
(2011) 11 PAT CK 0093
In the Patna High Court
Case No : Misc. Appeal No. 481 of 2006

Branch Manager, National Insurance Company Ltd.	APPELLANT
Vs	
Most. Manju Devi and Others	RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173
Penal Code, 1860 (IPC) — Section 279, 304(A)

Citation : (2012) 3 PLJR 250

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, for the Appellant; Sudhir Kumar Bijpuria, Amicus Curiae., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The present appeal u/s 173 of the Motor Vehicles Act (hereinafter referred to as the "M.V. Act") was preferred against the judgment dated 12.7.2006 and award dated 26.7.2006 in Motor Vehicles Claim Case No. 28 of 2003 passed by learned Additional District Judge (F.T.C.-IV)-cum-Motor Accident Claims Tribunal, Samastipur (hereinafter referred to as the "Claims Tribunal"). By the impugned judgment and award the learned Claims Tribunal had allowed the claim case and directed the appellant/ insurer of the offending vehicle to pay compensation amount of Rs. 4,00,000/-. As per Claims Tribunal Rs. 50,000/- which was paid as interim compensation u/s 140 of the M.V. Act was required to be adjusted from the compensation amount. The learned Claims Tribunal has further directed to pay the compensation amount alongwith simple interest at the rate of 9% per annum from the date of filing of the claim case i.e. from 29.5.2003. The claimants' case was that on 12.4.2003 at about 15.30 Hrs. (3.30 P.M.) while the husband of the claimant/respondent no. 1 (claimant no. 1) was going to Samastipur market on a scooter which was being driven by one Rabindra Kumar and when they reached near Railway over-bridge a coach bus bearing Registration No. BR-09A-3361 being driven rashly and negligently by the

driver from the side dashed the scooter. In the said accident the husband of the respondent no. 1 namely Satya Narain Rai fell down from the scooter and received injuries. At the place of occurrence due to accident he became unconscious and blood started oozing. Thereafter, the injured was carried to the Sadar Hospital, Samastipur for treatment and while doctor was examining him he died. Accident had taken place near Samastipur Railway overbridge. After the death of the injured, in Sadar Hospital itself, on 12.4.2003 at about 16.00 Hrs. (4.00 P.M.) fardbeyan of Rabindra Kumar was recorded by Sub-Inspector of Police, Town Police Station, Samastipur. In the fardbeyan the informant disclosed that the deceased was his "Samadhi" and it was scooter of the informant. The deceased was seating on the scooter while the informant was driving the scooter which was dashed by the coach bus due to rash and negligent driving of the driver of the aforesaid coach bus. Immediately after recording fardbeyan, on the same date a First Information Report (F.I.R.) vide Samastipur Town P.S. Case No. 135 of 2003 was registered for the offence under Sections 279/304(A) of the Indian Penal Code on the same date at 17.15 Hrs. (5.15 P.M.) against the driver of the Deluxe Coach bus bearing Registration No. BR-09A-3361.

2. On 29.5.2003, the respondent no. 1/wife of the deceased late Satya Narain Rai filed petition under Sections 166 and 140 of the M.V. Act for compensation as well as for interim compensation claiming compensation of Rs. 4,00,000/-, arraying the owner, driver and insurer of the offending coach bus as defendants. From the record it further appears that subsequently on filing petition by the claimant no. 1, the respondent nos. 2 to 4 were impleaded as applicant/claimant nos. 2 to 4 in the claim case. Before the learned Claims Tribunal the owner of the offending vehicle as well as the appellant filed separate written statement to the claim petition. The appellant who was arrayed as opposite party no. 3 /defendant no. 3 filed detailed written statement. The owner of the offending vehicle produced documents to show that the offending coach bus was having road permit, certificate of registration, photo copy of document showing payment of road tax to the Road Transport Department, photo copy of certificate of fitness, photo copy of insurance policy of the coach bus issued by the National Insurance Co. Ltd. i.e. the appellant as well as photo copy of driving licence of the driver of the offending coach bus.

3. The interim compensation amount of Rs. 50,000/- was allowed on 16.12.2004 which was subsequently paid to the claimants.

