
(2008) 09 PAT CK 0088
In the Patna High Court
Case No : MA No. 147 of 2003

Branch Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Meena Devi and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Citation : (2008) 09 PAT CK 0088

Final Decision : Dismissed

Judgement

Subash Chandra Jha, J.

This appeal has been preferred against the judgment dated 6.3.2002 and award signed on 10.10.2002 passed by the Third Additional District Judge-cum-Motor Accident Claims Tribunal, Bhagalpur, in Claim Case No. 57 of 1994, directing the appellant to pay a sum of Rs. 3,00,000/- (Three lac) with 9% interest thereon.

1. Heard learned Counsel of both the sides.

2. An application for claim u/s 166 of the Motor Vehicles Act, 1988, was filed by the claimants Meena Devi and her children in respect of death of Girdhar Prasad Sah, a Tractor Mechanic who was aged about 25 years on 6.9.1993 at 1 P.M. on 31, National High Way near Murli Madrani in the district of Bhagalpur. The deceased was said to have been driving the Tractor bearing Registration No. BHJ. 523 which turned turtle and fell down and he came under the tractor and died on the spot. Gopalpur P.S. Case No. 155/1993 was registered and investigation was made by the I.O. of the case. Post Mortem examination was held in Naugachia Sadar Hospital.

3. It has been averred in the petition that deceased was earning Rs. 2,000/- per month as Motor Mechanic and cultivation work. The vehicle concerned was insured with the National Insurance Company Ltd. Khagaria, vide Policy No. 170709/630-15-98 for Rs. 3,00,000/- (three lac).

4. The appellant National Insurance Company Ltd. made its appearance and filed

written statement and challenged the maintainability of the claim on the ground that there was violation of terms and conditions of Insurance Cover besides taking plea of non-production of relevant papers in respect of the tractor in question.

5. The learned Tribunal after framing of the issues decided all the issues but important issues being Issue Nos. 3 and 4, which in substance were to this effect as to whether death of the deceased Girdhar Prasad Sah occurred due to turning of the tractor being driven by him and whether the applicants were entitled to receive any compensation from the Insurance Company.

6. In course of hearing before the Tribunal, five witnesses on behalf of the applicants were examined in respect of manner leading to the death of the deceased, earning of the deceased and his age and the learned Tribunal after considering the age of the deceased awarded compensation of Rs. 3,00,000/- (Three lacs) and, thus, directed to deduct Rs. 25,000/- (Twenty five thousand) which was paid earlier by way of interim relief along with the interest as stated above.

7. Contention raised on behalf of the appellant was that the driver of the said Tractor had no licence to drive the vehicle and as such he violated the terms and conditions of the Insurance Policy. Besides, relevant papers of the tractors were not filed in the court below and the claim of compensation was excessive. The appellant has also relied upon the report of its surveyor, who has reported that the vehicle was plying on the road on only three wheels. But this fact was not corroborated by any witnesses on behalf of the appellant.

8. In reply, the learned Counsel for the respondents-claimants has submitted that such denial of the Insurance Company from discharging its liability, the obligation is not tenable in the eye of law as also on facts in view of the decision of Hon''ble Apex Court reported in 1985 (2) SCC, 574, wherein it has been held that it was the burden of the Insurance Company to prove that person driving vehicle had no valid licence, and mere failure to produce driving licence in Court can not absolve the insurance company from making payment of the compensation amount.

9. Another decision has a been cited on behalf of the respondents as reported in Binda Singh Vs. Narendra Pal Singh and Others, in support of his contention that the defence available to the insurance company in respect of non-production of Driving licence before the court below would not absolve the insurance company from making payment of compensation amount. Rather, the Insurance Company should have taken steps to summon the records of the District Transport Officer or ask the owner or driver of the vehicle to produce the licence in the court.

10. Here, in the facts and circumstances of the case, the Insurance Company did not discharge its onus by invoking aforesaid steps and so simply by pleading that the driver had no licence would not absolve it from making payment of the compensation amount.

11. Besides, reliance has also been placed on other decisions of Hon''ble Apex Court reported in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, and National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, in support of his contention that the appeal by the Insurance Company is not maintainable on merit because no leave u/s 170 of the M.V. Act was taken by the Insurance Company. Besides, the Insurance Company did not file copy of the Insurance Policy in the Tribunal so as to show that there was violation of the condition of Policy, although, claimants mentioned the Policy particulars being Policy No. 170703/6301598/92 issued by the Khagaria branch of National Insurance Company Ltd. in respect of Tractor No. BHJ-523 and the existence of policy of the vehicle was admitted by the Insurance Company at page 81 of the Lower court record and vide report of the investigator Ext. A at page 38 of the LCR which is Ext. A before the court below.

12. So, adverse inference be drawn against the appellant-Insurance Company for which reliance has been placed in a decision reported in 2007 (2) PLJR, 354 and 2002 (1) BBCJ, 209.

It has also been submitted that it is well settled law that the Insurance Company will have to prove breach of policy condition by producing the policy.

13. It has been further submitted that the claim in respect of death of a motor mechanic due to motor accident in course of trial of repaired vehicle on public place is covered under MV Act and policy of Insurance because when the owner of the vehicle entrusts his vehicle to a repairer to carry out repairs, he is in fact allowing the repairer to use his vehicle in that connection. The mechanic acts within his limit of authority and in course of employment for and on behalf of the owner. If any accident occurs either to third party or to the mechanic himself, the owner is vicariously liable to third party or to mechanic himself, the owner is vicariously liable consequently if the vehicle is covered under Insurance policy then the insurer is also liable.

14. Here, as pointed out there was insurance cover for the aforesaid period. Furthermore, by referring several decisions of Hon''ble Apex Court, argument has been advanced on behalf of the respondents that in case of death of or personal injury caused to workmen in Motor accident arising out of and in course of employment, liability of insurance company u/s 147 of the Act exists under MV Act also because such workmen like driver, conductor, coolie etc. comes within the purview of "any person". In this regard reference of National Insurance Co. Ltd. Vs. Prembai Patel and Others, , New India Assurance Co. Vs. Annappa Laxman Karamoshi and Others, , Smt. Bhimavva and Others Vs. Shankar @ Adya and Others, and United India Insurance Company Limited Vs. Shaik Husain and Another, have been made.

15. It was further argued that Mechanical Break down defines that the driver, conductor, workman etc. are entitled to claim compensation under Motor Vehicles Act in view of provision of Section 167 of Motor vehicles Act because such

persons are entitled to claim either under Motor Vehicles Act or under Workmen's Compensation Act, but not in both. In this regard reliance has been placed in decisions reported in Ramji Porte and Others Vs. Premabai Patel and Others, Chhaya Mishra and Others Vs. Oriental Insurance Co. Ltd. and Another, Peetamber Prasad Ratle and Others Vs. State of Madhya Pradesh,

16. According to the learned Counsel for the respondents, so far payment of interest is concerned, interest shall be awarded even though not claimed and the rate and effective date may vary. In this regard, reference of decisions reported in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, and Tejinder Singh Gujral Vs. Inderjit Singh and Another, have been made.

Having considered the aforesaid facts and circumstances, I do not find any reason for interference with the impugned order.

17. In the result, this appeal is dismissed.