

(2005) 05 UK CK 0018

Uttarakhand High Court

Case No: None

United India Insurance Company
Limited

APPELLANT

Vs

Manju Gupta and Others

RESPONDENT

Date of Decision: May 6, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149, 170, 173

Citation: (2005) 4 ACC 458 : (2005) 3 UC 1595 : (2005) 1 UD 705

Hon'ble Judges: P.C.Verma, J; Brahma Singh Verma, J

Bench: Division Bench

Judgement

P.C. Verma, J.

Both these appeals u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") arise out of the same Motor Accident and similar questions are involved for determination in these appeals, therefore, for convenience they are being decided by this common order.

2. A.O. No. 42 of 2002 has been preferred against the judgment and award dated 12.2.2001 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Dehradun in M.A.C. Petition No. 380 of 1991, Smt. Manju Gupta and Ors v. Jagat Singh Negi and Ors. whereby the Claim Petition was decreed for compensation of Rs. 2,00,000 along with interest @ 9% per annum as mentioned in the impugned order against the O.P. appellant.

3. A.O. No. 41 of 2002 has been preferred by the Insurance Company-appellant against the judgment and award dated 12.12.2001 passed by the learned Tribunal in M.A.C. Petition No. 432 of 1991, Jagat Singh Negi and Ors. v. Ganga Ram and Ors. awarding compensation of Rs. 60,000 along with @ 9% per annum as mentioned in the impugned order in favour of the claimant against the appellant.

4. Aggrieved by the said judgment and awards, the United India Insurance Company has come up in appeal.

5. Brief facts giving rise to these appeals are that a motor accident took place on 8.10.1991 near Birla Yamaha Factory within P.S. Doiwala between Haridwar-Dehradun motor-road, wherein D.C.M. Toyota Truck No. U.G.Y. 8196 being driven rashly and negligently by its driver collided with Taxi No. U.M.T.-8052 with the result occupants of the Taxi sustained grievous injuries and some of them died including Sri Arun Kumar Gupta, husband of Smt. Manju Gupta, the claimant of MAC Case No. 380 of 1991. One Sri Jagat Singh, the claimant of the latter case also sustained grievous injuries in the said accident. According to the claimants, Arun Kumar Gupta was diploma holder in Mechanic from the I.T.I. and he was owner of two taxi-cars and he used to earn about Rs. 5,000-6,000 from this profession. Jagat Singh, the other claimant, was the owner-cum-driver of the said ill-fated Taxi. It was alleged that the offending vehicle UGY-8196 was owned by Ganga Ram and it was duly insured with the O.P.-appellant. The ill-fated Taxi was insured with the Oriental Insurance Company. Hence, the claimants filed claim petition for compensation of Rs. 5,12,000 for the death of Arun Kumar Gupta and the injured Jagat Singh filed claim petition claiming Rs. 3,75,000.

6. The opposite parties in both the two cases are common, except that in Claim Petition No. 300 of 1991, the claimants have arrayed the owner of the ill-fated taxi Jagat Singh as opposite party besides other opposite parties.

7. The opposite parties have filed their written statement and have contested the case. The O.P. Ganga Ram, owner of the offending truck, and Jaipal Singh, driver of the truck, filed joint written statement. According to them, the taxi driver himself was rash and negligent in driving and was responsible for the accident. They have denied the age, income of the deceased as well as injured claimant. These opposite parties have amended their written statement and stated that the D.C.M. Toyota Truck No. UGY-8196 being 3200 kgs. in its weight, therefore, it comes in the category of light motor vehicle but due to the fault of the R.T.O. concerned, this vehicle has been shown as Medium Motor Vehicles. According to them, the empty vehicle weight of the Light Motor Vehicle is prescribed by the manufacturers upto 5,990 kgs, and the driver Jaipal Singh was having valid driving licence to drive light motor vehicle on the date of accident.