4. To prove the claim case the claimant examined altogether six witnesses and got exhibited salary certificate of the deceased as Exhibit-1, certified copy of the F.I.R. as Exhibit-2, post mortem examination report of the deceased late Satya Narain Rai as Exhibit-3, copy of Insurance Policy of the offending coach bus as Exhibit-4 and certified copy of the charge-sheet in Samastipur Town P.S. Case No. 135 of 2003 as Exhibit-5. The learned Claims Tribunal after examining all the materials, by the impugned judgment and award has allowed the claim case and directed the insurer i.e. the appellant, to pay the compensation amount as

indicated above.

5. The appellant in sum and substance had taken the plea that the owner of the offending coach bus had breached the Terms and Conditions (T&C) of the policy, and as such, the insurer was not required to pay any compensation amount.

6. Sri Ashok Priyadarshi, learned counsel for the appellant has placed heavy reliance on "Annexure-2" to the Memo of Appeal. It was submitted that the District Transport Officer, Samastipur, had issued "Annexure-2", which makes it clear that the driver of the offending vehicle was not having any valid driving licence. It was argued that as per certificate granted by the District Transport Officer, Samastipur, the copy of licence which was brought on record before the learned Claims Tribunal was actually not valid licence, and accordingly, it was argued that the insurer in view of breach committed by the owner of the vehicle is not liable to pay any compensation amount.

7. It was submitted that in view of settled law particularly judgment of the Hon'ble Apex Court reported in 2006 AIR SCW 1649 [: 2006 (3) PLJR (SC)185] (National Insurance Co. Ltd. vs. Kusum Rai & Ors.), Insurance Company cannot be held liable to pay compensation if the driver was not having valid driving licence at the time of accident. Second ground for attack on the impugned judgment and award is that in any event the only net income of the deceased was required to be taken into account for calculating compensation whereas, the learned Claims Tribunal has taken gross salary of the deceased for calculation which, according to learned counsel for the appellant, was contrary to the settled principle of law. In support of his contention Sri Priyadarshi has relied on National Insurance Company Ltd. Vs. Indira Srivastava and Others, and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Thirdly, it was argued that in any event it was a case of contributory negligence, and as such, the compensation amount was liable to be equally distributed amongst the insurer of the offending coach bus and either the owner or the insurer of the scooter on which the informant and the deceased were traveling at the time of accident.

8. On aforesaid grounds, Sri Priyadarshi has prayed for either quashing the entire order or modify the same to the extent of share of the appellant/insurer of the offending coach bus.

9. The present appeal was admitted on 18.1.2008 for hearing. However, no order was passed earlier on Interlocutory Application i.e. I.A. No. 3154 of 2007, which was filed for condoning the delay in filing the appeal. Accordingly, in view of the grounds set forth in the Interlocutory Application i.e. I.A. No. 3154 of 2007 filed for condoning the delay in filing the appeal, the same is allowed and delay in filing the appeal stands condoned.

10. In this case despite respondent nos. 1 to 4 had entered their appearance through their Advocate, repeatedly none had appeared on their behalf. Accordingly this court vide its order dated 16.5.2011 appointed Sri Sudhir Kumar Bijpuria, Advocate, as "Amicus Curiae".

11. Sri Bijpuria while controverting the plea of the appellant has argued that before the learned Claims Tribunal the appellant/insurer had not brought even a chit of paper to create doubt on the question of driving licence of the driver of the offending vehicle. Even in written statement no such specific plea was taken. He has drawn my attention to statement made in paragraph no. 7 of the written statement filed on behalf of appellant/insurer before the Claims Tribunal wherein only plea was taken by the appellant that the claimants had not produced copy of insurance policy, driving licence, road permit, road tax etc. and the National Insurance Co. Ltd. was liable to pay only when the offending insured vehicle was at the time of accident was being driven with the proper driving licence, insurance policy and other relevant papers. It was submitted that record shows that at least the owner of the offending vehicle who was arrayed as defendant no. 1/opposite party no. 1 in the claim case has brought on record the aforesaid documents. Copy of driving licence of the driver of the offending vehicle was specifically brought on record. Sri Bijpuria in respect of "Annexure-2" to the Memo of Appeal submitted that the documents which were not at all brought before the learned Claims Tribunal may not be looked into at this stage. It was submitted that in the present case on the basis of the documents on record, the learned Claims Tribunal vide its judgment and award dated 12th July, 2006 had allowed the claim case whereas "Annexure-2" is purported to be issued on 8.9.2006 LB. after the judgment of the learned Claims Tribunal. Accordingly, it was submitted that "Annexure-2" to the Memo of Appeal may not help the appellant. It was further submitted that even "Annexure-2" indicates regarding professional driving licence in the name of one Baidya Nath Rat. Sri Bijpuria, on the question of net income of the deceased submits that the salary certificate in respect of the deceased which has been brought on record indicates that the deceased was getting monthly salary from his employer as Rs. 4,500/- per month. He has drawn my attention to "Exhibit-1". It was submitted that during the cross-examination of any of the witnesses even no suggestion was given by the learned counsel for the insurer to extract as to what was the net salary of the deceased or what was the gross salary whereas there is consistent evidence, documentary as well as oral, that salary of the deceased was Rs. 4,500/- per month.

