

(2021) 04 JH CK 0171

In the Jharkhand High Court

Case No : Miscellaneous Application No. 764 Of 2018

Branch Manager, Magma HDI General Insurance Co. Ltd.

APPELLANT

Vs

Sonlata Devi & Others

RESPONDENT

Date of Decision : 17-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 427

Citation : (2021) 04 JH CK 0171

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Alok Lal, Rashmi Kumar, Munna Lal Yadav

Final Decision : Dismissed

Judgement

Heard, learned counsel for the appellant, Mr. Alok Lal. The Branch Manager, Magma HDI General Insurance Company Limited has preferred this appeal against the award dated 14.09.2018 passed by learned Principal District Judge-cum-Presiding Officer, Motor Accident Claims Tribunal, Koderma in Motor Accident Claim Case No.24/2015, whereby the claimants namely, Sonlata Devi, Badri Narayan Rana @ Badri Rana and Sagar Kumar Rana have been awarded compensation to the tune of Rs.7,86,000/- alongwith interest @ 9% per annum from the date of filing of the claim application i.e. 15.12.2015 till the date of payment within one month from the date of receipt of copy of the award.

Learned counsel for the appellant has submitted that earlier notice has been issued to the owner of the vehicle namely, Sakaldeo Yadav as well as claimants, who are appearing through their respective counsels, Mr. Munna Lal Yadav and Mrs. Rashmi Kumar.

Learned counsel for the appellant has assailed the impugned award on two counts; Referring to para-10 of the impugned judgment, learned counsel for the appellant has submitted that an FIR has been lodged with regard to an accident vide Jainagar P.S. Case No.67/2014 dated 09.04.2014 in which after

investigation, the police submitted charge-sheet vide Charge-sheet No.61/2014 on 26.05.2014 for offence under Sections 279, 304A and 427 IPC, but on 15.12.2014 after filing of the charge-sheet, an application was given to the police by the informant Badri Narayan Rana (Annexure- A), suspecting murder of his son Pawan Kumar Rana under conspiracy between Vijay Yadav and Vinita Rana (Sister of informant). Vijay Yadav is a paramour of Vinita Rana. It was also found that owner of the offending vehicle Sakaldeo Yadav is relative of Vijay Yadav, hence, Insurance Company is not liable to pay any compensation in simplicitor murder case as suspected by the informant.

Learned counsel for the appellant has referred the judgment passed by the Division Bench of this Court in Smt. Dhela Rani & Another Vs. Sri Deepak Prasad and others reported in 2009 1 JCR 326, where the Division Bench of this Court has affirmed the finding recorded by the learned Tribunal disallowing the claim application of the claimants on the ground that it was the felonious act where death is caused with the criminal intent and with a motive to kill the deceased, therefore, the Division Bench has held that it was a murder simplicitor, as such, the claim application, which was refused by the Tribunal has been affirmed by this Court, as such, in the present case also where the father of the deceased, Badri Narayan Rana has suspected simplicitor murder of the deceased namely, Pawan Kumar Rana by the offending vehicle of the owner, the claim application should have been dismissed by the learned Tribunal.

Learned counsel for the appellant has further submitted that the Insurance Company has raised the issue of violation of terms and condition of the policy as there was no valid and effective permit authorization for the vehicle on the date of accident. The verification report was called from RTI, which has been annexed as Annexure-B and as such, there is violation of terms and condition of the policy. The learned Tribunal has issued notice (Annexure-E) to the owner to produce all documents including permit authorization certificate, but the owner failed to produce the same, but even though the learned Tribunal has decided the issue against the Insurance Company on the ground that there is no dispute that national permit was issued in favour of the owner of the offending vehicle bearing registration No. JH-12D-3769 valid upto 31.03.2022.

So far authorization certificate of permit is concerned, initially it was expired on 31.03.2013. It further transpired that national permit and authorization certificate was issued from the office of STA, Ranchi Exhibit-X/3. The O.P. No.2 has filed information under RTI Act, 2005 from ARTA, Hazaribag. The competent witness of the investigator, who has not been examined in this case, the information relied upon by O.P. No.2 is also issued without prejudice only for the purpose of Insurance Company. The Insurance Company has not examined any competent witness to prove the aforesaid fact so that effective cross-examination of the witness can be conducted.