8. Since the Insurance Company of the D.C.M. Toyota has come up in appeal, therefore, the written statement filed by it is relevant for the purposes of these appeals. The insurer-appellant has denied the allegations of the claim petition for want of knowledge. It was admitted that the vehicle was duly insured in the office of the R.T.O. as medium motor vehicle, while the driver of the truck was having driving licence to drive light motor vehicle. As such the vehicle was being plied in violation of the policy conditions and the Insurance Company was not liable to pay compensation. The Insurance Company by way of amendment in its written

statements waived its original pleas and further pleaded that the driver of the vehicle was driving the vehicle under intoxication, therefore, the insurance company is absolved from its liability to pay compensation.

9. The insurer of the ill-fated taxi also filed its written statement and contested the case. It denied the allegations made in the petition including the date, time and place of the accident and denied its responsibility.

10. Learned Tribunal framed necessary Issues in both the cases and consolidated both the cases for purposes of recording evidence and M.A.C. Petition No. 380 of 1991 was made the leading case. After hearing both the parties and perusing the evidence on record, the Tribunal came to the conclusion that the motor accident resulting into death of Arun Kumar Gupta and injuries to Jagat Singh occurred due to rash and negligent driving by Jaipal Singh, the driver of the offending vehicle. The point of holding of driving licence by the driver of the offending vehicle was dealt with elaborately by the Tribunal and it held that the D.C.M Toyota Truck No. UGY-8196 comes within the definition of light motor vehicle and the driver Jaipal Singh was having a valid driving licence. Ultimately, the learned Tribunal awarded compensation of Rs. 2,00,000 in the former claim petition and in the latter case, compensation of Rs. 60,000 was awarded to the injured claimant Jagat Singh.

11. In support of the appeals, the appellant contended that it obtained permission from the learned Tribunal u/s 170 of the Motor Vehicles Act, therefore, it can take all the defences available to the insured. It was contended on behalf of the appellant that the driver of the offending vehicle UGY-8196 was not having a valid driving licence and the finding of the learned Tribunal to the contrary is against the law, hence policy conditions were violated and the appellant is not liable to pay compensation.

12. We have heard learned Counsel for both the parties and have carefully gone through the entire material on record including the impugned judgment and awards.

13. The only point for determination in the present appeals is whether the driver of the offending Truck No. UGY-8196 was not having a valid driving licence and whether the finding of the learned Tribunal is erroneous on this score. No other point was pressed before us in the course of arguments on behalf of the appellant.

14. It is true that the offending vehicle was entered as medium motor vehicle in the record of the R.T.O. concerned. It is also not disputed by the appellant that the driver of the D.C.M. Toyota truck, which was involved in the accident, was having a valid driving licence to drive motor vehicle.

15. The owner of the offending vehicle has specifically raised a plea in its written statement by way of amendment that the vehicle D.C.M. Toyota comes in the category of the light motor vehicle as per norms prescribed by the Manufacturers in

