

(2009) 05 PAT CK 0002
In the Patna High Court
Case No : MA No. 296 of 2006

Branch Manager, United India Insurance Company Limited,
Chagwan Das Mohalla, J.P. Chowk, District-Darbhanga

APPELLANT

Vs

Beni Sahni and Others

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 113

Citation : (2009) 4 PLJR 510

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Ram Chandra Lal Das, for the Appellant; Shyam Kishor Das, for the Respondent

Judgement

Mihir Kr. Jha, J.—Heard counsel for the appellant-Insurance Company as also the claimant-respondent Nos. 1 and 2 and counsel for the respondent Nos. 3 and 4 namely the owner and driver of the vehicle. Against a judgment and award of Rs. 2,52,000/- for the death of one Rajendra Sahni in the morning of 8.1.2002. when he is said to have been crushed by a bus bearing registration No. BEF 9529 going from Darbhanga to Sakari, counsel for the appellant-Insurance Company has raised only three issues. He would firstly submit that since the multiplier applied by the Tribunal was "15" the same is per se illegal inasmuch as the father of the deceased Rajendra Sahni was aged about 48 years and therefore since his age was more than that of the deceased, 24 years, the multiplier should have been "13" and not "15". In this context he refers to the judgment of the Apex Court in the case of New India Assurance Co. Ltd. vs. Charlie & Anr. reported in 2005(2) PLJR (SC) 249.

2. It is unfortunate that the appellant Insurance Company has raised such an issue before the court in appeal, which had never been raised before the Court below i.e. Tribunal and also in the memo of appeal before this Court. The question of age of the deceased vis-a-vis dependents is essentially a question of

fact and the issue of multiplier can be applied by the Tribunal basically by taking into consideration the pleadings and evidence on the question of age. Here in this case, the Insurance Company and its counsel have conveniently forgotten that there are two claimants namely, the father and the mother and in the claim petition the age of father was 48 years whereas age of mother was 42 years. This part of specific statement on the question of aforesaid age as mentioned in paragraph No. 6 of the claim petition, was never sought to be controverted by the Insurance Company by disputing the age of the father and mother of the deceased. The multiplier therefore out of the two claimants even by applying the ratio of the case of Charlie (supra) would be the multiplier available to the mother because M.V. Act is a beneficial legislation and that out of the two claimants, mother being a lesser aged person, the multiplier as per second schedule of the Act would be "15". It is this multiplier of 15 which have been in fact applied by the Tribunal and in fact had the Tribunal applied the multiplier of the age of the deceased, that could have been 17 in view of the fact that the deceased was aged about 24 years. The Tribunal however did not take the multiplier of the deceased.

3. That being so, this Court would not find any error in adjudicating "15" as the multiplier and to that extent the appeal of the Insurance Company must be rejected.

4. It was next contended by the counsel for the appellant that the driving licence of the vehicle was not produced and as such the appellant-Insurance Company would not be liable to pay the amount of compensation as determined by the Tribunal. Reference in this connection was also made to the provisions of Section 113 of the Motor Vehicles Act. This Court fails to appreciate as to how the Insurance Company can take such a plea before this Court. This aspect can be better appreciated in the background of the fact that the Insurance Company in its rejoinder i.e. written statement to the claim petition had not said a word about the driving licence. The reliance placed by the counsel for the appellant in this regard on paragraph Nos. 17 and 18 of the written statement of the Insurance Company to the following effect:-

"17. That the owner of vehicle Bus No. BEF-9529 will only be liable in absence of valid driving licence to be held by the then driving the vehicle Bus.

18. That in absence of bona fide papers relating to vehicle Bus as owner book, tax token, permit, fitness etc. owner could only be held liable for any compensation."

has been noted only for its being rejected inasmuch as there is not even a whisper about the driver of the vehicle having no valid licence.

4. On the other hand this Court would find from the written statement filed by the owner and driver of the vehicle in paragraph No. 8, that they had categorically asserted that at the time of alleged occurrence the driver had a valid and genuine licence up-to-date. After parties had exchanged their aforesaid

pleadings, the issues were framed and as the Insurance Company did not raise the dispute with regard to driver having no valid licence and there was a specific assertion in the written statement of the driver and owner that they were equipped with a valid driving licence, the Tribunal had in fact, neither framed such issue nor had gone into this aspect of the matter.

5. In the opinion of this Court, unless the Insurance Company had specifically raised this issue of its being not liable to pay the amount of compensation on the ground of driver having no valid licence and had also got it framed as a separate issue before the Tribunal, it is not at liberty to raise this question at the first instance before the appellate court. It is equally important to note here that in that this issue of the driver having no valid licence has also not been raised in the memo of appeal containing detailed facts with fourteen grounds. A question therefore would arise as to whether the Insurance Company can keep on inventing a new case and/or expending its grounds of attack before the appellate court even without raising such questions of fact in its pleadings and/or evidence in course of trial before the original court i.e. Tribunal. The answer obviously has to be in negative

6. In the considered opinion of this Court even the Insurance Company is bound by the same standard of pleadings and proofs as prescribed in CPC in getting its cases adjudicated as is an ordinary litigant. It would be in fact a very sad state of affair if the Insurance Company in the name of saving public exchequer would be absolved from pleading and proving its case before the Tribunal. In that view of the matter, once the Insurance Company had not raised this question of a valid licence of driver before the Tribunal and in fact has also not even taken the same in any of the fourteen grounds in the memo of appeal before the Court it must be precluded from raising it before this Court for the first time in appeal.

7. The last point urged by Mr. Das, learned counsel for the appellant, that the Tribunal has committed an error in not allowing deduction of Rs. 60,000/- already paid by the Insurance Company as interim compensation needs to be only clarified that if the amount of Rs. 60,000/- has been paid by interim compensation under the orders of the Tribunal the same will be deducted but then if such amount is by way interest over the delayed payment of interim compensation of Rs. 50,000/- such amount will not be adjusted in the final payment. The appellant therefore may raise issue before the Tribunal while making payment of the amount under the impugned judgment and award. Subject to the aforementioned observations and liberty, this appeal being wholly devoid of merit, must be and is hereby dismissed with a cost of Rs. 10,000/- to be paid by the Insurance Company to the respondent-claimant for harassing them by filing this frivolous appeal on such pleas which were never raised before the Tribunal.