(2006) 11 JH CK 0013

In the Jharkhand High Court

Annapurna Choubey and Surendra Kumar Choubey — APPELLANT

Vs

Abdul Khalique, Abdul Latif, New India Assurance Co. Ltd. and Abdul Rasid Ansari — RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2007) ACJ 2567 : (2007) 2 JCR 325

Hon'ble Judges : M.Y. Eqbal, J;Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal by the claimants-appellants is directed against the judgment and award dated 21st February, 1998 passed by the Motor Vehicles Claims Tribunal, Pakur in Title (Claims) Suit No. 12 of 1991 whereby the Tribunal awarded a sum of Rs. 51000/- only for the death of one Manish Kumar Choubey @ Pintu, a boy aged 13 years. The Claimants-appellants are the parents of the deceased.

2. The facts of the case, inter alia, is that the deceased Manish Kumar Choubey @ Pintu was a student of Class-IX in Harindanga High School, Pakur. On 14.4.1991 he was run over by a truck bearing registration No. WB-65/0597 being driven rashly and negligently. The vehicle was insured with the respondent-New India Assurance Co. Ltd, Bhagalpur branch. The respondents appeared and contested the case. The respondents-Insurance Company took the plea that the truck bearing registration No. WB-65/0597 was not insured rather truck No. BHG-9230 was insured with the Insurance Company. The owner of the vehicle took the stand that the vehicle was insured with the respondent- New India Insurance Company.

3. The Tribunal after hearing the parties passed the impugned judgment and awarded and held that the claimants are entitled to compensation for the death of the deceased. However, the Tribunal took the view that since the owner of the

vehicle failed to produce the certificate of registration of vehicle, route permit and original insurance policy, the compensation amount is to be paid by the respondent-owner of the vehicle. Accordingly, the Tribunal awarded a sum of Rs. 51000/- as compensation and directed the respondent-owner of the vehicle for payment of the said amount.

4. Mrs. Ritu Kumar, learned Counsel appearing for the appellants, assailed the impugned award on the ground that the quantum of compensation awarded by the Tribunal is wholly erroneous and against the settled principles laid down by the Supreme Court and different High Courts. Learned Counsel submitted that admittedly the deceased was 13 years young boy and was a very meritorious student of Class-IX in a reputed school at Pakur. The father of the deceased, at the relevant time, was manager of State Bank of India. The boy belonged to an educated family and the family members of the deceased are doctors, engineers, lawyers and government servants. Because of death of the deceased, the parents have suffered substantial loss and injury. Learned Counsel submitted that at no stretch of imagination, compensation could be assessed only Rs. 51000/-. Learned Counsel further submitted that admittedly the truck involved in the accident was insured and covered by the insurance policy. When admittedly the vehicle was insured with the Insurance Company, then for mere non production of policy, the Tribunal ought not to hove exonerated the Insurance Company from payment of compensation.

5. First of all, we shall deal with the quantum of compensation assessed by the Tribunal. As noticed above, the deceased was a young boy of 13 years reading in High School and was a very meritorious student. The Tribunal was of the view that the monthly salary of the father of the deceased boy is Rs. 15000/- per month and he was 51 years of age which means he has at least 7 years of service and after retirement, he would get pension @ Rs. 7000/- to 7500/- per month: Taking notice of the aforesaid fact, the Tribunal assessed the following compensation:

a) Loss to estate : Rs. 5,000=00 b) Mental agony : Rs.20,000=00 c) Last rituals : Rs. 5,000=00 d) Expenses on treatment : Rs. 1,000=00 e) Loss of affection : Rs.20,000=00 _____________ Total : Rs.51,000=00 _____________

6. In our view, the Tribunal has committed serious error of law and has completely failed to apply a correct procedure for assessing the compensation in respect of the death of a 13 yean; young boy. Even if we take the notional income of the deceased, the compensation amount cannot and shall not be less than Rs. 2.5 lakhs. However, learned Counsel appearing for the parties have agreed and very fairly submitted that a lump sum compensation of Rs. 2 lakhs will meet the ends of justice and will be just and proper compensation.