this regard. The learned Tribunal has very elaborately dealt with this point in its judgment. It is settled principle of law that if a party asserts a particular fact and the other party denies the same, the onus of proof lies on the party denying the fact in the present case before us, the Insurance Company. An interesting aspect of this case is that the appellant has produced Sri U.P.S. Gujral, Branch Manager of United India Insurance Company. This witness D.W. 4, who appeared on behalf of the appellant before the Tribunal, had passed the claim preferred by the owner of the D.C.M. Toyota, Sri Ganga Ram. This witness has proved the claim paper (126-B) and testified his signatures and date thereon. In the cross-examination, a specific question was put to this witness on behalf of the owner and driver of the offending vehicle that before passing the claim all necessary papers were perused. This witness has clearly admitted that a claim is passed only after all valid papers are placed on record. He showed his ignorance to the fact that the driver was not having a valid driving licence. It is admitted by the appellant that the Surveyor Sri Vivek Arora prepared survey report. He appeared in the witness box as D.W. 5 and in his testimony, he has tried to prove that the offending vehicle D.C.M. Toyota comes in the category of medium motor vehicle, but in his statement, he admitted that he does not possess knowledge of the Motor Vehicles Act, therefore, from his testimony it cannot be said that the offending vehicle was a medium motor vehicle. It is very strange that the appellant-Insurance Company of the vehicle D.C.M. Toyota, involved in the accident, opted not to file the survey report before the learned Tribunal though the Surveyor was produced as witness. Yet another circumstance, which goes against the case of the appellant is that it has not made a prayer before the learned Tribunal to summon any Officer of the R.T.O. concerned before the Tribunal, who could have stated that the offending vehicle is covered by the category of medium motor vehicle or at least could have explained the circumstances under which the offending vehicle was entered as such in the records of the R.T.O. concerned. It is the positive case of the owner of the vehicle that the truck in question was entered as medium motor vehicle due to error on the part of the R.T.O. office. Learned Tribunal rightly held that for want of concrete evidence to show that the offending vehicle was a medium motor vehicle, no benefit can be given to the Insurance Company for the inadvertence or error on the part of the Transport Authority especially in view of the empty vehicle weight of the said truck. Considering the facts and the circumstances in its totality, particularly when the claim preferred by Sri Ganga Ram, the owner of the truck, was already passed by the own witness of the Insurance Company coupled with his admission that before passing any claim, all necessary valid papers are taken into consideration, therefore, it does not lie in the mouth of the appellant to say that the driver of the offending vehicle was not having a valid driving licence. Besides this, the law on the point has been declared by the Apex Court in the case of National Insurance Co. Ltd. v. Swaran Singh and Ors. I (2004) ACC 1 (SC) : 2004 (1) UD 195 SC In paragraph 110(iii) (Summary of findings), the Apex Court has held as under:

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

16. In the instant case, the facts and the circumstances discussed in the preceding paragraphs, the appellant failed to lead reliable and cogent evidence to substantiate its contention regarding breach of policy conditions before the learned Tribunal, which may be sufficient to assail the finding of the learned Tribunal by this Court, especially when the clear admissions of the star witness D.W. 4 are detrimental to the case of the appellant coupled with the fact that the survey report prepared for and on behalf of the appellant by its Surveyor, D.W. 5, Vivek Arora, was not filed before the Tribunal. In the instant case, the appellant failed to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time.

17. The appellant has contended that no finding was recorded by the learned Tribunal on the issue "Whether the vehicle D.C.M. Toyota UGY-8196 is a light Motor Vehicle? If so, its effect? The contention of the appellant is without any footing. At page No. 23 of the impugned judgment, the learned Tribunal has observed that it came to the conclusion that the D.C.M. Toyota Truck No. UGY-8196 in fact comes in the definition of the light motor vehicles and for any fault of the R.T.O. office, the Insurance Company cannot take any advantage to absolve itself from the liability to pay compensation. Therefore, the contention is misconceived.

18. On the point of negligence or contributory negligence, no argument was placed before us. The learned Tribunal has discussed the issue on the point at length. It is interesting to mention that the driver of the offending vehicle Jaipal was not produced before the Tribunal, who could be the best witness to substantiate the contention of the O.P.-appellant. Injured Jagat Singh Negi has appeared in the witness box. He was driving the ill-fated taxi at the relevant time. This witness lodged the report of the accident with the police. The opposite parties including the appellant have led no evidence to show that the driver of the offending vehicle was innocent. Considering the fact that the driver of the vehicle involved in the accident was not produced and no explanation has come forward for his non-appearance in the witness box, coupled with the fact that the report of the accident was lodged by injured Jagat Singh, the finding recorded by the learned Tribunal on the point of

rash and negligent driving does not require any interference.

19. No other point was urged or argued before us in these appeals.

20. For the reasons and discussion aforesaid, both the appeals are liable to be dismissed.

21. Both the appeals are hereby dismissed. The judgment and awards, under appeals, are affirmed. No order as to costs.

22. The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.