2025:UHC:9724

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 85 of 2011

Sri Narendra Singh --Appellant

Versus

Smt. Gohar Jahan and Ors. --Respondents

Presence:-

Mr. Tarun Pande, learned counsel for appellant.

Mr. Pulak Agarwal, learned counsel for respondent No.7-Insurance Company.

There is no representation for the respondents-claimants and for driver.

Hon'ble Pankaj Purohit, J. (Oral)

This is an appeal of the year 2011 and the fateful accident was happened on 18.02.2008.

2. The present appeal from order has been filed by the appellant-owner challenging the impugned judgment and award dated 08.12.2010 passed by the learned Motor Accident Claim Tribunal/Additional District Judge/First Fast Track Court, Haldwani, District Nainital, passed in MACP No.62 of 2008 *Smt. Gohar Jahan and Ors. Vs. Narendra Singh and Ors.*, whereby, the said claim petition was allowed and a compensation of Rs.4,41,500/- was awarded in favour of the respondents-claimants to be paid by the appellant along with the interest @6% per annum from the date of filing of the claim petition.

3. By the order impugned in the present appeal, liability was fastened upon the owner of the vehicle-appellant for the reason that none of the documents has been filed by the appellant-owner before the learned Tribunal during the trial. By the impugned order, a compensation of Rs.4,41,500/- was awarded in favour of the respondents-claimants by the appellant along with the interest @6% per annum from the date of filing of the claim petition.

4. The facts in brief are that the deceased, Sagir Ahmed, while proceeding from Haldwani to Lalkuan on his scooter bearing registration No.UP 31-A/6561 in connection with his business, was hit near Teen Pani on Bareilly Road, Haldwani, by a truck bearing registration No. UP 78-AN/3200, which was being driven in a rash and negligent manner. As a result of the collision, the deceased sustained grievous injuries and succumbed to them during the course of treatment at Soban Singh Jeena Base Hospital, Haldwani. The claim petition was filed by respondent No. 1, the widow of the deceased, along with her minor children and the deceased's aged mother, seeking compensation for his untimely death.

5. The claimants sought compensation under Sections 166 and 140 of the Motor Vehicles Act, alleging that on 18-02-08, Sagir Ahmed, riding his scooter from Haldwani to Lalkua, was fatally injured near Teen Pani, Bareilly Road, Haldwani, when he was hit by truck No. UP 78 AN/3200 driven negligently by Opposite party No.3 in claim petition, Veer Pal.

6. The claimants further pleaded that the deceased was the sole breadwinner of the family, leaving behind his wife, three minor daughters, and elderly parents, who suffered loss of dependency, loss of consortium, and mental anguish due to his untimely death. They sought compensation of Rs.15,00,000/- for these losses, along with funeral expenses, loss of estate, and other consequential damages.

7. The appellant-the owner of the truck, admitted ownership of the vehicle but contended that the accident was not caused by the rash or negligent driving of his driver, Veer Pal. He submitted that the driver held a valid license and the vehicle was insured with Reliance General Insurance Company Ltd. at the time of the accident.

8. The respondent no. 7- the insurance company, denied liability for compensation, contending that opposite party No.1 in claim petition (appellant herein) had failed to comply with statutory provisions under Sections 158(6) and 134C of the Motor Vehicles Act and that the driver of the truck did not possess a valid license at the time of the accident. They further stated that no valid insurance coverage existed due to violations of policy terms.

9. Respondent no 8, Veer Pal, driver of the truck, also contended that the accident occurred due to the negligence of the scooter rider and that he was driving with a valid license at the time.

10. Based on the pleadings and evidence, the Motor Accident Claims Tribunal framed the following issues:

1. *Whether on 18-02-08 at about 6:00 pm, when Saqir Ahmed was going from Haldwani to Lalkuan on his scooter No. UP 31-A/6561, the driver of truck No. UP 78 AN/3200, while driving rashly and carelessly, hit Saqir Ahmed's scooter, due to which he sustained serious injuries and died during treatment?*
2. *At the time of the said accident, whether the driver of the truck in question had a valid driving license, and whether all the documents of the truck were valid?*
3. *Are the claimants entitled to any compensation? If so, how much and from whom?*

11. On issue No.1 the Tribunal examined oral and documentary evidence, including the testimony of PW-1 Smt. Gauhar Jahan and PW-2 Avid Khan, who was a direct eyewitness. Both witnesses described the circumstances of the accident, establishing that the truck collided with the deceased's scooter due to rash and negligent driving. Supporting documents included the FIR, charge sheet, and postmortem report. The Tribunal concluded that the accident occurred due to the rash and negligent driving of the truck and decided this issue in favor of the petitioners (respondents-claimants herein).

