

(2011) 11 PAT CK 0118
In the Patna High Court
Case No : Misc. Appeal No. 494 of 2010

Branch Manager, Oriental Insurance Company Ltd	APPELLANT
Vs	
Md. Jahur and Others	RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 279, 304A, 427

Citation : (2012) 2 TAC 122

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Barun Kumar Chaudhary, for the Appellant; Rajiva Ranjan, Advocate for the Respondent Nos. 1 to 7 and Shri Sheopujan Singh, Advocate for the Respondent No. 8, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Barun Kumar Chaudhary, learned Counsel for the appellant, Sri Rajiva Ranjan, learned Counsel appearing on behalf of Respondent Nos. 1 to 7/ Claimants and Sri Sheopujan Singh, learned Counsel for the Respondent No. 8/ owner of the offending vehicle. The present appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act") has been preferred against the judgment dated 27th January, 2010 and award dated 5th March, 2010 passed in Claim Case No. 147 of 2007 by learned 5th Addl. District Judge-cum-Motor Accidents Claims Tribunal, Rohtas at Sasaram (hereinafter referred to as "the Claims Tribunal").

2. By the impugned judgment and Award, learned Claims Tribunal has allowed the claim petition and directed the appellant/Insurer of the offending vehicle to make payment of compensation amount of Rs. 1,79,500/-. Learned Counsel for the appellant has questioned the impugned Judgment and Award mainly on two grounds. Firstly, it was argued that in the post-mortem examination report, the name of the deceased was not disclosed and, as such, it was contended that the

claimants on the basis of an unclaimed dead body had filed the claim petition. Secondly, it has been argued that the claimants before the Claims Tribunal had not impleaded the driver of the offending vehicle as party, which was vital defect of the claimants's case.

3. Short fact of the claimants' case is that on 11th October, 2007, while the wife of Respondent No. 1 and mother of Respondent Nos. 2 to 7 was coming from Nasiriganj and was going to her village by boarding a bus, the said bus due to break down had stopped and thereafter on foot she was moving ahead. In the meanwhile, a bus in name and style as "City Ride Bus" having Registration No. BR-24P/1377 suddenly came from opposite side and due to rash and negligent driving of the bus, the bus dashed the wife of Respondent No. 1, and she died on the spot itself. Subsequently, the dead body of the deceased was carried for postmortem examination. After the accident on the fardbeyan of the Chowkidar, an F.I.R. vide Karakat (Gorari) P.S. Case No. 139 of 2007 was registered on the same day i.e. on 11th October, 2007 at about 20.00 hours. The accident had occurred at about 17.30 hours (i.e. 5.30 p.m.) on 11th October, 2007. The F.I.R. was lodged against the driver of the City Ride Bus No. BR 24P-1377 for the offence under Sections 279, 304A and 427 of the Indian Penal Code. Subsequently, a charge-sheet was submitted on 31st August, 2009 against the driver of the bus. Thereafter, a claim petition was filed by Respondent Nos. 1 to 7 before the Claims Tribunal vide M.V. Claim Case No. 147 of 2007 claiming compensation amount of Rs. 3 Lacs. Before the Claims Tribunal, the Claimants to prove their case had examined altogether five witnesses. The Respondent No. 1 was examined as C.W.1. It is evident from the evidence of C.W.1 that he got information regarding accident after about 24 hours of the accident. C.Ws. 2 to 5 were eye witnesses to the occurrence and they have categorically stated regarding the accident. It further appears that during cross-examination, nothing could be extracted to create doubt on the evidence of any of the witnesses. Besides oral evidence, the claimants brought on record number of documents; such as copy of the F.I.R., Charge-sheet, Post-mortem Examination Report etc. After examining all those evidences, the Claims Tribunal on the point of income of the deceased had come to the conclusion that no material was brought on record to establish regarding the income claimed by the claimants and, as such, in view of Schedule-II of the M.V. Act on the basis of notional income, calculation was done and the amount of compensation as indicated above has been directed to be paid.

