing the petition till the date of actual payment instead of Rs. 3,14,000/- as has been awarded by the tribunal. The insurance company may recover the awarded amount of compensation from the owner of the tractor trolley.

19- Let the statutory amount of compensation deposited by the appellant with this court be remitted to the tribunal concerned.

20- The amount deposited in excess, if any, by the appellant/insurance company, before the tribunal concerned, be refunded to it.

Dated: 30-06-2009

(B.C. Kandpal, J.)

ISB

