

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal from Order No. 314 of 2012

National Insurance Company Limited ... Appellant
Vs.

Sueb Khan and Others ...Respondents

Advocate: Mr. Lalit Belwal, Advocate, for the appellant.
Mr. Rajesh Joshi, Advocate, for the respondent No. 1
Ms. Suraiyya Naz, Advocate, holding brief of Mr. Lalit
Sharma, Advocate, for the respondent No. 2 and 3.

Hon'ble Sharad Kumar Sharma, J.

Brief facts of the instant Appeal from Order are, that the claimants had preferred a claim petition before the learned Motor Accident Claims Tribunal, thereby praying for grant of an appropriate compensation to the tune of Rs. 10.00 lakh, on account of injury caused to the claimant Sueb Khan, due to the accident which has chanced on 10.02.2010 by a vehicle, which was owned by respondent No. 2 i.e. Vikar Hussain and which, at the relevant point of time, was being driven by respondent No. 3 i.e. S. Khan.

2. The learned Motor Accident Claims Tribunal, after dealing with the factual matrix about the vehicle being involved in the accident and upon exchange of pleading had framed the issues and the issue which presently would be of concern for deciding the instant Appeal from Order, would be the issue No. 3 as to whether at the relevant point of time, i.e. on the date of accident dated 10.02.2010, the vehicle was being driven in accordance with the terms of the insurance policy. Issue No. 3 is extracted hereunder:-

“iii. Whether at the relevant time the alto car involved in the accident was being driven as per the terms and conditions of the Insurance policy?”

3. The learned counsel for the appellant has argued that in accordance with the provisions contained under Section 66, which is part of Chapter 5 of the Motor Vehicles Act, it has provided, that no owner of the vehicle will use the vehicle, for any commercial activities for being plied, in a public place until and unless there happens to be a valid permit issued in favour of the owner of the vehicle, as contemplated under Section 66 of the Motor Vehicles Act.

4. It is argued by the learned counsel for the appellant that as on the date of the accident i.e. 10.02.2010, the offending vehicle, which was admittedly owned by respondent No. 2, bearing registration No. UK04/TA1545 (Alto Car), was not having a valid permit as per Section 66 of the Motor Vehicles Act, and such, liability of payment of compensation as determined to be made payable to Sueb Khan, who was injured couldn't have been harnessed upon the insurance company.

5. On the contrary, the learned counsel for the owner of the vehicle had argued that the observation, which has been made by the learned Motor Accident Claims Tribunal, while deciding issue No. 3, to the effect, that the owner of the vehicle could not get the valid permit owing to the fact that there was a strike in the department for a period from 10.01.2010 to 10.02.2010, that in itself cannot be taken as to be a valid reason to waive off the liability, which otherwise is to be fastened upon the owner of the vehicle,

since the vehicle itself was not being plied in accordance with the provisions of Motor Vehicles Act particularly when and the Insurance company in accordance with the insurance policy itself had provided, that in case if the vehicle was plied in contravention to the provisions of the insurance policy though the vehicle might have been covered by the insurance policy, but since it was being operated in contravention to the provisions contained under Section 66 of the Motor Vehicles Act, the liability should have befallen on the owner of the vehicle and not on the insurance company.

6. The offending vehicle, on the date of the accident i.e. dated 10.02.2010 was not having valid permit is a fact which is quite apparent from the finding which has been recorded on issue No. 3 itself, because the defense taken by the owner of the vehicle that they could not procure a document because of the strike for a period from 10.01.2010 to 10.02.2010 that in itself will amount to be an admission on part of respondent No. 2, that on the date of accident, they were not having a valid permit, as it is contemplated under Section 66 of the Motor Vehicles Act and hence, the vehicle was not being plied in compliance of the provisions contained under Section 66, which creates an absolute bar that the owner of the vehicle cannot ply a vehicle for commercial activities until and unless there happens to be a prior valid permit in their favour.

7. The aforesaid contention stands fortified by reading of the document paper No. 20(ga2), which was Form-23, having being issued by the competent authority, while

exercising its powers under Rule 48, which is in the format of a permit being granted to the vehicle for being plied for commercial activities and according to the permit granted as per Form SR27 under Rule 65(1)(ii), it was a tourist vehicle permit which was granted to owner of the vehicle to ply the same for tourist purposes for the period from 20.02.2010 to 19.02.2015. Meaning thereby, the permit itself which was placed on record as paper No. 20(ga3) itself was a decipher, that the permit of the vehicle in question stood validated only for the period from 20.02.2010 onwards and not on the date when the accident has chanced i.e. 20.02.2010.

8. Thus, in view of the aforesaid fastening of liability to pay the compensation as it has been determined by the learned Motor Accident Claims Tribunal to compensate the respondent No. 1 for the injuries suffered in the accident, which was determined as to be an amount payable to the tune of Rs. 1,76,000/- with interest payable on it @ 7%, the same should have been fastened upon the owner of the vehicle since the vehicle was not being driven in accordance with the provisions of the Act itself.

9. Thus, the impugned award dated 05.05.2012 would stand partially modified limited to the extent that the awarded amount, which has already been paid by the insurance company to the claimants which has been deposited before the learned Motor Accident Claims Tribunal concerned, that would be remitted to the claimant respondent No. 1 herein and the amount thus deposited by the appellant before the learned Motor Accident Claims Tribunal concerned and paid to the claimants that would be

recoverable from the owner of the vehicle i.e. respondent No. 2 herein.

10. Subject to the aforesaid, the impugned award dated 05.05.2012 would stand modified to that extent.

(Sharad Kumar Sharma, J.)

18.12.2023

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