
Universal Sampo General Insurance Company Ltd Vs Pushpa Devi & Ors

Appeal From Order No. 330 Of 2013

Court: Uttarakhand High Court

Date of Decision: Sept. 5, 2019

Acts Referred:

Motor Vehicles Act, 1988 & Section 173

Hon'ble Judges: Lok Pal Singh, J

Bench: Single Bench

Advocate: H.C. Pande, Ravindra Singh Bisht, Devendra Singh Bohra, A.M. Saklani

Final Decision: Dismissed

Judgement

Lok Pal Singh, J

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant against the judgment and award dated

30.03.2013 passed by M.A.C.T./Additional District Judge, Ranikhet, District Almora in M.A.C.P. No.14 of 2011 Smt. Pushpa Devi & Ors. Vs.

Manpreet Singh and another, whereby the Tribunal has awarded a sum of Rs.32,81,500 alongwith 6% interest to the claimants as compensation

against the appellant Insurance Company.

2. Facts, in brief, are that on 11.02.2011 when Bhupal Ram was travelling in Indica Car bearing no.DL3C U-1149 and was coming from Noida to

Basot then at about 12:30 pm near Gadekhan Basot, District Almora due to rash and negligent driving by the driver, car fell into a deep gorge in which

Bhupal Ram died at the spot whereas the others sitting in the car got injured. During treatment, Pushpa Devi, sister of deceased Bhupal Ram also

died. The claimants who are the wife, children and parents of deceased Bhupal Ram, filed the claim petition before the Tribunal alleging that the

deceased was the sole earning member of the family. He was hale and hearty and was aged 35 years. He was working as Operation Theatre

Technician and was getting salary @ Rs. 21,369/- per month. In these circumstances, the claimants claimed a sum of Rs. 30,00,000/- from the

respondents.

3. Respondent no.7-Owner of the vehicle filed his written statement and admitted the factum of accident. However, he denied that the vehicle was

being driven rashly and negligently by its driver. He also contended that the vehicle was being plied as per the rules and regulations of Motor Vehicle

Act and the vehicle was insured with the Insurance Company. It was also contended that the driving licence of the driver was valid and effective on

the date of accident.

4. Appellant Universal Sompo General Insurance Company Ltd. also filed its written statement and denied the averments made in the claim petition

due to lack of information. In additional pleas, the appellant contended that vehicle was insured with the appellant as per private car policy and was

insured for owner, driver and third party. It was also contended that the driver was carrying nine passengers beyond the seating capacity and the

deceased was neither travelling as a passenger nor was a gratuitous passenger. It was also contended that the driver was not holding valid driving

license and there was no hill endorsement.

5. On the pleadings of parties, the Tribunal framed the following issues:-

i) Whether on 11.02.2011 when Bhupal Ram was travelling in Indica Car bearing no.DL 3CU-1149, due to rash and negligent driving, the car met with

an accident and fell down into a deep gorge, resulting into the death of Bhupal Ram?

ii) Whether the vehicle was being plied against the terms and conditions of policy?

iii) Whether the driver was possessing valid and effective driving license on the date of incident? If yes, its effect?

iv) Whether the deceased was travelling as a gratuitous passenger in the said vehicle? If so, its effect?

v) Whether the claimants are entitled to get any compensation? If yes, to what extent and from which party?

6. Thereafter, the parties led their oral and documentary evidence. After hearing the learned counsel for the parties and upon perusal of entire

material available on record, the Tribunal passed the impugned judgment and Award as above.

7. Heard learned counsel for the parties and perused the entire material.

8. Learned counsel for the appellant would submit that in the present case the policy was a package policy. The deceased was travelling in a private

car owned by respondent no.7 and no premium for the occupants other than the driver/owner was paid as such the deceased cannot be treated as

third party and therefore the insurance company is not liable to pay any compensation to the claimants.

9. Learned counsel for the appellant would further submit that the compensation awarded to the claimants is exorbitant and not in consonance with the

settled law.

