

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal from Order No. 168 of 2011

Mohammad Miya

... Appellant

Vs.

Ali Mohammad and Others

... Respondents

Advocate: Mr. Mohd. Azim, Advocate, for the appellant.
Mr. Basant Singh, Advocate, holding brief of Mr. Harshpal
Sekhon, Advocate, for the respondent Nos. 1 & 2.
Mr. B.K. Gupta, Advocate, for respondent No. 3 through video
conferencing.

Hon'ble Sharad Kumar Sharma, J.

This Appeal from Order arises out of an award dated 05.05.2010, as it has been rendered by the learned Motor Accident Claims Tribunal in MACC No. 392 of 2007, Ali Mohd. and another Vs. Mohd. Miya and others.

2. This Appeal from Order stood admitted by the coordinate Bench of this Court by an order dated 16.07.2013, but, owing to the fact that the parties to the Appeal from Order have agreed to address the Appeal from Order on merits, the same is being heard finally.

3. The claimants respondent Nos. 1 & 2 herein had filed a Claim Petition on 14.11.2007, praying for the grant of compensation to the tune of Rs. 25.00 lakh, on the ground that in an accident which has chanced on 11.10.2007, due to collision of the vehicles i.e. Motorcycle bearing registration No. UA-06E-9453, along with other offending vehicle i.e. HR-38H-1905, Mohd. Kabil Hussain had met with the sad demise thus on account of which, they contended that since they were the dependents on the deceased, they

were entitled to receive the compensation as per the provisions of the Motor Vehicles Act.

4. According to the Claim Petition, on the date of the accident/death, the deceased was 24 years of age and it was contended by the claimants that the deceased was working as an electrician/mechanic. Apart from that he was also engaged in the business of agriculture and used to respectively earned about Rs. 5,000/- and Rs. 2,000/- per month. Thus, the total income, which was said to have accrued to him i.e. deceased was Rs. 7,000/- per month.

5. It was further contended by the claimants that his engagement as an electrician was with the fabricators workshop, which was being operated by one Mr. Rahees Ahmad. The matter was contested and the respective parties filed their respective statements. The written statement thus filed by the owner of the Truck was numbered as Paper no. 15(kha) along with its driver the opposite party No. 2 to the claim petition.

6. In the written statement thus filed by the present appellant on 21.04.2008, what is important is that none of the pleadings has been raised by the appellant herein before the learned Motor Accident Claims Tribunal, to get a finding returned with regard to the plea of contributory negligence, as argued by the learned counsel for the appellant, which are apparently contrary to the pleadings of the written statement and even contrary to the issue framed by the learned Motor Accident Claims Tribunal and even contrary to the grounds which had been taken in the present Appeal from Order, to the effect that they would not be liable to

pay any compensation because the accident, as alleged it was an act of “contributory negligence” because there was a head on collision due to which the death has taken place of late Mr. Mohd. Kabil Hussain.

7. The Insurance Company contested the proceedings by filing a separate written statement and in the written statement thus filed by them, they have come up with the case that they would not be liable to pay any compensation as such to the claimants for the reason being that on the date of accident the offending vehicle i.e. the Truck bearing registration No. HR-38H-1905 was being rashly and negligently driven by the driver of the offending vehicle and further that they would not be liable to pay any compensation to the claimants, because of the fact that the vehicle since was being driven contrary to the terms of the policy, thus in the light of the provisions contained under sub Section (6) of Section 158 of the Act, the Insurance Company would not be liable to pay any amount of compensation to the claimants, qua the claim raised therein, coupled with the fact, that the vehicle was being driven by the driver of the vehicle in contravention to the provisions contained under Section 64(V-B) of the Insurance Act.

8. A specific plea was taken by the Insurance Company by filing a written statement on 03.10.2008, that the entire proceedings of the claim petition raised by the respondent Nos. 1 & 2 would be vitiated for the reason being the other vehicle, which was said to be involved in the motorcycle accident; in order to develop and establish the plea of contributory negligence, since was not made as a party nor

the Insurance Company of the motorcycle which was also said to be involved in the accident was made a party thus it was contended that the claim petition would be deserved to be rejected on that ground.