12. On the question of contributory negligence, which was raised on behalf of the appellant, Sri Bijpuria submits that "Exhibit-5" i.e. charge-sheet in Samastipur Town P.S. Case No. 135 of 2003, is indicative of the fact that it was not a case of contributory negligence. The stand which was taken in the F.I.R. has been corroborated during investigation, and as such, charge-sheet was submitted by the Police only against the driver of the offending coach bus. The Investigating Officer has not even whispered against the scooter driver. The evidence of the informant who has been examined as C.W.-1 is consistent on the point that only the driver of the offending coach bus was driving the bus rashly and negligently. In view of evidences brought on record the learned Claims Tribunal has rightly come to the conclusion that it was not a case of contributory negligence.

13. Besides hearing learned counsel for the parties, the court has also perused evidences and materials available on record.

14. After going through the entire evidence, the court is satisfied that there is no force in the argument advanced on behalf of- the appellant. It is well settled that in a motor vehicle accident claim case onus lies on the insurer to establish breach of Terms and Conditions (T&C) of the insurance policy which includes non-availability of the valid driving licence of the driver of the offending vehicle. No such evidence was brought on record by the appellant to disapprove the fact regarding valid driving licence of the driver. Before the court below copy of valid driving licence of the driver of the offending coach bus was brought on record besides bringing other documents on record. In the written statement also specific statement was made by the owner of the offending bus that the driver was having valid driving licence at the time of accident. In absence of any contrary evidence, the learned Claims Tribunal has rightly decided the issue in favour of the claimants. Similarly, regarding net income or gross income, nothing has been brought on record by the insurer either before the learned Claims Tribunal or at the time of argument of the present appeal, save and except, advancing oral argument on behalf of the appellant that net income is only required to be taken into account for calculation of compensation. The court is of the opinion that question of law cannot be argued without any foundational fact. There is consistent evidence that the deceased was employed in Bombay since long and while he had come to Samastipur the accident had taken place. The witnesses have categorically stated that the deceased was getting salary of Rs. 4,500/- per month. Before the court below, during cross-examination, no suggestion was given to create any doubt regarding gross or net salary, and as such, the argument advanced by the learned counsel for the appellant is required to be simply ignored on this issue. The learned Claims Tribunal on the basis of evidence particularly the fact that charge-sheet was submitted against the driver of the offending vehicle has rightly come to the conclusion that it was not a case of contributory negligence. To establish a case of contributory negligence there must be specific evidence on record to draw such an inference. Accordingly, on the basis of evidence on record, the court is of the opinion that the learned Claims Tribunal while allowing the claim case has committed no error and rightly directed the insurer/the appellant to pay the compensation amount as indicated above. The appeal stands dismissed. However, in facts and circumstances, the court is not imposing any cost. In view of rejection of the appeal, the statutory amount deposited at the time of filing of the appeal, is directed to be remitted back to the court below for its payment to the claimants. The appellant is directed to pay compensation amount alongwith interest in terms of judgment and award passed by the learned Claims Tribunal within a period of two months from the date of receipt/production of a copy of this judgment. Before parting with the judgment, the court must appreciate proper assistance rendered by Sri Sudhir Kumar Bijpuria, "Amicus Curiae". Sri Bijpuria shall be entitled to get a fee of Rs. 2,500/- which should be paid by Patna High Court Legal Services

Committee.