
(2012) 04 PAT CK 0057

In the Patna High Court

Case No : Appeal From Original Order No. 454 OF 2008

Aqiquir Rehman

APPELLANT

Vs

Husbul Nisha, Afshana

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2012) 04 PAT CK 0057

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Advocate : Ajay Kumar and Mukesh Prasad Singh, for the Appellant; Shambhu Sharan Singh, Advocate Respondent No. 1 and 2 and Mr. Barun Kumar Choudhary, Advocate Respondent No. 3, for the Respondent

Judgement

Shailesh Kumar Sinha, J.—The appeal is directed against the order dated 13th of May, 2008 passed by the 9th Additional District Judge, Saran-Cum-Motor Accident Claims Tribunal in Claim Case No.43 of 2006, wherein he, while disposing of the petition for interim compensation filed u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), directed the owner of the offending vehicle to pay the interim compensation of Rs.50,000/- (fifty thousand) to the claimants. The owner of the said vehicle, being aggrieved by such interim award, has preferred this appeal on the ground that the owner of the offending vehicle was admittedly insured with the respondent-Oriental Insurance Company Ltd. and, as such, the interim compensation ought to have been directed to be paid by the Insurance Company.

2. Shortly stated, the facts of the case are that the deceased while travelling in a pick-up van bearing registration No.BR-31B/7686 met with an accident resulting into death of deceased Nijam Qurashi. A First Information Report was lodged by the father of the deceased vide Maker Police Station Case No.27/2006 dated 5.6.2006, a copy of which has been annexed as Annexure 2 to the memo of appeal.

The claimants, being the widow and minor daughter, filed the aforesaid claim case claiming compensation and during the pendency of such case, filed an application u/s 140 of the Act for grant of interim compensation.

The court below, upon considering the application and the rejoinder of the Insurance Company to the effect that the deceased was a gratuitous passenger and as such, the risk was not covered under the insurance policy although the offending vehicle was admittedly insured, concluded that the stand of the Insurance Company was genuine and accordingly directed opposite party no.2 of the said case i.e., the owner of the offending vehicle to pay the interim compensation of Rs.50,000/-.

3. Mr. Ajay Kumar, learned counsel appearing on behalf of the appellant submits that the final adjudication of the respective cases of the parties cannot be finally decided at the stage of consideration for grant of interim compensation u/s 140 of the Act. The Tribunal ought not to have concluded as a finding on fact that the case of the Insurance Company that the deceased was a gratuitous passenger is genuine. Learned counsel submits that such finding cannot be arrived without trial in absence of evidence still to be adduced by the parties. In fact, the evidences have been adduced after the impugned order. Learned counsel further submits that in case the offending vehicle is insured, the Insurance Company cannot escape from its liability to pay the interim compensation. In case the offending vehicle is insured, the liability rests upon the Insurance Company, however, the amount of compensation may be recoverable from the owner in case the Insurance Company proves that it is not liable. Learned counsel relies on a Division Bench decision of this Court in the case of Kanhai Rai and Others Vs. Dharampal and Others in support of the submission that the Insurance Company cannot escape from its liability to pay interim compensation.

4. On the other hand, Mr. Barun Kumar Choudhary, learned counsel appearing for the respondent-Insurance Company opposes the order under appeal and submits that the court below has taken into consideration the First Information Report lodged by the father of the deceased wherein there is no statement to the effect that the deceased was working as a Khalasi and, as such, the court below concluded that the stand of the Insurance Company is genuine.

5. Considering the rival submissions of the parties, it would appear that there is no dispute that the offending vehicle was insured with the respondent-Insurance Company. The only controversy is whether the deceased was working as a Khalasi of the offending vehicle or not. In my opinion, such consideration can be arrived finally during the final trial of the case and not at the stage of consideration of the petition u/s 140 of the Act. Such final conclusion cannot be arrived as the case has not been finally decided on the basis of the evidence, which may be adduced at the time of the final trial. This Court in the case of Kanhai Rai v. Dharampal (Supra) has categorically held that at the stage of considering an application u/s 140 of the Act, the Tribunal cannot hold a mini trial and consequently if it is found that the offending vehicle was insured, the

liability of the Insurance Company to pay the interim compensation cannot be escaped.

6. In view of the discussion and reasons stated above, the finding of the Tribunal at the stage of section 140 of the Act accepting the stand of the Insurance Company that the deceased was a gratuitous passenger is set aside. Since admittedly the offending vehicle was insured with the respondent-Insurance Company, the liability to pay the interim compensation is also on the Insurance Company. As such, the Insurance Company cannot escape from the liability to pay the interim compensation. Accordingly, this Court directs the respondent-Oriental Insurance Company with whom the offending vehicle was insured, to pay the interim compensation. The Insurance Company is directed to pay the interim compensation within a period of two months to the claimants. The statutory amount deposited in this appeal by the appellant be remitted to the court below for its refund to the owner of the offending vehicle i.e., opposite party no.2 of the aforesaid claim case.

7. It is made clear that this Court has not expressed any opinion on the merits of the claim or stand of the respective parties. The Award of the Tribunal is modified to the above extent. The appeal stands disposed of. No costs.