
(2002) 02 JH CK 0108

In the Jharkhand High Court

Case No : Appeal from Original Order No. 165 of 1994 (R)

Binda Singh

APPELLANT

Vs

Narendra Pal Singh and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 166

Citation : (2003) ACJ 1563 (2003) 1 ACC 330

Hon'ble Judges : Hari Shankar Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : S.L. Agrawal, for the Appellant; D.C. Ghose, for the Respondent

Judgement

The Court

1. Appellant is the owner of truck bearing Registration No. BEW 8064. Respondent No. 5 was driver of the said vehicle. At the relevant time, the said vehicle was duly insured with New India Assurance Company Limited. The truck dashed the Scooter bearing Registration No. BRT 5741 on which Manjeet Kaur along with her son was sitting as pillion rider and the Scooter was being driven by her husband Narendra Pal Singh.

2. It was established that the accident took place on account of the truck being driven in a very high speed in rash and negligent manner. By impugned judgment, and award dated 1.6.1994, passed in Compensation Case No. 75 of 1990, u/s 166 of the Motor Vehicles Act, 1988, the Tribunal assessed a sum of Rs. 75,000/- with interest @ 12% per annum payable to the claimants.

3. In paragraph 8 of the impugned judgment, it was observed that according to the provision of Section 149(2) of the Act, no doubt the insurer was entitled to defend an action for compensation against it on the ground of any breach of statutory conditions, including the holding of valid licence by driver of the vehicle in question at the time of accident, but in the present case, inspite of challenge having been thrown to the owner by the insurer in its written statement, no care

was taken either to produce the driving licence of driver of the truck or to adduce any other evidence to show that he did have any proper driving licence at the time of the accident. The Tribunal accordingly held that the insurer was not responsible to indemnify the liability of the owner of the vehicle and the amount of compensation be paid by owner of the truck in question to the claimants.

4. The owner of the vehicle has, therefore, preferred the present appeal u/s 173 of the Act challenging direction of the Tribunal, whereby the insurer was held to be not responsible to indemnify liability of the owner of the vehicle in question under the Act.

5. In paragraph 14 of the show cause filed on behalf of New India Assurance Company Limited before the Tribunal. It was stated that owner of the vehicle No. BEW 8064, the truck may also be directed to produce R.C. Book and the driving licence of the driver, failing which it should be presumed that there was a statutory violation of the policy as contemplated u/s 149 of the Act and the insurer would not as such stand in law to pay the award amount of compensation to the claimants.

6. It is true that in the present case though the owner and driver of the truck in question have appeared in the claim case and also cross-examined the witnesses examined on behalf of the claimants, but neither filed any show cause/written statement nor adduced any evidence. Driving licence was also not produced.

7. On the other hand, the insurance Company, who filed its show cause/written statement and also contested the claim case, did not take any step either to summon the records from the District Transport Office or to direct the person concerned for production of driving licence.

8. It may also be noted that if the vehicle in question was being driven by a person not having valid licence, liability would not have been fastened on the Insurance-Company, but in the present case there were no evidence that the driver had no valid licence or the owner of the vehicle was aware of the fact that the driver was not possessing any valid licence. In case, the Insurance Company contended that the driver had no valid driving licence and thereby there had been a breach of one of the important terms of the insurance policy, the burden of proof of this fact was certainly on the Insurance Company. Not an iota of evidence was led by the Insurance Company to show that the driver had no valid driving licence at the time of the accident. It cannot, therefore, be said that the Insurance Company discharged its onus merely by making such statement in its pleadings. In this regard, reference may be made to a decision of the Apex Court in *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, wherein it was held that owner or driver of the vehicle involved in the accident was under no obligation to furnish evidence so as to enable the Insurance Company to wriggle out its liability under the terms of the insurance policy. The Company could have got evidence produced to substantiate its allegation by calling for the records of the driving licence from the concerned office of the

District Transport Officer, from where the licence in question was either issued or renewed.

9. It is not in dispute that in the present case the Insurance Company failed to prove the aforesaid aspect of the matter. Its liability under the Insurance policy remained intact and un-hampered and it was bound to satisfy the award.

10. In the circumstance, without interfering with the quantum of compensation amount assessed by the Tribunal, the impugned judgment and award is modified to the extent that liability of owner of the truck for payment of compensation shall be fully indemnified by the insurer. Even after service of appeal notice, claimants-respondents have not appeared in this Appeal. However, on the ratio of recent decision of the Apex Court in Smt. Kaushnuma Begum v. New India Assurance Company Limited 2001 (1) JLJR 322 (SC) rate of interest granted by Tribunal on the compensation amount at 12% per annum is reduced to 9%.

11. This Appeal is disposed of with above modification in the impugned Judgment and award. Lower Court records may be sent down.