

(2013) 01 AHC CK 0133

Allahabad High Court (Lucknow Bench)

Case No: First Appeal From Order No. 250 of 2005

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Vidyawati and Others

RESPONDENT

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**Date of Decision:** Jan. 29, 2013**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 2(21)

**Citation:** (2013) 3 ACC 418 : (2013) 2 ADJ 98 : (2013) 4 ALJ 724**Hon'ble Judges:** Devi Prasad Singh, J; Arvind Kumar Tripathi, J**Bench:** Division Bench**Advocate:** Mukund Tiwari, Kusuma Devi and U.P.S. Kushwaha, for the Appellant; R.K. Dwivedi and Ashutosh Kumar Singh, for the Respondent**Final Decision:** Partly Allowed

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### Judgement

Arvind Kumar Tripathi-II, J.

Heard learned counsel for the appellant and learned counsel for the opposite parties. The present first appeal from order has been filed by Oriental Insurance Company Ltd. against award dated 24.11.2004 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 8, Sitapur in Motor Claim Petition No. 175/ 2001 "Smt. Vidyawati and others v. Vishambhar Nath and others) by which learned Tribunal has allowed the award and directed the Oriental Insurance Company Ltd. to pay Rs. 1,77,300/- (Rs. one lakh seventy seven thousand three hundred) alongwith 8% simple interest per annum from the date of the appeal till the date of actual payment.

2. It has been mentioned in the claim petition that on 11.5.2001 at about 7.00 p.m. Khushi Ram S/o Late Panchu (deceased) was going to Kutubpur from Village Bisehari on Motor-Cycle No. U.P. 34/ 5592 and as soon as, he reached near Sudhauili Biswa road Village Tikra, Tractor No. UP34A/1296 being driven by its driver rashly and negligently hit the motorcycle due to which he died on the spot. At the time of

accident Khushi Ram was working as Sales man in Sadhan Sahkari Samiti earning Rs. 6,000/- per month. By filing this claim petition an amount of Rs. 5,00,000/- had been claimed.

3. Opposite party No. 1, did not file any written statement. During pendency of the claim petition, he died and his legal heirs and opposite parties No. 2 filed their written statement alleging that the owner of Tractor No. U.P. 34A/1269 and the tribunal was insured with the Oriental Insurance Company Ltd. Station Road Sitapur. They denied the accident and submitted that at the time of accident Manjeet Kumar driver was having valid and effective driving licence. Khushi Ram was driving the Motor-Cycle U.P. 34/5592 but the owner and insurer of the Motor-cycle were not made party. Not a single word has been said in respect of the driving licence of deceased Khushi Ram and the registration certificate, and insurance of the Motor-cycle.

4. The Oriental Insurance Company filed its written statement denying the fact that Tractor No. U.P.34A/1269 was insured with them, it was also submitted that driver was not having valid and effective driving licence and the petition is bad for non-joinder of owner and insurer and driver of the Motor-cycle, tractor driver was not negligent in the driving of the Truck. After perusal of the pleading of the parties following issues were framed;

(i) Whether an accident took place on 11.5.2001 at about 7.00 p.m. while Khushi Ram was going on his Motor-cycle U. P. No. 34/5592 from Bishesra to Kutubpur Tractor No. U.P.34A/1269 being driving rashly and negligently hit the motor-cycle in which Khushi Ram died on the spot.

(ii) Whether the petition is bad for non-joinder of owner and. insurer of the motorcycle U.P. 43/5592.

(iii) Whether truck driver was having valid and effective driving licence at the time of accident, if so its effect?

(iv) To what compensation if any claimants are entitled and from whom and how much?

5. To prove the accident, certified copy of the FIR, certified copy of postmortem report, certified copy of charge-sheet were filed Smt. Vidyawati examined herself as P.W. 1, Suresh Kumar as P.W.2. From the side of opposite parties, photocopy of registration certificate of tractor, photocopy of Insurance cover note and photocopy of driving licence was filed. Manjeet Kumar was examined as O.P.W. No. 1.

