United India Insurance Company Ltd ... vs Smt Vidusha And 5 Others on 1 May, 2025

Author: Abdul Moin

Bench: Abdul Moin

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LKO:25174

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 460 of 2017

Appellant :- United India Insurance Company Ltd Through Deputy Manager

Respondent :- Smt Vidusha And 5 Others

Counsel for Appellant :- Tarun Kumar Misra

Counsel for Respondent :- Rajesh Trivedi

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the appellant and Shri Rajesh Trivedi, learned counsel for the respondents No.1 to 5.

2. Despite notice having been served on respondent No.6 as per the office report dated 14.09.2021, nobody has put in appearance on his behalf. Accordingly, the Court proceeds to hear and decide the matter finally.

3. Under challenge is the award dated 17.02.2017 passed by the learned Motor Accident Claims Tribunal / District Judge, Shrawasti at Bhinga in M.A.C.P. No. 19/70 of 2011 in Re: Smt. Vidusha

and Others vs. Laxman and Another, whereby the learned Tribunal has awarded a sum of Rs.7,72,000/- to the claimants along with interest.

4. At the very outset, learned counsel for the appellant states that he is not aggrieved by the award per se but raises a challenge to the award to the extent that the learned Tribunal has not given the right of recovery against the owner / respondent No.6 herein, who was the respondent No.1 before the learned Tribunal.

5. In this regard, learned counsel for the appellant states that an accident is said to have occurred on 11.03.2011 at 12:30 P.M. when one Shri Bhuseli, who was walking on the side of the road, was hit by a tempo from behind. He suffered serious injuries and died on the spot.

6. Claim application was filed by the claimants impleading the owner of the tempo namely Shri Laxman and the insurance company as parties.

7. Learned Tribunal has framed various issues but so far as the controversy in the instant appeal is concerned, the same is confined to the issue no.3 per which the learned Tribunal had framed an issue as to whether the driver of the vehicle involved in the accident was having a valid driving licence.

8. The argument of the learned counsel for the appellant is that the driver of the vehicle was also the owner of the vehicle namely Shri Laxman Verma which would be apparent from the F.I.R. and the charge sheet, yet, before the learned Tribunal, the owner Shri Laxman Verma contended that the vehicle was being driven by his driver namely Shri Bechu Lal whom the learned Tribunal found to be having a valid and effective driving licence, consequently, it is the insurance company which has been held liable to pay the compensation without a right for recovery being granted to it and hence, the instant appeal.

9. The argument is that for reasons best known to the owner of the vehicle namely Shri Laxman Verma, the alleged driver of the vehicle was not produced before the learned Tribunal to give his statement and it was the alleged driver of the vehicle namely Shri Bechu Lal who could have indicated as to whether on the fateful day he was driving the vehicle and, in absence thereto, the learned Tribunal has patently erred in disbelieving the F.I.R. and the charge sheet which specifically indicated that the vehicle was being driven by Shri Laxman Verma, whose name was indicated in both F.I.R. and the charge sheet, and thus the award of the learned Tribunal so far as it does not give a right for recovery merits to be set aside.

10. On the other hand, learned counsel for the claimant has supported the award as passed by the learned Tribunal.

11. Having heard the learned counsel for the parties and perused the record, it emerges that an accident is said to have occurred on 11.03.2011 when one Shri Bhuseli was injured in an accident involving a tempo and died on the spot on account of grievous injuries suffered by him.

12. Claim application was filed by the claimants.

13. Of the various issues framed by the learned Tribunal, one of the issue was whether in the said accident, the driver of the vehicle involved was having an effective and valid driving license.

14. In this regard, the learned Tribunal has placed reliance on the statement of the owner of the vehicle namely Shri Laxman Verma, who had indicated that on the date of the accident the vehicle was being driven by his driver namely Bechu Lal and on the said date, on account of illness of his son, he had gone to get medicines. Shri Laxman Verma had categorically stated before the learned Tribunal that he does not have a license to drive a vehicle neither he drives the vehicle and as and when the driver does not turn up, the vehicle is not driven.

15. Incidentally, the statement of Shri Laxman Verma has not been repudiated or controverted in the cross-examination as has been done on behalf of the insurance company, meaning thereby, that the statements of Shri Laxman Verma, the owner of the vehicle, remain unrebutted.

16. The sheet anchor of the argument of the learned counsel for the appellant is the F.I.R. and the charge sheet which indicate about the vehicle involved in the accident being driven by Shri Laxman Verma.

17. The aforesaid argument may not detain the Court keeping in view of the law laid down by the Hon'bhle Supreme Court in the case of Bimla Devi and Others vs. Himanchal Road Transport Corporation and Others 2009 (13) SCC 530, wherein the Hon'ble Supreme Court as held as under:-

> "15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

18. Likewise the Hon'ble Supreme Court in the case of Mangla Ram vs. Oriental Insurance Company Limited & Others 2018 (5) SCC 656 has held as under:-

> "27. Another reason which weighted with the High Court to interfere in the first appeal filed by respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet file by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes, noted that the plea of negligence on the part of the driver of the offending

> vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance or probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgements already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal cases, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.
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> (Emphasis added)"

19. From a perusal of the aforesaid judgments, it emerges that the Hon'ble Supreme Court has held that the claim application is to be decided on a preponderance of probability of accident having occurred and in case any evidence is led before the learned Tribunal, it is this evidence which would prevail vis-a-vis anything contrary coming either in the F.I.R. or in the charge sheet.

20. As already indicated above, from a perusal of the judgment passed by the learned Tribunal, it clearly emerges that the owner of the vehicle had categorically stated before the learned Tribunal of the vehicle being driven by his driver namely Shri Bechu Lal whom the learned Tribunal has found to be having an effective and valid driving license on the date of accident which, incidentally, is also not disputed by the learned counsel for the appellant before this Court also.

21. Keeping in view of the aforesaid, no case for interference is made out.

22. Accordingly, the appeal is dismissed.

23. The statutory amount under deposit before this Court be remitted to the learned Tribunal as per rules.

24. The trial court record be transmitted back.

Order Date :- 1.5.2025 S. Shivhare