10. The Tribunal, on issue no.1, has recorded finding that the accident occurred due to rash and negligent which resulted into the death of Bhupal

Ram. On issue no.2, the Tribunal recorded finding that onus lies on the appellant Insurance Company to prove that the offending vehicle was being

plied in breach of terms and conditions of policy but he has not lead any evidence in this regard. Learned Tribunal referred a judgment of Delhi High

Court in the case of New India Insurance Company v. Mangla 2010 (2) T.A.C. 590 wherein it has been held that the private car package policy also

covers the risk of gratuitous occupants travelling in a private vehicle. Tribunal further recorded finding that the Insurance Company has not filed the

complete policy. The claimant and the owner have filed the cover note of the policy which is admitted to the Insurance Company. The Tribunal further

referred judgments rendered in the cases of National Insurance Company Limited vs. Bala Krishnan and another 2013(1) U.D. 0 8and Oriental

Insurance Company Ltd. vs. Surendra Nath Lumba and another 2013(1) U.D. 17 wherein it has been held by the Hon'ble Supreme Court that the

comprehensive/package policy is different from the Act Policy and the package policy will cover the risk of occupants of vehicle. Thus, the tribunal

decided issue no.2 against the appellant Insurance Company. On issue no.3, the Tribunal recorded finding that onus lies upon the appellant Insurance

to prove this issue that the driver was not holding valid and effective driving license to ply the vehicle at the time of accident however he has not

produced any evidence in this regard whereas the owner of the offending vehicle has already filed the copy of driving license. The Tribunal, in these

circumstances, decided this issue against the appellant Insurance Company. On issue no.4, the Tribunal recorded finding that though the deceased was

travelling as a gratuitous passenger in the offending vehicle but as the policy was a package policy it will cover the risk of the deceased also. Findings

recorded by the Tribunal on issue nos.1, 2 3 and 4 are based on proper appraisal of evidence and require no interference. Learned counsel for the

appellant also could not point out any perversity in the findings so recorded by the Tribunal on these issues. Thus, the findings recorded by learned

Tribunal on issue nos1, 2 3 and 4 are hereby affirmed.

11. As regards the compensation awarded to the claimants, the Tribunal on issue no.5, has recorded finding that the claimants have pleaded that the

deceased was working as a Operation Theatre Technician in Kailash Hospital Noida and was getting salary of Rs. 21,369/- per month. This income of

the deceased is proved by oral and documentary evidence. The tribunal, after making deductions of conveyance allowance, personal allowance and

compensatory allowance, established the monthly income of the deceased as Rs. 19,670/-. Further the Tribunal after calculating the income tax on the

annual income of the deceased, made a deduction of Rs. 8,865/- towards income tax and thus assessed the annual income as Rs. 2,27,175/-. The

Tribunal made an addition of 40% on the salary towards future prospects and deducted one-fourth towards personal expenses. Multiplier of

16 has rightly been applied on the age of deceased in view of Sarla Varma Sarla Varma & Others vs. Delhi Transport Corporation &

Another (2009) 6 SCC 121, Further, the Tribunal has granted a sum of Rs. 5,000/- each under the conventional heads of funeral expenses and loss of

love and affection. The Tribunal, after calculating the figure under all the heads, has awarded a sum of Rs. 32,81,320/- as compensation in favour of

claimants along with interest @ 6% per annum from the date of award till its realization.

12. Insofar as the argument advanced by learned counsel for the appellant that compensation has been awarded to the claimants on higher side, this

argument is misconceived. A meager amount of Rs. 5,000/- each towards funeral expenses and loss of love and affection has been awarded by the

Tribunal, which could have been enhanced as per the law laid down in National Insurance Company Ltd. v. Pranay Sethi AIR 2017 SC 515.7

Furthermore, interest has been awarded on the amount of compensation from the date of order whereas the interest ought to have been awarded from

the date of filing the claim petition. In my considered view, it would have been a case for enhancement but as there is no appeal for enhancement of

compensation at the behest of the claimants, compensation cannot be enhanced on the principle that an appellant cannot be reduced to a position

worse than the one he would be in if he had not hazarded to file an appeal.

13. In view of the findings recorded above, present appeal from order is devoid of any merit. Same is hereby dismissed. No order as to costs.

14. Let the statutory amount along with the interest accrued on it, if any, be remitted to the Tribunal concerned.