
(2001) 07 PAT CK 0096

In the Patna High Court

Case No : Misc. Appeal No. 484 of 2000

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Most. Sabila Khatoon and Others

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0096

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This appeal is directed against the order dated 26.7.2000, passed by the learned 3rd Additional Motor Vehicle Accident Claims Tribunal, Muzaffarpur, in claim Case No. 111 of 1998 Most. Sabila Khatoon v. Saidur Rahman, whereby the insurer (the Appellant herein) has been directed to pay a sum of Rs. 25,000/- to the claimants (Respondent Nos. 1 to 3 herein) by way of interim compensation u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The Appellant challenges the same on the ground that payment of interim compensation in terms of Section 140 of the Act is the liability of the owner of the vehicle.

2. While assailing the validity of the impugned order, learned Counsel for the Appellant submits that the insurer is liable to pay compensation to persons covered by the Policy after final determination of the claim application. The interim compensation in terms of Section 140 of the Act, which is in pari materia with the provisions of Section 92A of 1939 Act lay down to the effect that the liability is of the owner of the vehicle, and the Tribunal should decide the question of interim compensation keeping in mind the constraints indicated in paragraph 43 of the judgment of the Supreme Court reported in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, In his submission, the Tribunal has failed to determine the question appropriately. For example, it is the Appellant's contention that the driver of the vehicle was not in possession of a valid driving licence as is manifest from letter dated 18.12.98 (Annexure 1), but not considered by the Tribunal. Learned Counsel for the Appellant has placed

reliance on paragraph 14 of the judgment of a Division Bench of this Court to which I was a party, reported in Kanhai Rai and Others Vs. Dharampal and Others

3. Learned Counsel for the Respondent Nos. 1 to 3 (the claimants) has supported the impugned order.

4. Learned Counsel for Respondent No. 4 (the owner of the vehicle) has also made submissions in support of the impugned order.

5. Having considered the rival submissions, I am of the view that this issue is covered by the judgment of a Division Bench of this Court in the case of Kanhai Rai v. Dharampal (supra), paragraph 20 of which is relevant to the present context and is set out hereinbelow for the facility of quick reference:

In view of my conclusions arrived at above, it is clear that the insurer cannot escape from the liability to pay the interim compensation u/s 140 of the Act provided other conditions, as enumerated above, are fulfilled. Once it is found that the insurance policy is in force with regard to use of a motor vehicle at a public place, the Tribunal can pass order against the insurer also. However, at the stage of considering an application u/s 140 of the Act, the court has to take prima-facie view in the sense that once on the basis of the materials on record it is proved that there is insurance policy in force in terms of provision contained in Chapter XI of the Act against the liability of a third party risk, the Tribunal may pass an order for payment of interim compensation against the insurer. At that stage, the Tribunal cannot hold a mini enquiry nor can it take into consideration the defence, which is available to the insurer, which has to be considered at the time of final determination of the said question u/s 168 of the Act. If at the stage of Section 140, the insurer is allowed to take defence as provided u/s 149(2), then that will frustrate the very object, for which the provision has been made as it cannot be disposed of expeditiously in terms of the statutory provision and the proceedings will linger and in all purposes will assume the character of determination of a final compensation u/s 168 of the Act.

It has clearly been held in the aforesaid judgment that the Tribunal cannot at this stage hold a mini enquiry nor can it take into account the defence, which is available to the insurer and has to be considered at the time of final determination. The insurer will be entitled to refund of the amount of interim compensation from the owner of the vehicle if it is ultimately found that the insurer is not liable under the insurance policy to pay compensation.

6. Learned Counsel for the Respondent No. 4 has rightly relied on the judgment of the Supreme Court reported in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, More wherein their Lordships have observed that the Tribunal is required to satisfy itself in respect of the following matters:

I. an accident has arisen out of the use of a motor vehicle;

II. the accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making

the claim;

III. the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

7. It is thus manifest that the impugned order is consistent with the relevant judgments of the Supreme Court and this Court in the case of Kanhai Rai (supra). In the result, the appeal is dismissed. Let the statutory amount deposited by the Appellant in this Court be handed over by means of a cheque in favour of Respondent No. 1 (Most. Sabila Khatoon) through her counsel in due discharge of the liability under the impugned order.