National Insurance Co. Ltd & Others Vs Pooja & Others

Court: Uttarakhand High Court

Date of Decision: March 19, 2019

Acts Referred: Motor Vehicle Act, 1988 â€" Section 140, 166, 173
Indian Penal Code, 1860 â€" Section 279, 304A

Hon'ble Judges: Sharad Kumar Sharma, J

Bench: Single Bench

Advocate: Prabhat Pande, Gaurav Singh, D.C.S. Rawat

Final Decision: Dismissed

Judgement

Sharad Kumar Sharma, J

1. These are two connected Appeals From Order preferred under Section 173 of the Motor Vehicle Act, 1988, which are arising out of the same

accident which has occurred on 09.01.2011. These appeals are listed for orders at admission stage, today, but with the consent of parties it is being

heard for its final adjudication. Before venturing into the merit of the appeals as argued by the learned Counsel for the Insurance Company, a brief

backdrop is necessarily, required to be considered for an effective adjudication of the Appeals From Order.

2. In A.O. No. 403 of 2015, National Insurance Co. Ltd. Vs. Smt. Pooja and others, would be treated as a leading appeal. The precise facts as

involved in the present Appeal From Order are that an accident occurred on 09.01.2011 near P.S. Birla Yamha Chauki Lal Tappar at about 10:00

p.m.; wherein the deceased namely, Pankaj Kumar and his brother-in-law Raju Prajapati @ Vipin Kumar, while they were travelling on their scooter

bearing registration No. UA07 9861 from Dehradun to Bahadarabad, as soon as, they reached near the factory of Birla Yamha Lal, Police Chowki

Lal Tappar at about 10:00 p.m. the scooter is said to have met with a collusion with a car bearing registration No. UK07X-7005 of make brand of

Logan. As a consequence of the accident the rider of the scooter, as well as, the pillion rider both the persons had been seriously injured, out of which,

Raju Prajapati @ Vipin Kumar and Pankaj Kumar both met with the sad demise on the spot and its contended in the claim petition that they had

succumbed to their injuries caused due to the accident caused by rash and negligent driving of the offending vehicle.

3. It is alleged that in the accident, the driver of the car took advantage of the situation and of the pandemonium created due to accident and ran away

from the spot. Later on brother-in-law of the deceased when got the information about the accident, the brother-in-law of one of the deceased Mr.

Kuldeep Kumar, who happened to be the complainant, had lodged an FIR being FIR No. 4/2011, registered under Section 279 and 304-A of IPC,

which found place as Exhibit Paper No. Ã¢â‚¬Ëœ8 KhaÃ¢â‚¬â„¢ in the proceeding before the Motor Accident Claim Tribunal. On account of death of the rider

and the pillion rider of the scooter. They were taken to the hospital and postmortem was conducted on the corpus on 10.01.2011.

4. Later on the heirs of the deceased filed their respective claimed petition before the Motor Accident Claim Tribunal claiming an adequate

compensation by initiating proceeding invoking under Section 140 read with Section 166 of the Motor Vehicle Act of 1988. As per the proceeding

therein one of the case was registered as MACT Case No. 101 of 2011, Dhaniram Prajapati Vs. Kuldeep Kaushik. The two Insurance Companies,

Insurance Company of the offending vehicle Logan and Insurance Company of the scooter, which were involved in the accident were made parties

with the proceedings before the Tribunal. Insurance companies were made a party by way of subsequent amendment which was carried on before

the Motor Accident Claim Tribunal.

5. As per the submissions which were raised in for the determination of the compensation apart from the fact that there was a clear pleading

regarding the involvement of the vehicle Logan bearing registration No. UK07X 7005, in the accident. It was contended that the deceased Raju

Prajapati @ Vipin Kumar at time of accident was working in a private company and was earning about Rs.8,000/- per month. According to the claim

petition the age of the deceased at the time of the death was shown to be 24 years. It was contended that in accordance with the pleading that he was

the only earning member in the family and was the source of earning for the entire family and the deponent had thus, they determined the

compensation which they claimed was Rs.69,76,000/-. What is apparent in this case is that at the time of the institution of the proceeding on

20.05.2011 by the claimants under Section 140, itself the owner of the Logan vehicle was already made as a party / defendant No.1 in the claim

petition, and it would not be out of place to mention that the owner of the vehicle and the pleadings regarding involvement of the vehicle by the

claimant was made even at the time when the proceeding of the claim petition was instituted on 20.05.2011. On issuance of the notices the owner of

the vehicle as well as the driver had filed a combined written statement was filed by defendant No.1 and 4, wherein if the written statement if it is

read in its totality particularly the certain averments as made in para 12 of the written statement, wherein as per the driver of the vehicle had admitted

the fact that the accident was caused due to the negligent driving of the vehicle and accident was shown to have been caused due to the glare of the

headlights of the vehicles, which were coming from the opposite direction due to which, the accident had occurred. Para 12 of the aforesaid written

statement reads is under:-

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6. The owner of the vehicle had submitted and also not disputed by the Insurance Company that at the time of the occurrence of the accident on

09.01.2011, the offending vehicle Logan was insured with the appellant Insurance Company. After the exchange of pleadings the MACT Case No.

100 of 2011, entered into stage of trial and at the stage of trial the prosecution has produced two witnesses i.e. PW3 and PW4 who had recorded their

statements before the Tribunal, which finds place on record in the paper book as paper No. 40-Ka and 41-Ka respectively.