6. After going through the record and arguments learned tribunal held while deciding issue No. 1 that the contributory negligence of the truck owner was 75% and 25% was of the motor-cycle driver. While deciding issue No. 2 the Tribunal decided, that since: motor-cycle owner and insurer were not made party, hence, the compensation is to be lessened to the tune of 25%, which motor-cycle insurer were

liable to pay. While deciding issue No. 3 the Tribunal held that driver of the tractor was having valid and effective driving licence. While deciding issue Nos. 3 and 4, the tribunal held that monthly income of the deceased can be assessed to be 24,000/- per month in absence of any documentary evidence and after deducting 1/6 on account of Unit System held the dependency to be Rs. 1600/- per month and applying multiplier of 12 fixed the amount of compensation of Rs. 2,20,400/- (1600x12x12). After deducting 25% regarding contributory negligence the total compensation due to loss of dependency was fixed to Rs. 1,65,300/-. Apart from that Rs. 10,000 /- was assessed as loss of consortium, Rs. 2000/- for funeral expenses, and thus allowed the claim petition for Rs. 1,77,300/- alongwith 8% simple interest from the date of filing of the petition the actual payment. Feeling aggrieved this F.A.F.O. was filed by the Oriental Insurance Company.

7. It was argued that since the owner of motor-cycle and insurer were not made party, the petition was liable to be rejected on this very ground. It was also argued that tractor driver was having a valid licence for driving motor-cycle and light motor vehicle and not heavy vehicle like tractor, so appellant is not liable to pay compensation. It was also argued that motorcycle driver (deceased) was not having valid and effective driving licence, no proof of income was filed. Hence, the tribunal has assessed the monthly income without any basis, it was also argued that appellant should have been granted liberty to recover the amount from the owner.

8. Since 25% of the amount was deducted from the compensation on account of percentage of contributory negligence held by Tribunal, so, we are not going to discuss the argument that owner and insurer of the motorcycle were not made party. The Tribunal has rightly deducted 25% from the compensation amount on the ground of contributory negligence to the tune of 25%. The main limb of the argument was that the truck driver was having a driving licence of light motor vehicle and motor-cycle so the tribunal ought to have granted liberty to recover that amount.

9. In this respect, we would like to quote definition of light motor vehicle. In Section 2(21) the definition of light Motor Vehicle Act has been given which reads as follows;

"light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 Kilograms;

10. A careful perusal of definition of light Motor Vehicle goes to show that it includes a tractor whose unladen weight does not exceed 7,500 Kilograms. It has nowhere been averred or argued that the unladen weight of the tractor was more than 7,500 Kilograms.

11. There is evidence on record that tractor was being used for carrying marriage procession. This clearly goes to show that tractor was being plied in violation of the Insurance Policy. The tractor was insured for agricultural purpose and carrying the

marriage procession does not come within the purview of agricultural purpose. In view of this, Insurance Company ought to have been given liberty to recover the amount from the owner of the Tractor. Learned counsel for the respondent could not place any argument to show that the entire liability without liberty to recover from the owner would be on the Insurance Company. Though, the tractor driver was having a valid and effective driving licence at the time of accident, the tractor was not being used for agricultural purpose. Hence, there was violation of Insurance Policy. In view of above, the petition is liable to be partly allowed. We are not interfering in the amount of compensation and rate of interest etc. Only modification is being made is to grant liberty to the Insurance Company to recover the compensation amount after paying it to the claimants. The F.A.F.O. is partly allowed. The appellants are directed to pay the awarded amount to the claimants, if not already paid. Appellants will be at liberty to recover the amount from the owner of the tractor and if any application is moved by the Insurance Company before the tribunal, the Tribunal shall decide that application expeditiously and preferably within a period of six months. The first appeal from order is decided accordingly.