

(2003) 08 AHC CK 0170

Allahabad High Court

Case No: F.A.F.O. No. 2039 of 2003

National Insurance Co. Ltd.

APPELLANT

Vs

Ajij Ul-Haq and Another

RESPONDENT

Date of Decision: Aug. 4, 2003

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149(2), 170, 173

Citation: (2004) 1 ACC 648 : (2004) ACJ 2042

Hon'ble Judges: S.P. Srivastava, J; K.N. Ojha, J

Bench: Division Bench

Advocate: Satish Chaturvedi, for the Appellant; Ram Singh, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Ojha, J.

Heard the learned counsel for the insurer appellant and Mr. Ram Singh, the learned counsel for the respondent No. 1.

2. The appellant feels aggrieved by the award of Motor Accidents Claims Tribunal, Allahabad, determining an amount of Rs. 3,98,000 (rupees three lakh ninety-eight thousand only) to which the dependants of the deceased Dilshad were found entitled to on account of his untimely death in an accident involving the offending motor vehicle, a truck bearing registration No. UP 63B-9345 which had been insured by the present appellant covering the risk.

3. Motor Accidents Claims Tribunal, on a careful consideration of the evidence and materials brought on record had come to the conclusion that the deceased was aged about 20 years at the time of the accident. He was earning Rs. 4,500 per month. He had left behind his mother and father. The Claims Tribunal utilizing the multiplier of 11 and after considering the circumstances of the case, had made an award in favour of the dependants of the deceased.

4. The only submission made by the learned counsel for the appellant insurance company is that Dilshad victim was driving the motor vehicle at the time of the accident but he did not have the driving licence. Therefore, the insurance company is not liable to make the payment. It will be deemed that the victim himself was negligent in driving the motor vehicle.

5. After considering the evidence on record, the Tribunal arrived at a conclusion that the victim was driving the motor cycle at the time of accident and the truck which was coming from the opposite direction dashed against the motor cycle so rashly that not only Dilshad who was driving the motor cycle, pillion rider was also injured as the jerk was serious. The occurrence had taken place on the side the victim was driving the motor cycle. It shows that due to negligence of the truck, accident had taken place. This issue was urged before the Tribunal and the Tribunal considered the ruling cited before it and arrived -at a conclusion that it was the negligence of the driver due to which the occurrence had taken place.

6. The learned counsel for the appellant has cited [Gujarat State Road Transport Corporation Vs. Thacker Narottam Kalyanji](#), In the said case, the fatal accident had taken place due to collision between a bus and scooter. The insurance company took the plea that the victim was not having a driving licence. However, the Tribunal found that the accident had taken place due to rash and negligent driving of bus. Plea of the dependant was that the accident took place due to rash and negligent driving of bus. It was held that though the deceased was not having driving licence but it cannot be made a ground for holding that the deceased was guilty of contributory negligence. It was held that the plea of contributory negligence was not believed.

7. In the instant case, the Tribunal has held that the vehicle was driven rashly by the truck driver. It was the negligence of the truck driver due to which accident took place.

8. The respondents have also cited [State of U.P. and Others Vs. Vidyawati Singh and Another](#), and this ruling was also considered by the Tribunal.

9. It may be significant to mention that the insurance company did not seek permission of the Tribunal u/s 170 of the Motor Vehicles Act to produce the witnesses and to challenge the quantum of compensation.

10. Thus taking into consideration the totality of the facts and circumstances as brought on record, no justifiable ground has been made out for any interference by this court in impugned award.

11. This appeal is totally devoid of merit, which deserves to be and is hereby dismissed.

12. As prayed, amount of Rs. 25,000 deposited in this court by the appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accidents Claims Tribunal

concerned so that it may be disbursed to the claimants.