Learned counsel for the appellant has further submitted that such finding of the learned Tribunal is contrary to the evidence brought on record by the Insurance

Company by examining Shikhar Sinha, Deputy Legal Manager, Magama HDI General Insurance Company Limited and his evidence at paras-10, 11 and 12 shows that ample evidence has been adduced by the Insurance Company to substantiate their pleadings, but the learned Tribunal has considered that there is no violation of terms and conditions of the policy, for which this Court may verify the same from the lower court records.

Learned counsel for the owner of the offending vehicle has submitted that there is no violation of terms and conditions of the policy and the learned Tribunal has rightly not given right to recover in favour of the Insurance Company, but he has failed to give any reply to the query made by this Court that why pursuant to the notice issued to him, he has not produced all the document before the learned Tribunal.

Considering the same, let Lower Court Records be called for. So far the right of recovery to the Insurance Company from the owner of the vehicle is concerned, the issue which has been agitated by the appellant - Insurance Company taking support from Smt. Dhela Rani's case, this Court consider that the same is not relevant question before this Court as deceased Pawan Kumar Rana was going to see Hirodih fair by his motorcycle bearing registration No.JH-12E-8787, as he reached near Parsabad Bridge, meanwhile, a Truck bearing registration No.JH-12D-3769 coming from opposite direction driven by its driver very rashly and negligently dashed the motorcycle, due to which, he sustained severe injuries and died on the spot at the age of 25 years. The police investigated the case and submitted Chargesheet No.61/2014 on 26.05.2014 under Sections 279, 304A and 427 IPC.

No protest petition was filed by the informant, rather an application was given to the police by the informant Badri Narayan Rana suspecting murder of his son Pawan Kumar Rana under conspiracy between Vijay Yadav and Vinita Rana (sister of informant). The informant has not raised this question before the criminal court by praying that further investigation may be held nor the police department has filed any application before the Chief Judicial Magistrate, Koderma for order of further investigation.

Under the aforesaid circumstances, a letter which has been filed under suspicion by the informant cannot be ground to refuse the claim of the claimants.

Accordingly, the issue which has been agitated by the Insurance Company against the claimants is not acceptable to this Court as the case of Smt. Dhela Rani is entirely different than the fact of the present case. Here the issue with regard to simplicitor murder is not accepted by the learned Tribunal or by the criminal court or by the police after due investigation.

Accordingly, the said issue which is agitated by the appellant- Insurance Company is hereby rejected, as such, in absence of any appeal preferred by the claimants as stated by counsel for claimants, Mrs. Rashmi Kumar, the impugned judgment / award passed in favour of the claimants against the Insurance

Company is hereby affirmed.

The appellant is directed to indemnify the award to the claimants within a period of 90 days from today in terms of the award passed by the Tribunal as the occurrence is of dated 09.04.2014.

The statutory amount shall be remitted to the learned Tribunal by learned Registrar General of this Court within a period of four weeks from today, so as to indemnify the claim to the claimants in terms of the award passed by the learned Tribunal.

So far the right of recovery, as discussed above, the matter shall be heard after receipt of lower court records from the learned Tribunal, so as to appreciate the finding recorded by the learned Tribunal in Para-13 at Page-11 of the impugned judgment after perusing the lower court records.

In the meantime, learned counsel for the owner, Sakaldeo Yadav is directed to file all the relevant documents to substantiate his case.

Let the appeal be listed after receipt of lower court records so as to follow the intent of the beneficial legislation in favour of the claimants as the appeal is kept pending for several years because of dispute between the Insurance Company and the owner, in which the claimants are the poor sufferer.

In the meantime, learned counsel for the owner is also directed to supply all the documents upon learned counsel for the Insurance Company, Mr. Alok Lal within two weeks, who shall verify the same in the meantime.