

(2009) 02 UK CK 0009
Uttarakhand High Court
Case No: None

Darmiyan Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Feb. 12, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 146, 166, 173

Citation: (2009) 2 UC 978 : (2009) 1 UD 451

Hon'ble Judges: B.C. Kandpal, Acting C.J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

B.C. Kandpal, A.C.J.

1. This appeal, u/s 173 of Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 31.12.2003 passed by Motor Accident Claims Tribunal/District Judge, Pauri Garhwal, in MACT No. 12/2002, Darmiyan Singh v. Union of India.

2. Briefly stated the facts, as narrated in the claim petition, are that on 24.2.1998 SSB Truck No. UP-08-1949 met with an accident near Rampur (UP) during the course of performance of Lok Sabha election duty. In the said accident, backbone of claimant was badly damaged and he became 100% physically disabled. It has also been alleged that the said accident had occurred on account of rash and negligence of driver. After the accident claimant remained admitted w.e.f. 24.2.1998 to 1.2.1999 in various hospitals for his treatment and thereafter he was declared unfit for the service. The claimant was 30 years of age at the time of accident and he was getting salary of Rs. 6000/- per month. It has further been alleged that about Rs. Two Lacs was spent on the treatment of claimant and therefore the claimant claimed a sum of Rs. 15,00,000/- as compensation against opposite party under different heads.

3. Opposite party/Union of India contested the claim petition and filed its written statement denying the contents of the claim petition. In the additional pleas, it has been stated that on the date of alleged accident claimant was employed in SSB and he was travelling in departmental vehicle on official duty. It has also been stated that all the passengers travelling in vehicle were officials of SSB and under this circumstance claim petition of the claimant is barred by principle of estoppel and acquiescence and the same is not maintainable before Motor Accident Claims Tribunal for any compensation. It has further been stated that on the date of accident vehicle in question was being plied by its driver very carefully and slowly. The plea taken by claimant with regard to rash and negligence of the driver is totally wrong. It is also wrong to say that a sum of Rs. Two Lacs was spent on the treatment of claimant, rather entire expenses over medical treatment of claimant was borne by department. It has also been stated that after finding the claimant unfit for service a sum of Rs. 1275/- per month as pension and other dearness allowance due on it were sanctioned to the claimant and besides this wife and brother of the claimant have been given appointment on compassionate grounds. Therefore, the claim petition filed by the claimant is liable to be dismissed.

4. The learned Tribunal on the basis of pleadings adduced by the parties framed following issues:

1. Whether petitioner Darmiyan Singh sustained injuries in an accident on 24.2.1998 due to rash and negligent driving of a Vehicle belonging to the opposite party, as alleged in the Claim Petition?

2. Whether the Claim Petition is not maintainable in this Tribunal, as alleged in the Written Statement?

3. What amount of compensation, if any, is the petitioner is entitled?

5. The learned Tribunal after having considered the entire material available on record and hearing learned Counsel for the parties decreed the claim petition and awarded a sum of Rs. 25,000/- to the claimant u/s 140 of Motor Vehicles Act under "No fault liability" vide judgment and award dated 31.12.2003.

6. Feeling aggrieved by the aforesaid impugned judgment and award, the appellant/claimant has preferred the present appeal before this Court for enhancement of amount of compensation.

7. Heard Sri L.K. Tiwari, learned Counsel for the appellant-claimant, Sri Pankaj Purohit, learned Central Government Counsel for respondent-Union of India and perused the record.

8. Learned Counsel for the appellant has submitted before the Court that learned Tribunal has erred in holding that claimant-appellant has failed to establish that ill-fated vehicle was being driven rashly and negligently at the time of accident. He has further submitted that learned Tribunal has again committed an error in

holding that claim petition is not maintainable u/s 166 of Motor Vehicles Act. He has also submitted that amount of compensation awarded by the Tribunal is on higher side and the same is liable to be enhanced by this Court.

9. Learned Counsel for the respondent, on the other hand, made the rival contention and supported the judgment and award passed by the Tribunal.

10. As far as factum of accident is concerned, The Tribunal while deciding issue No. 1 has specifically discussed the evidence adduced by the parties. The record reveals that accident had taken place on 24.2.1998. The conclusion drawn by the Tribunal that claimant has been unsuccessful in establishing this fact that accident had taken place on account of rash and negligence of its driver of vehicle in question. The learned Tribunal held that in case, if the claimant has not been able to establish the factum of rash and negligence of the driver, then under these circumstances claim petition u/s 166 of Motor Vehicles Act is not maintainable. I do not find any ground to interfere in the finding recorded by the Tribunal with regard to factum of accident.

11. Learned Counsel for the appellant, in support of his contention, has cited before me a judgment passed by a Division Bench of Allahabad High Court in the case of Bir Singh Rawat and Ors. v. Virendra Kumar and Anr. reported in 1991 AWC All. 1503 as well as a judgment passed by the Hon'ble Apex Court in the case of [Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. \(P\) Ltd. and Another](#), .

12. I have gone through the decisions cited by learned Counsel for the appellant and I am of the view that the facts and circumstances of the present case are absolutely different and the appellant does not get any help of the aforesaid cited cases.

13. As far as issue No. 2 with regard to maintainability of claim petition is concerned, learned Counsel for opposite party pleaded that the claim petition was not maintainable in law before Motor Accident Claims Tribunal as the claimant was travelling in official vehicle during the course of his employment and he cannot be said to be third party. Learned Counsel for opposite party has also invited the attention of the learned Tribunal towards Section 146(3) of Motor Vehicles Act. The learned Tribunal after having gone through the aforesaid Section held that the said Section does not apply in the present case. Learned Counsel for opposite party has further invited the attention of the Tribunal towards paper No. 35C/2, which is Office Memorandum of Govt. of India, in which the provision of compensation in case of death of a person during the course of employment, has been given. The learned Tribunal held that the said Memorandum does not override the provisions of Motor Vehicles Act. The Tribunal further came to the conclusion that since in the present case accident had taken place by the use of motor vehicles, therefore, the claim petition filed by the claimant is maintainable under the provisions of Motor Vehicles Act. I do not find any ground to interfere in the said finding recorded by the Tribunal

and it deserves to be confirmed.

14. As far as amount of compensation to be awarded in favour of claimant is concerned, the record reveals that claim petition has been filed u/s 166 of Motor Vehicles Act as it has been alleged in the claim petition that accident had taken place on account of rash and negligence of driver of vehicle in question. The learned Tribunal having considered the entire material available before it came to the conclusion that since claimant has been unsuccessful in establishing the factum of rash and negligence on the part of the driver, therefore, claim petition cannot be treated under the provisions of Section 140 of M.V. Act and there is provision of fixed amount of compensation to the tune of Rs. 25,000/- in case of permanent disability u/s 140 of Motor Vehicles Act. Thus, the Tribunal has rightly awarded a sum of Rs. 25,000/- as compensation under "No fault liability" to the claimant. I do not find any ground to interfere in the said finding recorded by the Tribunal in this regard and it deserves to be confirmed.

15. For the reasons stated above, the appeal lacks merit and is liable to be dismissed.

16. Accordingly, appeal is dismissed. The impugned judgment and award dated 31.12.2003 passed by Tribunal is hereby confirmed.