9. Despite the fact that after the exchange of pleading the Insurance Company had brought the facts on record with regard to the violation of the terms of the policy and the manner in which the vehicle was being driven by the driver who was employed by the present appellant, coupled with the plea taken by the insurance company to the effect that the proceedings under Section 166 to be read with Section 140 of the Motor Vehicle Act would be bad due to non-joinder of the necessary party. No effort was ever made by the present appellant or even the claimants, ought to move application, as such, before the learned Motor Accident Claims Tribunal, praying for to implead the owner of the motorcycle as well as its insurance company, in order to develop and prove his plea pertaining to the act of contributory negligence as argued now at the stage of appeal.

10. The argument as it has been extended by the learned counsel for the appellant, for the first time, in this Appeal from Order with regard to the compensation which has been leveled against them, that the same would be bad because it was an accident which has chanced on 11.10.2007, due to the act of contributory negligence, because it was a head on collusion, the said aspect could have only been proved and established by evidence when the owner and the insurance company of the other offending vehicle i.e. motorcycle which was involved in the accident and also was made as a

party to the proceedings because the factum of contributory negligence cannot be isolatedly decided by impleadment of one of the offending vehicle, which was involved in the accident i.e. the truck owned by the appellant herein. Because that aspect could have been decided only when the owner and the insurance company were got made as a party before Motor Accident Claims Tribunal, it would have been then only this aspect could have decided, and could have been considered by his Court even at the appellate stage.

11. The defence of contributory negligence was a defence which has been raised by the appellant. Hence they were more importantly required to shoulder their responsibility to have moved an appropriate application for raising the plea about the effect of non-joinder of the necessary party or particularly by raising a plea with regard to the contributory negligence and accordingly getting the issues formulated before the learned Motor Accident Claims Tribunal, that the proceedings of Case No. 392 of 2007 would be vitiated due to non joinder of necessary party and no liability of payment of compensation could be harnessed upon the appellant, because of the fact that since it was a case of contributory negligence, they ought to have got an issue formulated before the learned Motor Accident Claims Tribunal, which was not done, hence, they would be estopped from raising a question of contributory negligence, now for the first time before the Appellate Court and that too without there being any specific ground taken in the Memorandum of Appeal as preferred under Section 173 of the Motor Vehicles Act.

12. The Insurance Company in the written statement have come up with plea that since the vehicle, which was insured with the insurance company i.e. respondent No. 3 herein, they have contended that apart from the fact that the vehicle was being driven contrary to the provisions of the insurance cover; apart from that it has been argued by the learned counsel for the respondent No. 3, that even the documentary evidence which was placed on record by the appellant himself herein in relation to the driver who was driving the offending vehicle at the relevant point of time when the accident has chanced, the exhibit which was marked as paper No. 18C/8, which was the driving license of the offending truck, was issued by Assistant Regional Transport Officer, Rampur, UP, which was by way of a Form No. 6, issued under Rule 6(1), wherein it was specifically observed by the competent licensing authority, that the driver of the vehicle was holding the license to drive "light motor vehicle" and not for "heavy goods vehicle".

13. Since the appellant himself has placed the said document on record to be read in evidence by the learned Motor Accident Claims Tribunal, they cannot now take a somersaulted plea, a stand that on the date of the accident, the driver Habib Ahmed who was engaged by them to drive the vehicle, was having a valid license to drive the vehicle.

14. The aforesaid contention further stands denounced because during the pendency of this Appeal from Order, the appellant have filed an Application under Order 41 Rule 27, allegedly bringing on record the driving license which they contended that it was being held by the driver on the date of accident in order to show that he was validly driving the

vehicle which was of a heavy goods vehicle but since the Application under Order 41 Rule 22, was lastly dismissed by the coordinate Bench of this Court on 30.06.2023, the same cannot now be taken into consideration for the purposes of establishment of his argument that the driver at the time of the accident was having a valid license as it has been argued by the learned counsel for the respondent No. 3, that no liability could be fastened upon them because the driver engaged by the appellant was not having a valid driving license hence the entire liability was to be fastened upon the owner of the vehicle and not to the insurance company.

