
(2016) 04 PAT CK 0151

In the Patna High Court

Case No : Miscellaneous Appeal No. 833 of 2011

Branch Manager, New India Assurance Company Ltd.

APPELLANT

Vs

Baby Devi

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2016) 2 BLJud 305 : (2016) 3 PLJR 916

Hon'ble Judges : Mr. Aditya Kumar Trivedi, J.

Bench : Single Bench

Advocate : Mr. Durgesh Kumar Singh, Advocate, for the Appellant; Mr. Mukesh Pd. Singh, Advocate, for the Respondents No. 1 to 3; Mr. Satyendra Kr. Dubey, Advocate, for the Respondent No. 4

Final Decision : Dismissed

Judgement

Mr. Aditya Kumar Trivedi, J.—With the consent of the parties, the matter is being disposed of at the admission stage itself.

2. Appellant, Branch Manager, New India Assurance Company Ltd., Magardahi Ghat Road, Samastipur/defendant no.3 has filed instant appeal in accordance with Section 173 of the Motor Vehicle Act 1988 (the "Act" for brevity) against an order dated 12.07.2011 passed by District Judge-cum-Motor Vehicle Accident Claims Tribunal, Samastipur in Claim Case No. 104/2010 (Baby Devi & Ors v. Girdhari Lal & Ors) allowing the prayer of the claimant/respondent nos. 1 to 3 so made under Section 140 of the Act directing the appellant/defendant no.3 to pay Rs. 50,000/-.

3. Claim Case No. 104/2010 was filed by the claimants/Respondents No. 1 to 3 on account of death of Bali Ram Rai on 09.01.2006 at 8:00 P.M. due to rash and negligent driving of tractor no. BR33B/0691 while was engaged in agriculture work. Furthermore, it has been incorporated that for the aforesaid accident Tajpur PS Case No. 13/2006 was registered under Sections 279, 337, 338 and

304A of the IPC wherein after concluding investigation, charge-sheet has already been submitted.

4. Apart from main petition, in terms of under Section 166 of the Act, a petition under Section 140 of the Act was also filed. Apart from the appearance of owner as well as driver Opposite Party No.1 and 2 who are respondent nos. 4 and 5 respectively, appellant/defendant, Insurance Company, O.P. No.3 also appeared. Apart from filing WS, also filed rejoinder to the petition filed under Section 140 of the Act where under it was incorporated that tractor, trailer along with driver happens to be ensured and not the passenger or labourer. It has further been incorporated that the deceased was a passenger and on account thereof, was not a third party and in likewise manner, the tractor and trailer was not to be used for the purpose of carrying passengers. Consequent thereupon, status of deceased happens to be that of gratuitous passenger and on account thereof, was out of purview of insurance policy.

5. The tribunal after hearing both the parties passed the order impugned, subject matter of instant appeal.

6. Learned counsel for the appellant has submitted that there happens to be delay of six months and one day in filing of appeal and on account thereof, I.A. No. 6070/2014 has been filed to condone the delay for the purpose of proper adjudication. It has also been submitted that tractor was insured for the purpose of agriculture work only and not for any other activity much less for commercial purpose. In likewise manner, it has also been submitted that the deceased's presence over the tractor was no way connected with the agriculture work rather he was a gratuitous passenger and his presence was connected with commercial activities adopted by the owner in contravention of the terms of policy, therefore, the insurance company could not be held responsible. To substantiate such plea, learned counsel for the appellant has relied upon M.A. No.64 of 2007 (National Insurance Company Ltd v. Laxminia Kuer & Ors) order dated 28.04.2010, Eshwarappa @ Maheshwarapp v. C.S. Gurushanthappa reported in (2010) 8 SCC 620, M.A. No. 251 of 2012 (Divisional Manager v. Rameshwar Yadav & Ors), order dated 25.03.2014, National Insurance Co.Ltd v. Cholleti Bharatamma reported in [2007] 7 Supreme(SC)265. It has also been pleaded that after all, it is the owner who could be held responsible for the act committed by his servant, hence be directed to pay the amount instead of appellant.

7. On the other hand, learned counsel for the Respondents no.1 to 3 (claimant) supported the finding recorded by the learned tribunal and submitted that, for the present, the controversy under question has got no importance because of the fact that for ascertaining the liability under Section 140 of the Act in depth enquiry is not at all warranted. It has also been submitted that in case during conduction of trial, if any adverse finding is recorded against the owner, then in that event, the insurance company will be at liberty to realise the amount from the owner of the offending vehicle. So submitted that order impugned does not require interference.

8. After considering the rival contention as well as for the reasons stated in the petition, delay is condoned and on account thereof, I.A.No.6070/2014 is allowed.