7. The next question that arises for consideration to as to who shall pay the compensation amount, the owner of the vehicle or the Insurance Company. Mr

Alok Lal, learned Counsel appearing for the respondent-Insurance Company submitted that the impugned judgment and award has been passed against the owner of the vehicle and the Insurance Company has been exonerated from its liability. No appeal has been filed by the owner of the vehicle for shifting the liability to the Insurance Company. Mr Lal, therefore, submitted that in the appeal filed by the claimants, the liability of payment of compensation amount cannot be shifted from the owner of the vehicle to the Insurance Company. We do not find force in the submission of the learned Counsel.

8. The power of the appellate Court u/s 173 of the Motor Vehicles Act, 1988 (Section 110-D of Motor Vehicles Act, 1939) has been set at rest in a catena of decisions of Supreme Court and various High Courts. The appellate Court can exercise power as contemplated under Order 41, Rule 33 of the CPC for passing any order which ought to have been passed by the Tribunal notwithstanding that appeal is not filed by the aggrieved party. When the appellate Court finds that the findings recorded by the Tribunal is wholly perverse, then it can reverse the judgment and can award compensation in favour of the claimants in order to do complete justice between the parties. It is equally well settled that the appellate Court can enhance and reduce the compensation amount granted by the Tribunal when the procedure of assessment of compensation has not been correctly followed by the Tribunal.

9. In the instant case, from perusal of the Lower Court Records, it transpires that the claimant in the claim application has mentioned registration number of the vehicle i.e. Truck as WB-65/0597. The owner of the truck appeared and field written statement wherein it was stated that Truck No. WB-65/0597 was insured with the respondent-New India Assurance Co. Ltd, Bhagalpur branch for the period 6.12.1990 to 5.12.1991 vide Policy No. 3154010303626 and after renewal from 11.12.1991 to 10.12.1991 vide Policy No. 3154010305024. The Insurance Company in para.5 of the written statement although denied the Insurance Policy of Truck No. WB-65/-597, but at the same breath, stated that the insurance policy covers the risk of truck No. BHG-9230. The Insurance Company further specifically admitted that the owner filed the insurance policy in which the risk of alleged vehicle No. WB-65/0597 was covered.

10. In course of hearing of this appeal, learned Counsel appearing for the owner of the vehicle, produced before us a copy of the policy, a copy of which was also filed before the Tribunal, to show that the truck in question was insured with the respondent-New India Assurance Co. Ltd.

11. Mr. Alok Lal, learned Counsel appearing for the Insurance Company, has also not. disputed the fact that the truck in question was insured with the respondent-Insurance Company.

12. The unfortunate part is that the owner of the vehicle neither proved the insurance policy in the Court below nor even filed the insurance policy with an affidavit for using it as an additional evidence. Curiously enough, even no appeal

has been filed by the respondent-owner of the vehicle against the impugned judgment and award. In the aforesaid premises, if we take the view that in absence of any appeal having been filed by the owner of the vehicle, the liability for payment of compensation amount cannot be shifted, then ultimate sufferer would be the claimants who have not yet got the compensation amount. It is because of sheer latches and negligence on the part of the owner of the vehicle, the Tribunal exonerated the Insurance Company from its liability, notwithstanding the fact that vehicle was insured with the insurance Company.

13. Taking into consideration all the facts and the circumstances of the case, we are of the view that out of total compensation of Rs. 2 lacs, the respondent-Insurance Company shall pay a sum of Rs. One lac fifty thousand (Rs. 1.5 lacs) and the rest of the amount i.e. Rs. 50,000/- shall be paid by the respondent-owner of the vehicle who has accepted the award of the Tribunal and did not file any appeal.

14. This appeal is, therefore, allowed and the compensation amount is assessed at Rs. 2 lakhs which shall be payable by the respondents-owner of the vehicle and the Insurance Company in the manner indicated above.