

(2007) 07 JH CK 0006
In the Jharkhand High Court
Case No : M.A. No. 277 of 2005

Baby Devi and Others

APPELLANT

Vs

National Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 17-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 165, 166

Citation : (2007) 2 AndhWR 453 : (2008) ACJ 1114 : (2007) 2 BLJR 2735 : (2007) 4 JCR 256

Hon'ble Judges : M.Y. Eqbal, J;D.G.R. Patnaik, J

Bench : Division Bench

Advocate : J.K. Majumdar, Kaushik Sarkhel and Rohit Roy, for the Appellant; Praveen Kumar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal by the claimants-appellants is directed against the judgment and order dated 7.10.2005 passed by the Claims Tribunal, Dhanbad in Title (MV) Suit No. 45 of 2004 whereby he has dismissed the claim application filed by the appellant under Sections 166 and 140 of the Motor Vehicles Act, 1988.

2. On 13.3.2003 the deceased Suresh Pandey was going to Gopal Hardcoke Oven at Ratanpura, Govindpur on Motor Cycle No. JH-10C/5827 with one Raju Singh. The deceased was the owner of the motorcycle. When they reached near Govindpur suddenly back wheel of the vehicle became punctured as a result of which, the motorcycle became unbalanced and the deceased Suresh Pandey fell down and received head injuries. He was taken to Central Hospital, Dhanbad but in course of treatment, he died on the next day on 14.3.2003. The heirs of the deceased filed application under Sections 140 and 166 of the Motor Vehicles Act for the grant of compensation.

3. The respondent-National Insurance Co. Ltd., being the insurer of the motor

vehicle, contested the case by filing written statement. The respondent's case was that the claimants are not entitled to any compensation on the ground that it is not a claim by third party. The claimants are only entitled to coverage regarding personal accident of Rs. One Lac from the Company.

4. The Tribunal proceeded to decide the maintainability of the claim application. The Tribunal held that the deceased died due to motorcycle accident. This accident was not with the third party. In fact back wheel of the motorcycle burst and the motorcycle became unbalanced. The Tribunal, further, held that it is a case of self accident of the owner and driver of the vehicle. The Tribunal further held that Motor Claims Tribunal can only maintain claim for compensation which involves a third party risk. Accordingly, the claim application was dismissed.

5. Prima facie, we are of the view that the Tribunal has completely misconstrued and misinterpreted the provision of Motor Vehicles Act. Section 165 of the Motor Vehicles Act confers power upon the State Government to constitute one or more Motor Accident Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving death of or, bodily injury to, persons arising out of the use of the motor vehicles, or damage to any person or third party or both.

6. The word "use" used in the Section has a wider sense. It covers all employments of a motorcycle, so that whenever the vehicle is put into action or service, there is a "user" of the vehicle within the meaning of Section 165 of the Act where the vehicle is being driven or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used whenever the vehicle is driven out for any purposes whatsoever. This is sufficient to attract Section 165 of the Act. Therefore, whenever any accident occurs causing death or injury to a person because of the vehicle or in the course of its use, the jurisdiction of the Claims Tribunal arises.

7. It is well settled that jurisdiction of the Tribunal is not restricted to decide claim arising out of negligence in the use of motor vehicle. Negligence is only one of the species of cause of action for making a claim for compensation in respect of accident arising out of use of motor vehicle. The law in this respect has been set at rest by the Supreme Court holding that the words "use of a motor vehicle" include the period when the vehicle was in stationary position due to breakdown, mechanical defect or accident.

8. In the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , the vehicle involved in the accident was a jeep. It capsized while it was in motion. The cause of capsizing was attributed to bursting of the front tyre of the jeep. In the process of capsizing, the vehicle hit against one person who was walking on the road. The Tribunal dismissed the claim holding that rash and negligent driving was not established. The appeal before the High Court was also dismissed and the matter came before the Supreme Court. The Supreme Court elaborately discussed the rules enunciated in

Rylands v. Fletcher and held that the claim before the Tribunal for the grant of compensation is maintainable.

9. Applying the said principle laid down by the Supreme Court, we are of the view that the Tribunal has committed error of law in dismissing the claim application holding that the claim is not maintainable.

10. We, therefore, allow this appeal, set aside the order passed by the Tribunal and remit the matter back to the Tribunal for deciding the claim application on merit in accordance with law.