15. Based on the aforesaid pleading, the learned Motor Accident Claims Tribunal has framed the following issues, which are extracted hereunder:-

“उभयपक्षों के अभिवचनों के आधार पर निम्न वाद बिन्दु बनाये गये:-

1-क्या दुर्घटना दिनांक 11-10-2007 को समय करीब 6.10 बजे सायं, स्थान-चढढा पेपर मिल के पास पुलिया पर दोराहा, बहद थाना बाजपुर, जिला ऊधम सिंह नगर में ट्रक संख्या-एच0आर0-38एच-1905 के चालक द्वारा अथवा मोटरसाईकिल संख्या-यू0ए0-06ई-9453 के चालक द्वारा अपने-अपने वाहनों को तेजी व लापरवाही से चलाने के कारण घटित हुयी, जिसमें आयी चोटों के कारण काबिल हुसैन की मृत्यु हो गयी? यदि हां तो प्रभाव?

2-क्या दुर्घटना की तिथि पर प्रश्नगत ट्रक के चालक के पास वैध एवं प्रभावी चालक लाइसेंस नहीं था? यदि हां तो प्रभाव?

3-क्या याचिका में मोटरसाईकिल के पंजीकृत स्वामी व उसकी बीमा कंपनी आवश्यक पक्षकार है? यदि हां तो प्रभाव?

4-क्या याचीगण कोई प्रतिकर की धनराशि प्राप्त करने के अधिकारी हैं? यदि हां तो कितनी धनराशि व किस पक्षकार से?

16. The respective parties lead their evidence in relation to their respective cases for their defence and for the claim before the learned Motor Accident Claims Tribunal and the driving license which was placed on record was also a subject matter which was considered by the learned Motor

Accident Claims Tribunal while deciding issue No. 2, about its validity and its impact upon fixation of liability on the insurance company.

17. As far as the quantification of compensation is concerned, that is not an aspect which has been argued by the learned counsel for the appellant before this Court, accepting it as determined by the learned Motor Accident Claims Tribunal, while deciding issue No. 4 as to what would be the appropriate compensation which could be determined to be made payable to the claimants on account of the death of Mr. Mohd. Kabil Hussain based on the income proved to be accruing to him.

18. Since no question has been raised, qua the quantification of the compensation and particularly in the context of the income accruing to the deceased, the learned Motor Accident Claims Tribunal has rightly determined the monthly income of the deceased as to be Rs. 7,000/- per month, and determining it by a multiplier of 12 as to be Rs. 36,000/- per annum income which accrued to the deceased and after making deductions, the amount of Rs. 18,000/- was taken as to be the dependency for the claimants based on which and after applying the multiplier of 18 taking into consideration the age of the deceased on the date of the accident, the amount of compensation which has been determined as to be Rs. 3,36,000/- has been rightly determined by the learned Motor Accident Claims Tribunal which calls for no interference by this Court.

19. It is a settled law that if a party to a proceedings raises a defence, it's always the burden which has to be

discharged by him to establish, that the liability could not have been fastened upon him being the owner of the vehicle and the driver engaged by him was driving the vehicle contrary to the provisions of the Insurance Act, as well as about the validity of the insurance policy of the vehicle which was utterly failed to be discharged by the appellant before the learned Motor Accident Claims Tribunal. Thus, the impugned award as rendered on 05.05.2010 does not suffer from any apparent error or it is not in violation to the argument of the learned counsel for the appellant before this Court as observed above. Thus, the Appeal from Order lacks merit; the same is dismissed.

20. The amount, as deposited by the appellant in pursuance to the interim order passed by this Court and the part of it, which has been disbursed to the claimants, the balance amount would be paid to the claimants by the learned Motor Accident Claims Tribunal in accordance with law along with the interest which has accrued on the same, after deducting the amount which has been permitted to be withdrawn by the orders passed by this Court. Let the statutory amount be remitted back to the learned Motor Accident Claims Tribunal, for its appropriate adjustment and disbursement as directed above.

21. Subject to the aforesaid, the Appeal from Order stands dismissed.

(Sharad Kumar Sharma, J.)
01.12.2023