(2011) 10 PAT CK 0012

In the Patna High Court

Case No : CWJC No. 4567 of 2009

Arvind Kumar and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 32

Citation : (2012) 2 PLJR 55

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Shankar Kumar, for the Appellant; Rabindra Kr. Choubey for the State, for the Respondent

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned counsel for the appellant and respondents in two sets, this appeal is being disposed of at the admission stage itself with their consent. This appeal has been preferred by the insurer against Judgment and Award passed in Motor Vehicle Claim Case No. 174 of 2001 by learned 1st Additional District Judge-cum-Additional Motor Accident Claim Tribunal, Muzaffarpur in Motor Vehicle Case No. 174 of 2001.

2. The respondents 1, 2 & 3 were the claimants before the court below, seeking compensation against death of one Prithviraj Singh, who died in a motor accident on 8.2.2001, while travelling on Tractor bearing Registration No. B.R. 33A/2057, attached with Trailor bearing Registration No. B.R. 33A/2058, the deceased was working as Khalasi of the Tractor aforementioned. Before the court below the owner did not appear nor filed written statement and as it appears from impugned order, proper service of notice was affected upon him, and in this appeal also earlier on the point of limitation notice was personally received by respondent no. 4. A few years ago delay was condoned and again for hearing and disposal of the appeal, second time notice was issued against respondent no.

4, who avoided earlier but now entered into appearance.

3. The insurer-appellant has come out with this appeal on solitary ground that Tractor-Trailor though was insured, but there was no contract between the owner and insurer with respect to risk of any employee as Khalasi of the Vehicle in question. The risk covered only against third party and the driver of the vehicle, consequently the insurer is not liable to pay the amount so awarded. Learned counsel for respondents 1, 2 & 3 have to say nothing but to the satisfaction of his claim either from owner or from insurer. Learned counsel for the respondent no. 4, the owner initially tried to submit that before the Claim Tribunal, owner had entered into appearance and filed written statement, but subsequently on proper verification withdrew that submission. He tried his level best to get this hearing differed, but reasons were found not satisfactory. However during submission the learned counsel for the respondent no. 4 could not dispute to this fact that for insurance of the vehicles limited premium of Rs. 333/- (Three Hundred Thirty Three) paid and except driver and third party, there was no coverage of risk.

4. Since undisputedly the terms and conditions of the policy does not cover the risk of Khalasi as in the instant case deceased is said to be Khalasi of the vehicle in question. The insurer-appellant is not liable to pay the amount under award rather it is the liability of owner to compensate the claimants against death of deceased.

5. Here now only question is required to be considered, whether the insurer-appellant can be directed to satisfy the award with right to recovery as contemplated u/s 149 of the Motor Vehicles Act.

Section 149 of the Act reads as such:--

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.--(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any payable in respect interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or

in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:--

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:--

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motorcycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) (X X X X X)

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) (X X X X X)

(7) (X X X X X)

The claim application was filed u/s 166 of the Motor Vehicles Act and impugned order is final award passed after detailed adjudication. It is not the case of interim award u/s 140 of the Act and on final adjudication of course initially, in absence of the owner, the Claim Tribunal did not frame issue as regard to inter se liability between owner and insurer. But only on basis of the vehicle being insured, without going into the terms and conditions and any violation thereof, directed the appellant to pay the amount of award, but in face of appearance of the owner on participation in this appeal privilege as contemplated u/s 149, sub-clauses 4 & 5 is not available to the owner rather it is respondent no. 4, the owner who is to pay the amount under award with interest till date of realization. The entire amount of the award has been deposited by the appellant in this appeal as submitted, the appellant is entitled to get its refund, the interim award u/s 140 of the Act has also been paid by the insurer-appellant. The insurer is entitled to recover it from the owner, respondent no. 4 as per observations and directions made above. Order of the Claim Tribunal is modified to this extent that entire award including interim compensation is to be paid by owner of the vehicle i.e. respondent no. 4 and whatever amount has been paid by the insurer to the claimant, towards compensation u/s 140 of the Act is to be recovered by him from the owner. The appeal stands disposed of on contest, there is no order as to costs. The amount deposited here in the appeal by appellant against compensation is order to be returned to the appellant.