

(2005) 10 UK CK 0015
Uttarakhand High Court
Case No: None

Sardar Deedar Singh

APPELLANT

Vs

United India Insurance Co. and
Others

RESPONDENT

Date of Decision: Oct. 21, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173
- Penal Code, 1860 (IPC) - Section 279, 304A, 338

Citation: (2005) 4 ACC 596 : (2006) 2 UC 865 : (2006) 1 UC 215 : (2006) 1 UD 96

Hon'ble Judges: Prafulla C. Pant, J

Bench: Single Bench

Judgement

Prafulla C. Pant, J.

Heard learned Counsel for the parties.

2. This appeal, preferred u/s 173 of Motor Vehicles Act, 1988, is directed against the judgment and award dated 23.9.1996, passed by M.A.C.T./II Additional District Judge, Nainital, whereby he has awarded a sum of Rs. 1,54,000 to the claimants and directed that said amount be paid by appellant Sardar Deedar Singh who was owner of the vehicle.

3. Brief facts of the case are that on 3.5.1993 at about 8.30 p.m., Mohd. Usman (deceased) was taking wheat in truck registration No. U.P.- 26/0616 loaded from village Jamaur. When he reached near brick kiln, due to rash and negligent driving on the part of the driver of the truck, it got uncontrolled and dashed at the tree by the side of the road. Driver as well as the cleaner fled from the spot. Mohd. Usman was rushed to primary health center, Khatima where he was declared brought dead. On 4.5.1993 a crime No. 256 of 1993 was registered in respect of the above

accident u/s 279/338/304A of Indian Penal Code. It is alleged in the claim petition that the deceased was earning Rs. 4,000 per month. At the time of his death he left behind him widow (claimant No. 1) and four minor children (claimant Nos. 2 to 5). Claimant Nos. 6 and 7 are the parents of the deceased. Claimant Nos. 8 and 9 are his sisters. A sum of Rs. 18,15,000 as amount of compensation was claimed by the claimants.

4. Respondent No. 1 (the present appellant), the owner of the vehicle, contested the claim petition and denied that the driver was rash and negligent in driving the vehicle. However, the accident was not disputed by him. Respondent No. 1, pleaded that the aforesaid truck was ensured with United India Insurance Company for the period 20.9.1992 to 19.9.1993 under cover Note No. 442411. Both United India Insurance Company and its Branch Manager, disputed the facts alleged in the claim petition and denied having issued any cover note in respect of truck No. U.P. 26/0616.

5. Learned Motor Accidents Claims Tribunal framed following three issues:

(1) Whether the truck registration No. U.P. 26/0616 met with an accident due to the rash and negligent driving on the part of the driver?

(2) Whether the truck registration No. U.P. 26/0616 was insured with respondent Nos. 2 and 3 at the time of the accident?

(3) Whether the claimants are entitled to compensation, if so to what amount and from whom?

6. After recording the evidence and hearing the parties, learned Motor Accidents Claims Tribunal decided issue No. 1 in favour of the claimants holding that the truck No. U.P. 26/0616 met with an accident due to the rash and negligent driving on the part of its driver. On issue No. 2, learned Tribunal found that the cover note No. 442411 was not issued by the respondent Nos. 2 and 3 and the truck registration No. U.P. 26/0616 was not insured with respondent - United India Insurance Company on the date of the accident. On issue No. 3, the Tribunal after considering the evidence found that the deceased had an income of Rs. 1,500 per month at the time of his death and considering his age (i.e., 30 years), a multiplier of 12 was applied and after deducting one-third of his income, which the deceased would have spent on himself, assessed Rs. 1,44,000 as financial loss to the dependents, Rs. 5,000 as compensation on account of burial expenses and Rs. 5,000 on account of loss of love and affection of which the dependents were deprived due to the death of Mohd. Usman. With these findings the Tribunal awarded a sum of Rs. 1,54,000 in favour of the claimants as against respondent No. 1, the owner of the vehicle. Aggrieved by which the owner of the vehicle has filed this appeal.

7. I heard learned Counsel for the appellant and perused the record. Learned Counsel for the appellant argued that appellant has taken the policy under the cover

note No. 442411 and had paid Rs. 5,750 towards premium to the Insurance Company on 17.9.1992. In this connection on behalf of the appellant, my attention was drawn to statement of D.W. 2. Deedar Singh (owner of the vehicle). I have gone through said statement. The appellant has failed to file original cover note if any received by him. On behalf of the respondent - United India Insurance Company. D.W. 1-Sanjeev Kumar Aggarwal, an employee of the said company was got examined before the Tribunal. The said witness in his statement has stated on oath that the copy of the cover note (paper No. 19 C/2), filed by the owner of the vehicle does not bear signature of officers of the company nor was said cover note No. 442411 was ever issued by their office. In the circumstances, when neither the original cover note was filed on behalf of the owner nor was it admitted to have been issued by the Insurance Company a very heavy burden lies on the owner of the vehicle to show that his vehicle was insured on the date of the accident with the United India Insurance Company. The appellant could have sought the original record summoned before the Tribunal in respect of the cover note 442411 issued to any one by said company but he failed to do so for the reasons best known to him.

8. Learned Counsel for the appellant drew my attention to the case law reported in Oriental Insurance Company v. Smt. White Rose 1 (2002) ACC 451 (DB) : 2002 (2) SCD 283. I have gone through said case law. The facts in said referred case were different as in said case it was found that the policy was issued by the Insurance Company which is not the case here. Once the Insurance Company has denied having issued the cover note, the burden was on the owner of the vehicle to prove that the vehicle was insured with the respondent-Insurance Company. In the present case, the respondent-Insurance Company has shown that the cover note was not even got printed by the office of the Insurance Company. The Tribunal in the circumstances rightly refused to hold the Insurance Company liable to make payment of compensation. If the insurance company is held liable, it would not only be unjust as against the Insurance Company but also encourage the persons involved in the forgery.

9. In the above circumstances, this Court is in agreement with the findings and order passed by the learned Presiding Officer, Motor Accidents Claims Tribunal/IIInd District Judge, Nainital. Accordingly, the appeal filed against the impugned order dated 23.9.1996, passed M.A.C.T. Case No. 336 of 1995, is hereby dismissed. No order as to costs. Lower Court record may be sent back.