

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-4261-2016 (O&M)
Date of Decision: 26.07.2018

Uttarakhand Transport Corporation

--Appellant

Versus

Oriental Insurance Company Ltd. & Ors.

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Dr. Deepak Jindal, Advocate for the appellant.

Mr. Neeraj Khanna, Advocate for respondent no.1.

TEJINDER SINGH DHINDSA.J (Oral)

This order shall dispose of the instant appeal filed at the hands of Uttarakhand Transport Corporation (earlier known as Uttaranchal Roadways Transport Corporation).

The instant appeal arises out of M.A.C.T Petition No.163 of 2009/2016 before the M.A.C.T, Jhajjar which was a petition filed under Section 166 of the Motor Vehicles Act filed by the claimant Sachin (minor) son of Om Parkash and who was claiming compensation to the tune of Rs.10 lacs for the grievous injuries suffered in an accident that took place on 13.7.2008 in which bus bearing registration no. UA-07-M-3220 belonging to the appellant-Corporation was involved.

The Tribunal vide award dated 31.3.2016 awarded compensation to the extent of Rs.1,21,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

Learned counsel representing the appellant-Corporation confines the scope of the instant petition only as regards the recovery rights having been granted to the insurer/respondent no.1/Oriental Insurance Company to recover the amount of compensation from the driver and owner

of the offending vehicle belonging to the appellant-Corporation. He states that he is not raising any issue with regard to quantum of compensation.

I have heard counsel for the appellant as also Mr. Neeraj Khanna, Advocate representing respondent no.1-Insurance Company.

Since the only issue involved in this appeal is with regard to recovery rights, this Court would be adverting to Issue No.3 that had been framed by the Tribunal and which was in the following terms:-

“3. Whether respondent no.1 & 2 contravened the terms & conditions of the insurance policy? If yes, its effects.OPR5.”

On Issue No.3 the following findings were returned by the Tribunal:-

“13. The onus to prove the issue no.3 was upon the respondent no.5. No evidence has been produced on record and from the testimony of petitioner's witnesses and the pleadings even of respondent no.2, it is apparent that respondent no.1 was holding a valid driving licence at the time of the impugned accident. There is also no evidence of the accident to be the result of contributory rashness and negligence on behalf of respondents no.1 & 4 as is alleged by the respondent no.5. Both the petitioner's witnesses rather have deposed that an FIR 254 dated 13.7.2008 under sections 279, 337, 338, 304-A and 427 I.P.C was got registered at Police Station Kotwali, Manglaur, District Haridwar against respondent no.1, Madan Lal. The same has not been disputed by the respondents. In the given circumstances, the issue no.3 stands decided against the respondent no.5.”

The uncontroverted factual premise is that the insurance company has not filed any appeal to assail the findings returned by the Tribunal with regard to Issue No.3.

Strangely inspite of the findings afore-reproduced in relation to Issue no.3, the Tribunal in the operative part of the award granted recovery rights to the insurer to recover the compensation amount.

Even counsel representing the insurance company concedes that an error has been committed by the Tribunal and the liability against the backdrop of the findings returned on Issue No.3 should have been joint and several i.e. upon the insurer as also driver and owner of the offending vehicle.

In view of the above, the present appeal is allowed and the award dated 31.3.2016 passed by the M.A.C.T, Jhajjar is modified to the extent that the liability of the compensation amount awarded in favour of injured/claimant namely Sachin (minor) son of Om Parkash would be joint and several upon the insurer i.e. respondent no.1-insurance company as also driver and owner of the offending vehicle which otherwise belongs to the appellant-Corporation.

Appeal is allowed in the aforesaid terms.

The statutory amount of Rs.25,000/- that was deposited by the appellant-Corporation be remitted to the Tribunal for disbursement in favour of the claimant/injured.

(TEJINDER SINGH DHINDSA)
JUDGE

26.07.2018

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No