9. Considering the present day importance of having the motor vehicle compulsorily insured, on account of extraordinary increase in Motor Vehicle Accident costing life of human being, apart from providing insurance under different heads though optional, insurance of vehicle against third party has been made compulsory which could be traced from Section 146 under Chapter-XI of the Act. In likewise manner, whenever a claim petition lies on account of death/injury resulting motor vehicle accident, insurance company has got two options available to contest. The first one, where there happens to be absence of owner, in tune of Section 170 of the Act substituting the status of owner and secondly, in terms of Section 149(2) of the Act, the statutory one, even after having presence of owner. It is needless to say that be it a claim under Section 166 of the Act or 140 of the Act, if the terms of policy did not bind the insurance company to indemnify, then in that event, insurance company could not be directed to indemnify. The Judicial pronouncement having been relied upon by the appellant conclusively held like so, and on account thereof, there should not be any divergence of opinion. Whether the aforesaid principle has got proper application in the facts and circumstances of the present case that is the matter of consideration.

10. Now coming to the present episode, it is evident from the petition, as is available on the lower court record that vehicle in question was engaged in agriculture work. The rejoinder filed on behalf of appellant dated 11.05.2011 contains an admission regarding having the tractor and trailer along with driver duly insured and further, denying its liability identifying the deceased to be a gratuitous passenger. For the present purpose, the FIR of Tajpur PS Case No. 13/2006 having been lodged by Satish Kumar, son of deceased on 09.01.2006 could be taken into consideration which divulges that his father, deceased Bali Ram Rai along with other labourers had lifted tobacco from the field of Phool Thakur and while it was being carried, fell down from the trailer and died. The aforesaid discloser has not been controverted.

11. At the present stage, by way of supplementary affidavit, it has been incorporated that only tractor was insured and not the trailer and to substantiate the same, policy, Annexure-1 has also been annexed.

12. There happens to be inconsistent plea having at the end of the appellant taken at an initial stage where under at para-2, it has been incorporated " that the tractor and trailer along with driver of tractor is insured by O.P. No.3, not the passengers or labourer who were raided on the trailer or tractor". While at this stage, same has been declined.

13. This controversial issue will take in depth scrutiny along with materials having on behalf of respective parties, as the rejoinder would not have been filed without going through the relevant papers. Furthermore, either the owner or the

Insurance Company, appellant happens to be custodian of the Insurance Policy, then in that event, unless and until, the relevant documents are brought up on record, properly scrutinised by the Court, any kind of finding at the present moment will be uncalled for as well as premature. Apart from this, taking into account the averments made under rejoinder, the obligation shift upon the appellant to explain what kind of policy was issued against the trailer which is found unexplained as appellant is keeping mum over the same.

14. In likewise manner, status of the deceased happens to be. Respondents/claimants have not pleaded that deceased was a gratuitous passenger or was over the tractor rather specifically pleaded that was engaged in agriculture work which has been controverted by the appellant. Therefore, the controversy again need thorough adjudication which goes out of purview for the present purpose.

15. Because of the fact that applicability of Section 140 of the Act happens to be intermediary event which, has been provided in favour of claimant, an intermediary measure to provide succor to the grieved family.

16. Apart from this, if the aforesaid event is allowed, at the present moment, then in that event, the whole purpose of legislature in providing interim relief to support to the family to protect from vagrancy, will frustrate.

17. In *Union of India v. Prabhakaran Vijaya Kumar* reported in (2008) 9 SCC 527, it has been held:-

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. v. The Work men*, AIR 1961 SC 647 (para 7); *Jeewanlal Ltd. v. Appellate Authority*, AIR 1984 SC 1842 (para 11); *Lalappa Lingappa and others v. Laxmi Vishnu Textile Mills Ltd.* AIR 1981 SC 852 (para 13), *S. M. Nilajkar v. Telecom Distt. Manager* (2003) 4 SCC 27 (para 12).

13. In *Hindustan Lever Ltd. v. Ashok Vishnu Kate and others*, 1995 (6) SCC 326, this Court observed : (SCC pp.347-348, Paras 41-42)

"41. In this connection, we may usefully turn to the decision of this Court in *Work men v. American Express International Banking Corporation* [(1985) 4 SCC 71] wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations :(SCCp. 76) ?

4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights" legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content"

and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* [(1971) 1 WLR 1381]. In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Indus trial Tribunal-cum-Labour Court*, [(1980) 4 SC 443] we had occasion to say : (SCC p.447 para 6)

"6. Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

42. Francis Bennion in his *Statutory Interpretation*, Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus :

"A purposive construction of an enactment is one which gives effect to the legislative purpose by -

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under :

"Contrast with literal construction - Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: "If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions". The matter was summed up by Lord Diplock in this way -

... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

(Emphasis supplied)

18. Consequent thereupon, the instant appeal is found devoid of merit and is,

accordingly, rejected.

19. However, it is made clear that during course of trial if the appellant succeeds in getting his plea duly substantiated then in that event, the learned tribunal will be at liberty to pass appropriate order even to the extent of exonerating the appellant as well as giving an opportunity to the appellant to recover the amount so paid under Section 140 of the Act in the same proceeding from the owner.