7. The arguments of the learned Counsel of the Insurance Company is that such pleadings cannot be placed reliance on as the certain statement

which were made by the witnesses and considered by the Tribunal for coming to a conclusion, with regard to the involvement of the vehicle in

question by which accident has occurred. In this regard he submits that even the submission of statement and examination of PW3 i.e. Vineet Kumar

by way of paper No. 40-Ka is taken into consideration, since he has shown his affinity and closeness to the family of the deceased right from the

childhood. This affinity and the reason, whereby PW3 is said to have been disclosed for the first time during the pendency of case that the Logan

bearing registration No. UK07X 7005 was involved in the accident. Similarly the involvement of the vehicle in the accident according to the Insurance

Company i.e. appellant has drawn the attention of this Court to the Statement of PW4 Praveen Kumar who recorded his statement as paper number

41-Ka who too in his statement and in his cross-examination has admitted the closeness of the relationship with the deceased and the deceased family

members and hence, it is, the submission made by them which has been derived by the Insurance Company to place his arguments from the view

paint that as the FIR was lodged against an unknown vehicle, and the complainant too was not present at the time when the accident had occurred, in

that eventuality, the submission of PW3 and PW4 cannot be taken as basis to come to the conclusion that the vehicle No. UK07X 7005 Logan insured

with the appellant was involved in the accident.

8. This Court is not accepting the aforesaid arguments as extended by the learned counsel of the Insurance Company, appellant, and Court has got

two logic for not accepting the arguments exchanged for the reasons :-

(a) That the claimant when they instituted proceeding of the claim petition on 20.05.2011, at that point of time itself they have disclosed the

involvement of the vehicle UK074X 7005 in the accident in their claim petition.

(b) And further since in the written statement which has been filed by the defendant No.1 (the owner of the vehicle) and the driver Defendant No.4,

they themselves admitted that the vehicle was involved in the accident and the case of the accident was too pleaded in the written statement giving

reasons in defense regarding the circumstances in which the accident occurred. Para 12 of written statement of owner and driver is read as under:-

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9. The argument of the learned Counsel for the Insurance Company is that there is a connivance between the owner of the vehicle, as well as the

claimant so as to shift the liability of compensation on the Insurance Company, this argument cannot be accepted, because under human psychology,

no driver who is said to have been met with the accident would ever make statement as pleaded in the written statement admitting the fact of

involvement of the vehicle which he admits was driving and admitting the reasons for the cause of accident. The argument pertaining to the

interpretation given to the statements recorded by PW3 and PW4, which has been extracted by the Insurance Company to support their argument is

only that since they were closed family friends, therefore, allegations pertaining to the involvement of the car has been extracted by the appellant

counsel on the first occasion which has been made by the prosecution to show that the car Logan was involved in the accident rather earlier their case

is that the car was not involved in the accident. The statements of PW3 and PW4, which too is alleged to have derived by the court to establish the

fact of involvement of the vehicle in the accident. For drawing an inference regards the involvement of the vehicle. The statements of PW3 and PW4,

the joint written statement of the driver of the vehicle and the owner of the vehicle and the pleadings of the claim petition itself if it is read in totality, it

would lead to an unrebuttable inference that it was the car which was insured with the appellant company which was involved in the accident. Hence,

this argument of the learned counsel for the appellant that since in the FIR when it was lodged it was as against the unknown vehicle, it was quite

obvious, because the complainant, who was the brother of the deceased, since was not present at the place where the accident had chanced, he was

not suppose to rather he could not have disclosed the identity of the vehicle involved in the accident.

10. The conclusion regarding involvement of the vehicle in the accident could always be seriously derived from the rival pleading before the court

below and in accordance with the finality of the evidence of the parties, more particularly in the written statement of Driver and owner of vehicle, this

Court for reasons assigned also comes to a conclusion that the vehicle Logan bearing registration No. UK07X 7005 which was insured with the

appellant Insurance Company was involved in the accident.

11. The second argument which has been extended by the learned counsel for the appellant was to the effect that he in his pleading or argument has

not disputed the income of the deceased, and the evidence adduced before the court in support to it and the determination for the compensation was

not disputed by the appellant. But rather he pleaded that since according to the pleading which has come on record rather it shows that there was a

contributory negligence, and hence in case the entire liability to meet the compensation determined by the Tribunal cannot be fastened upon the

Insurance Company of the car only. In the answer to it, on the previous occasion during course of argument a question was posed by this Court to the

appellantÃ¢â‚¬â„¢s counsel that to argue the aspect of contributory negligence, the site plan was to be placed on record so as to rightfully derive the

conclusion and as to the basis of whose negligence the accident chanced. Ultimately no site plan has been placed on record by the counsel for the

appellant nor it find place in the LCR nor it has been placed before the appellate court to conclude as to under what circumstance the accident has

chanced. Hence, the arguments of contributory negligence cannot be answered appropriately in the absence of the basic discharge of responsibility to

lead evidence in that regard, pertaining to proof that it was a case of contributory negligence. In view of the reasons assigned above this Court does

not find any error in the judgment rendered by the Motor Accident Claim Tribunal. Thus, appeal fails and is, accordingly, dismissed.

12. There would be no order as to cost.