

(1983) 07 PAT CK 0015

In the Patna High Court

Caroline Subramaniam and Others

APPELLANT

Vs

Bihar State Road Transport Corporation

RESPONDENT

Date of Decision : 29-07-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1984) 2 ACC 160 : (1984) ACJ 648

Hon'ble Judges : Uday Sinha, J;Abhiram Singh, J

Bench : Division Bench

Judgement

Uday Sinha and Abhiram Singh, JJ.—This is an appeal by the claimants u/s 110-D of the Motor Vehicles Act (hereinafter referred to as "the Act").

2. The facts in brief are that on 12-6-1979 while Lawrence Subramaniam the husband of appellant No. 1 was going on a bicycle on the Purulia Road near High Tension Insulator Factory Namkum, Ranchi was knocked down by Bihar State Road Transport Corporation bus bearing No. BHX 7562 and in consequence thereof Lawrence Subramaniam died in Ranchi Medical College Hospital. Claimant No. 1 who was at Calcutta at that time, after having come to know of the accident and the sad demise of her husband came to Ranchi and after performing the last rite lodged a claim u/s 110 of the Act. The learned claims tribunal, Ranchi, after hearing the parties rejected the claim on the ground that there was no evidence to show that the deceased was knocked down by the bus of the Bihar State Road Transport Corporation bearing No. 562. The appellants being aggrieved by the order of the claims. Tribunal have preferred this appeal u/s 110-D of the Act.

3. At the outset it must be stated that appellant No. 1 was the only witness examined on behalf of the claimants. In course of cross-examination it transpired that she was not a witness to the occurrence as she was at Calcutta at that time. Thus there was no evidence before the Tribunal to establish that deceased died as a result of being knocked down by a bus of the Bihar State Road Transport Corporation. The claims Tribunal had to reject the claim. Learned Counsel

appearing on behalf of the appellants realising the infirmity in the evidence adduced on behalf of claimants filed an application under order XLI Rule 27 read with Section 151 of the CPC in this case. It has been averred that on the basis of the first information report lodged by one Girdhari Lal in relation to the accident caused by the Bihar State Road Transport bus bearing No. BHX 7562 a case had been instituted by Namkum Police. It has been averred that inspite of the best efforts, claimant No. 1 could not get certified copy of the first information report till the disposal of the claim case by the learned Judicial Commissioner, Ranchi. It has been averred that in the substantive police case, charge-sheet has been submitted against the driver of the Bihar State Road Transport bus bearing No. 7562. Mr. P.C. Roy, learned Counsel for the appellants has contended that if the first information report lodged by Girdhari Lal and charge-sheet are taken into account, it will show that the deceased died by an accident caused by Bihar State Road Transport Corporation bus. A prayer has, therefore, been made for taking additional evidence by examining Girdhari Lal, and also the police officer who submitted charge-sheet as also to admit the first information report and the charge-sheet submitted against the driver of the Bihar State Road Transport Corporation bus.

4. Much as we would have liked to help the appellants, in law, it is difficult to allow the prayer of the appellants. Allowing the prayer of the appellants in terms of the application under order XLI, Rule 27 or in terms of Section 151 of the CPC will mean ordering a fresh trial. The, law does not permit that. The appellants had full opportunity to adduce evidence but they failed to do so. It is difficult to accept the contention of the appellants that the appellants could not get certified copy of the first information report lodged by Girdhari Lal. The appellants had filed in the court below a copy of the post-mortem report. That refers to Namkum P.S. Case No. 5(6)79 in which the deceased had received injuries and consequent death. The appellants therefore, must be attributed the knowledge that a criminal case had been instituted at Namkum police station. If the claimants were poor and destitute counsel for the appellants could have requested the Judicial Commissioner to call for the first information report, charge-sheet and connected papers of Nakmum P.S. case No. 5(6)79. The claimants having not done that they have themselves to thank. The appellants tried to obtain an order for fresh trial in order to facilitate the claimants to adduce fresh evidence. But it would tantamount to giving an opportunity to fill up the lacuna in the claim case. That we regret cannot be permitted. In that view, of the matter the prayer for additional evidence therefore, has no merit. The application filed before this Court on 19-5-1983 is thus, devoid of any merit and it is rejected accordingly.

5. We now come to the evidence adduced in the case. We have gone through the evidence of appellant No. 1. Mrs. Caroline Subramaniam. It appears from her evidence that she was not a witness to the accident. There is no other evidence to show that the deceased was knocked down by the Bihar State Road Transport Corporation bus bearing No. BHX 7562. The documentary evidence in this case

only show that the deceased died as a result of road traffic accident but those documents do not show that the deceased was knocked down by Bihar State Road Transport Corporation bus bearing No. BHX 7562. In that view of the matter, there is no alternative but to dismiss the appeal as having no merit.

6. For the reasons stated above, there is no merit in this appeal and it is dismissed accordingly. In the circumstances of the case, there shall be no order as to costs.