
(2018) 05 PAT CK 0054

In the Patna High Court

Case No : Miscellaneous Appeal No.17 of 2012

Branch Manager, United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Parwati Devi

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A

Citation : (2018) 05 PAT CK 0054

Hon'ble Judges : PRAKASH CHANDRA JAISWAL

Bench : Single Bench

Advocate : Durgesh Kumar Singh, Ram Sumiran Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant and learned counsel for the claimant-respondent no.1 on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 26.08.2011 and award dated 08.09.2011 passed by the learned

1st Additional District Judge-cum-Motor Accident Claim Tribunal, Begusarai (hereinafter in short referred to as the "Tribunal") in M.A.C.T.

Case No.67 of 2005, whereby the learned Tribunal allowing the claim petition directed the appellant-United India Insurance Company Limited

(hereinafter in short referred to as the "Insurance Company") to pay compensation to the tune of Rs.2,56,000/- along with the interest at the

rate of 9% per annum from the date of filing of claim case to the claimant respondent no.1.

3. The factual matrix of the case is that claimant-respondent no.1 filed M.A.C.T. Case No.67 of 2005 under Section 166 of the M.V. Act for

awarding compensation on account of death of her son, Mukesh Jha alias Mukesh

Kumar Jha with the case in succinct that the said Mukesh Jha alias

Mukesh Kumar Jha was authorized representative of M.R. Trading Company. On 18.10.2010 he was proceeding from Garhara Railway Station to

Simaria Railway Station by loading wire of the company on the tractor bearing registration no.BRI-7568 and trailer bearing registration no. BRI 7569.

The driver of the said vehicle was driving the vehicle very rashly and negligently. As soon as the said tractor arrived at around 2:30 PM near Garhara

ground water tank, where the road was damaged, due to rash and negligent driving of the tractor by its driver it turned turtle and the said Mukesh

Kumar Jha sustained serious injury in the accident. He was rushed to the Nursing Home of Dr. M.N. Rai, Bishnupur, Begusarai to accord him

medical aid but he succumbed to his injury during the course of treatment. Further case of the claimant is that the deceased was aged about 22 years

at the time of accident and he was unmarried. He was a contract labourer and used to earn Rs.3000/- per month as wages-cum-salary.

4. Both the opposite parties put their appearance in the case but only the appellant filed the written statement and contested the case. The claimant-

respondent adduced ocular as well as documentary evidence in buttress of her case.

5. After hearing the parties and perusing the record, the learned Tribunal passed the impugned judgment and award as detailed in earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award, the appellant Insurance Company has preferred this appeal.

7. It is submitted by learned counsel for the appellant-Insurance Company that the offending vehicle was insured under Act only policy and the

deceased Mukesh Kumar Jha was traveling on the trailer of the tractor. Hence, the risk of the deceased was not covered under the policy and hence

the Insurance Company is not liable to pay any compensation to the claimant indemnifying the owner of the vehicle. It is further submitted that as the

deceased happens to be son of the owner of the vehicle (respondent no.2) and was traveling in the said vehicle, hence he stepped into the shoe of the

owner of the vehicle and this way he has become owner of the vehicle and not third party and the Insurance Company is not liable to pay

compensation in case of death of owner of the vehicle. It is further submitted that the claimant, being the mother of the deceased and wife of the

owner of the offending vehicle, she is claimant and recipient both and she is not entitled to get any compensation from the Insurance Company.

8. On the other hand, it is submitted on behalf of learned counsel for the claimant-respondent that there has been partition between the father and son

preceding to the death of accident and the deceased was traveling on the said vehicle in his separate status and entity as a labourer of M.R. Trading

Company so he had not stepped into the shoe of the owner of the vehicle rather is a third party. It is further submitted that as the offending vehicle

was insured and the insurance policy was valid and enforceable at the time of accident, hence the Insurance Company is liable to pay compensation to

the claimant.

9. From perusal of the record, it appears that the deceased happens to be son of the insured of the offending vehicle (respondent no.2) and was

traveling in the trailer attached to the tractor at the time of accident and sustained

injury, which proved fatal in the course of traveling on the said vehicle. Though the claimant-respondent has taken the case that there has been

partition between the deceased and the father of the deceased i.e. insured of the vehicle preceding to the date of death of the deceased, so by virtue

of the aforesaid partition the entity of the deceased was different from that of the insured of the vehicle and he had not stepped into the shoe of the

owner of the vehicle while travelling in the said vehicle. In buttress of her case, she has filed some rent receipts and the report of the Amin on the

mutation petition marked as Ext.5 series. From perusal of the report of the Amin on the mutation petition, it appears that the Amin has reported that

there has been partition amongst the sons of raiyat of the land in question and raiyat of the said land is the insured Tej Narayan Jha and rent receipts

filed by the claimant-respondent indicates that the rent receipts are issued in the name of the insured and his sons separately.

10. From perusal of the aforesaid documents filed by the claimant-respondent, it appears that firstly there has been partition amongst the sons of the

insured and not between the insured and his sons though rent receipts are issued in the name of insured and his sons separately. Moreover, the

claimant-respondent has not brought on record any evidence regarding any partition amongst the deceased and the insured by metes and bounds either

through the Court or by way of deed of partition. Mere issuance of rents receipts separately in the name of the deceased and the insured, in my considered opinion, is not sufficient to establish the partition between the deceased and the insured. It is mainly for the revenue purposes and it does not decide the right and title of the parties over the property in question. As there has been no partition between the deceased and the insured and the offending vehicle was hailing to the insured and the deceased was travelling in the said vehicle at the time of accident, the deceased had stepped into the shoe of the owner of the vehicle i.e. insured and became owner of the vehicle. Hence, the appellant-Insurance Company is not liable to pay any compensation in case of death of the owner of the vehicle.

11. From perusal of Ext.13 filed by the claimant-respondent, it appears that the aforesaid tractor and trailer was insured by the appellant under Act only policy. As the vehicle was insured only under the Act only policy it has not covered the risk of the owner so the Insurance Company is not liable to pay any compensation to the claimant in the case of death of owner of the vehicle. There is nothing in the policy to indicate that the policy covered any risk for injury or death to the owner himself and owner of the vehicle can only claim provided a personal accident insurance has been taken out but there is no such insurance in the case under hand.

12. The object of the Insurance is to compulsorily cover liability relating to the person and property of the third parties and not the owner of the vehicle. The Insurance Company is not liable to indemnify the owner of the vehicle. Son of the owner of the vehicle does not come within the purview of the term person within Section 147 of the Motor Vehicles Act, Insurer would be liable to cover all the risk of the third party and not others who would not otherwise come within purview thereof. It is the settled principle of law that if insured cannot be fastened with any liability under the provision of Motor Vehicles Act, the question of insurer being liable to indemnify the insured, therefore, does not arise.

13. The Honâ??ble Apex Court in Oriental Insurance Company Limited Vs. Ranji Devi and others reported in (2008) 0 Supreme (SC) 682 has been pleased to rule that the liability under Section 163-A of the Act is on the owner of the vehicle as the person cannot be both a claimant and a recipient.

14. In the facts and circumstances and in view of the discussions made by me

hereinabove, I find and hold that the appellant United Indian Insurance Company Limited is not liable to pay any compensation to the claimant indemnifying the owner of the vehicle. Hence, the impugned judgment and award passed by the learned Tribunal is set aside and the appeal is allowed. Let the statutory amount deposited by the appellant - Insurance Company be returned to it by way of cheque.