12. On issue No.2 regarding the validity of the driver's license and truck documents, the Tribunal observed that opposite party Nos.1 and 3 in the claim petition had not submitted any documents proving the validity of the driver's license, registration, insurance, or fitness certificate of the truck. In the absence of such proof, the Tribunal presumed that the documents were not valid at the time of the accident and held opposite party No.1 (appellant herein), i.e. owner of the vehicle, liable.

13. On issue No.3 considering the deceased's income and age, the Tribunal computed compensation based on a reasonable estimation of his monthly income at Rs.3,000/- per month, giving an annual income of Rs.36,000/-. Applying the multiplier of 16, and adjusting for personal expenses and additional claims for loss of consortium, estate, and funeral expenses, the Tribunal awarded a total compensation of Rs.4,41,500/-. Specific portions were directed to be deposited in high-interest accounts for the minor children and the elderly mother. The Tribunal held opposite party No.1 (appellant herein) responsible for payment of the compensation.

14. Having heard all the parties and upon careful examination of the record, pleadings, evidence, and the reasoning of the Tribunal, this Court finds no ground to interfere with the well-reasoned award. The appellant filed this appeal under Section 173 of the Motor Vehicles Act, challenging the findings of the learned Tribunal. The Tribunal correctly analyzed the evidence, drew a proper presumption of invalidity of the truck documents in the absence of proof, and reasonably assessed compensation on the basis of the deceased's age, income, and number of dependents.

15. It is pertinent to note that the claim petition before the Tribunal was allowed, fixing liability upon the

appellant-owner of the vehicle, as he had failed to produce any documentary evidence such as the driving license, insurance policy, or vehicle papers during the trial. Only after the liability was determined against him did the appellant seek to rely on certain documents annexed for the first time in this appeal. However, such documents cannot be taken on record at the appellate stage without a formal application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, and without the Court exercising its discretion to allow additional evidence. No such application has been moved, nor has any justification been provided for the earlier omission. Only one document i.e. driving license verification report was filed by the appellant along with the supplementary affidavit and some documents have been filed by the appellant along with the appeal without making any application to treat those documents as evidence in the appeal. This kind of practice cannot be permitted to be adopted by the appellant, wherein, the appellant has failed to file any documents of the offending vehicle during the trial and wants to get those documents to be taken into consideration at the time of adjudication of the appeal. Consequently, these documents cannot now be considered.

16. For clarity, *Order XLI Rule 27 of the Code of Civil Procedure, 1908, provides as follows:*

> *"27. Production of Additional Evidence in Appellate Court. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if—*
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> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
> *(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
>
> *(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

17. In the present case, the appellant neither sought leave under the above provision nor demonstrated any due diligence in producing the documents at the trial stage. The attempt to introduce them now, after the award, is impermissible.

18. Although this Court had, at an earlier stage, granted time to the parties to verify the authenticity of the documents, no verification could be completed due to lapse of time. While the driving license was later verified, the report received from the concerned RTA does not establish that the driver possessed a valid and effective license on the date of the accident. Hence, the finding of the Tribunal fixing liability upon the vehicle owner remains legally sound and unimpeachable.

19. Accordingly, the appeal is devoid of merit. The contentions of the appellant regarding the alleged invalidity of the learned Tribunal's proceedings or errors in assessment are unsupported by the record.

20. For the reasons recorded above, the appeal stands dismissed.

21. No order as to costs.

22. Let the T.C.R. be immediately sent back to the learned Trial Court for consignment. The amount of compensation i.e. Rs.2,25,000/- + Rs.25,000/- (Statutory deposit) deposited in the learned Tribunal and kept in FDR be released forthwith to the respondents-claimants along with the interest accrued thereon, if not already released. Rest of the amount of compensation under award be also paid to the respondents-claimants forthwith along with interest accrued thereon.

(Pankaj Purohit, J.)
04.11.2025

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