4. Sri Barun Kumar Chaudhary, learned Counsel for the appellant has mainly emphasized that since in the Post-mortem Examination Report, it was categorically mentioned that unclaimed dead body was examined by the doctor, it establishes that without any relationship with the deceased, the claimants on the basis of an unclaimed dead body had filed a frivolous claim petition, which was required to be rejected, but the learned Claims Tribunal ignoring the fact mentioned in the postmortem examination report has entertained the claim petition and, as such, it is required to be set aside. It has also been indicated

that in absence of the driver of the offending vehicle, the claim petition was required to be rejected.

5. Learned Counsel for the Respondent Nos. 1 to 7/ Claimants has vehemently opposed the prayer of the appellant. It was argued that as per the evidence of C.W.1, it is clear that after 24.00 hours of the occurrence, C.W.1 had got information about the accident and thereafter he rushed for collecting the dead body. It was further submitted that during the investigation, it has come that after the postmortem examination, the dead body was handed over to the Respondent No. 1 being husband of the deceased. It was further argued that the postmortem examination was done on the next day i.e. on 12th October, 2007 at about 2.10 p.m. Meaning thereby that it was done before 24 hours after the accident and, as such, mentioning of unclaimed dead body in the postmortem examination report does not create any doubt on the claimants' case. On the point of non-impleading the driver of the offending vehicle, learned Counsel for the Respondents/claimants has argued that purpose for impleading driver of the vehicle was to bring on record that the driver of the vehicle was having valid driving licence. It was submitted that time without number, it has been held that it is the duty on the part of the insurer to establish that the driver of the vehicle was not having any driving licence in a claim case. Learned Counsel for the Respondents/claimants has heavily relied on a Judgment of the Apex Court reported in (2004) 3 S.C.C. 297 : 2004 (1) T.A.C. 321, National Insurance Company Ltd. v. Swarn Singh. It was submitted that this Court relying on the judgment of Swarn Singh's case (supra) has recently held that it is the duty on the part of the insurer to establish that the driver of the offending vehicle was not having any driving licence. He has relied on a recent Judgment of this Court reported in 2011 (4) P.L.J.R. 560, National Insurance Company Ltd. v. Mosomat Asha Devi and Ors. According to the learned Counsel for the Respondents/Claimants, there is no substance in the appeal and the same is fit to be rejected.

6. Sri Sheopujan Singh, learned Counsel for the Respondent No. 8/ owner of the offending vehicle has argued that it has been categorically established before the Court below that the offending vehicle was duly insured by the appellant during the time when the accident had taken place and, as such, at the first instance onus is on the insurer to indemnify the owner of the offending vehicle.

7. Learned Counsel for the appellant in support of his argument of non-impleading the driver of the offending vehicle has relied on a judgment reported in United Insurance Co. Ltd. Vs. Sukh Deo Yadav, and also on (2009) 5 S.C.C. 544 : 2009 (3) T.A.C. 388, New India Assurance Company Ltd. v. Satbir & Ors. In Sukhdeo Yadav's case (supra), the issue was not similar to the present case. In the said case, the damage regarding the offending vehicle was claimed. It was not a case relating to claim of compensation in the case of death in a vehicular accident and, as such, the judgment of Sukhdeo Yadav's case (supra) does not help the appellant. Similarly, Satbir's case (supra) does not help the appellant due to the reason that in the said case, the issue involved was regarding

contributory liability and, as such, no weightage can be given to the appellant on the basis of the aforesaid Judgments.

8. In view of the facts and circumstances as well as the law settled by the Apex Court, as indicated above, I do not find any merit in the appeal. Accordingly, the appeal stands rejected. In view of rejection of the appeal, 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. It is further directed that the appellant shall pay the compensation amount in terms of the impugned Judgment and Award within a period of eight weeks from the date of receipt/production of a copy of this order.