

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal From Order No.392 of 2017

National Insurance Co. Ltd.

... Petitioner

Vs.

Smt. Shobha Devi and Others

... Respondents

Advocate: Mr. Prabhat Pande, learned counsel for the petitioner.
Mr. Shobhit Saharia, learned counsel for the respondents.

Hon'ble Sharad Kumar Sharma, J.

Heard learned counsel for the parties.

2. The challenge in the instant Appeal from Order is to the award dated 27.04.2017, as it was rendered by the learned Motor Accident Claim Tribunal, in Motor Accident Claim Petition No.272 of 2016, "Smt. Shobha Devi and Others Vs. Shri Mangal Singh and Others".

3. As per the facts, which are involved in the case, are that, on 26.06.2016, late husband of the applicant / claimant no.1, had met with the sad demise, on account of the accident, which has chanced at about 7:00 p.m. at Rishikesh Bazar, when the deceased was returning to his home on a cycle, he was dashed by the rashly driven offending vehicle bearing Registration No.UK-08-TA-4007, which was insured with the present appellant.

4. It was contended by the claimants that the deceased was employed with THDC and he was having an earning of Rs.77,690/- per month. At the time of accident, he was of 49 years 8 months and 18 days old and thus, pray for a compensation to be paid of an amount of Rs.93,31,000/-. The claim petition was opposed by the opposite party no.3 i.e. the insurance-appellant herein, who has filed written statement paper no.26B contending therein, that the claim petition, as preferred by the claimants would be barred by the provisions contained under Section 149(2) and Section 170(2) of the Motor Vehicle Act, which leaves it upon for the Insurance Company to take all the defence of their case in relation to the provisions of the insurance policy and with regards to the insurance cover provided to the offending vehicle.

5. The learned Motor Accident Claim Tribunal after exchange of pleading has formulated the following questions:-

“1- क्या दिनांक 26-06-2016 को समय सांय लगभग 07:00 बजे स्थान ऋषिकेश हरिद्वार वाईपास पर ए०आर०टी०ओ० कार्यालय ऋषिकेश के पास में वाहन सं० यू०के०-०८ टी०ए०-4007 के चालक द्वारा उक्त वाहन को तेजी व लापरवाही से चलाकर मृतक सोहन लाल द्वारा चलायी जा रही साईकिल में टक्कर मार दी गयी जिसके परिणामस्वरूप आयी गंभीर चोटों के कारण मृतक सोहन लाल की मृत्यु हो गयी?

2- क्या दुर्घटना के समय वाहन सं० यू०के०-08 टी०ए०-4007 वैध ड्राईविंग लाईसेंस व वैध प्रपत्रों के साथ चलाया जा रहा था?

3- क्या याची पक्ष वांछित अनुतोष पाने के अधिकारी हैं, यदि हां तो किस पक्षकार से?”

6. The parties led their respective oral and documentary evidence. As per the statements which were recorded by PW1 Shobha Devi, PW2 H.S.Negi and PW3 Devkrishan Semwal, to establish

the factum of the accident having been chanced on 26.06.2016 and consequently, the act of negligence and cause of death was on account of rash and negligent driving of the vehicle bearing registration no.UK-08-TA-4007.

7. The second question, which was required to be considered, was as to whether what adequate compensation the claimants would be entitled to receive. The said questions have been decided by the learned Tribunal while deciding issue no.3. While deciding the same, the Court has determined the income, which was based on the income, which accrued to the deceased by determining that the annual income accruing to the deceased would be Rs.9,32,280/- per annum and thus, after making a deduction of 1/4 of the income, the learned Motor Accident Claim Tribunal, after applying the multiplier of 13, had determined the compensation to be made payable to the tune of Rs.1,09,78,210/-

8. The learned counsel for the appellant has argued the matter though, without a pleading being raised either in the statement or even without a ground being taken in the present appeal from order to the effect that the entire proceedings before the learned Motor Accident Claim Tribunal, would be vitiated, in view of the provisions contained in the first proviso to Section 166 of the Motor Vehicle Act, which makes it incumbent that all the legal representatives of the deceased should

have been joined as a party to the application for claim of compensation.

9. The plea of non-joining of all the heirs or legal representatives of the deceased, were the plea available to the appellant, at the stage, when he was participating in the proceedings before the learned Motor Accident Claim Tribunal, but no such specific plea about the sustainability of the claim petition, based on that ground, was ever raised by the appellant herein either in the written statement or by getting an issue framed on the said perspective and getting the finding returned by the learned Motor Accident Claim Tribunal, as to what bearing would the claim proceedings have so far as it relates to the impact of first proviso to Section 166 of the Motor Vehicle Act.

10. The implications of the first proviso to Section 166 of the Motor Vehicle Act, has been orally argued for the first time, by the counsel for the appellant, at the stage, when the appeal itself is being heard, at the stage of final hearing, and that too without there being any ground taken, as such, in the memorandum of appeal while challenging the impugned award dated 27.04.2017.

11. The implications and the effect of the proviso to Section 166 of the Motor Vehicle Act would always have an impact on determination of the factual issue, as to whether what bearing would

it have due to non-impleadment of the heirs of the deceased in the claim petition. Though the same has been argued to the contrary by the learned counsel for the claimants/ respondents contending therein that since 1/4 deductions in paragraph no.25 has already been made, in fact, no material bearing, as such, it would have qua the determination of compensation, based upon the income accruing to the deceased, as it has been determined by the learned Motor Accident Claim Tribunal, while deciding the issue no.3.

12. As far as the observation, which has been made by the learned Motor Accident Claim Tribunal while determining the amount of compensation, as determined by it, and, particularly, the observations made in recording the findings on issue no.3 itself is based on the documentary evidence, which was adduced by the parties, particularly, having reference to paper no.10(Ga).

13. Thus, the determination of the compensation as made by the learned Motor Accident Claim Tribunal, happens to be in consonance to the parameters prescribed by the various precedents of the Hon'ble Apex Court as well as the provisions of the Motor Vehicle Act. Hence, the impugned award dated 27.04.2017 cannot be said to be bad in the eyes of law, because of the impact of the proviso to Section 166 of the Motor Vehicle Act, which has been attempted

to be argued by the learned counsel for the appellant.

14. The appellant cannot be permitted to take advantage of his own follies of lack of pleading or lack of issue, being raised before the learned Motor Accident Claim Tribunal for getting the issue decided, because it is always the prerogative of the parties to the proceedings, that in case if there is a controversial issue, which may have any bearing on the proceedings, it is the parties, who are required to get the issue framed and, based on their evidence and pleadings, get the finding recorded on the issue, which could have, at all, bearing on the case. Having not done so, at this stage, the appellant cannot be permitted to take advantage of his own follies by not raising an appropriate pleadings before the learned Motor Accident Claim Tribunal and raising it, for the first time, before this Court at the stage of final hearing, without there being any pleading so far as issue no.3 is concerned, since the quantum of determination of compensation has not been the question of debate in the present appeal from order, so, I do not find any illegality in the impugned award as rendered by the learned Motor Accident Claim Tribunal on 27.04.2017.

15. Thus, the appeal lacks merits and the same is, accordingly, dismissed. The statutory amount thus deposited by the appellant before this

Court, at the time of filing of the appeal, would be remitted back to the Motor Accident Claim Tribunal, which is to be disbursed to the claimants in lieu of the award dated 27.04.2017 and, consequently, in lieu of the present judgment rendered in this appeal from order.

(Sharad Kumar Sharma, J.)

24.11.2023

Sukhbant/