
(1997) 12 PAT CK 0048
In the Patna High Court
Case No : A.F.O.O. No. 60 of 1987 (R)

Kashi Nath Poddar

APPELLANT

Vs

Archana Sahay and Others

RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1999) ACJ 1017 : (1998) 46 BLJR 891 : (1998) 1 PLJR 279

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Kameshwar Prasad and Rajesh Kumar, for the Appellant; C.C. Jha, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—I have heard counsel for the parties.

2. This miscellaneous appeal is directed against the judgment dated 17.6.1987, passed by the 2nd Additional District Judge-cum-Motor Accidents Claims Tribunal, Dhanbad, in Title (Compensation) Suit No. 69 of 1984, by which the learned Tribunal has directed for payment of compensation to the claimant to the tune of Rs. 2,88,000, out of which Rs. 1,50,000 was payable by the insurance company (respondent No. 2) and the rest by the owner of the vehicle, i.e., the appellant.

3. Mr. Kameshwar Prasad, learned Counsel appearing on behalf of appellant, mainly contended that the appellant, who is the owner of the vehicle in question, is not liable to pay compensation awarded by the learned Tribunal, because the vehicle in question was insured by the insurance company (respondent No. 2) and it was a comprehensive insurance and, therefore, the insurance company was covering the entire risk and as such the insurance company was to indemnify the insured. Learned counsel also submitted that the learned Tribunal even in absence of the appellant or his driver, who was driving the vehicle in

question at the relevant time, could not have passed the impugned judgment against them directing them to pay compensation to the claimant.

4. Mr. Kameshwar Prasad, learned Counsel for the appellant, in support of his contention has filed an application under Order 41, Rule 27 read with Section 151 of the CPC annexing therewith a copy of the insurance certificate, by which the vehicle of the appellant, which had met with an accident, was insured. Learned counsel, in support of his submission, has also placed reliance upon the two decisions of this Court in the case of New India Assurance Co. Ltd. Vs. Chinta Devi and Others, and in the case of Dilip Kumar Saha Vs. Runnu Sarkar and Another .

5. Learned counsel appearing on behalf of the insurance company (respondent No. 2) on the contrary submitted that even though the vehicle was insured and it was a comprehensive policy there was no special contract between the respondent insurance company and the owner of the vehicle to cover unlimited liability, as there was no contract and no premium was paid by the owner of the vehicle towards third party risk and, therefore, the insurance company was only liable to pay the amount of compensation to the extent of Rs. 1,50,000 u/s 95 (2) (a) of the Motor Vehicles Act, 1939, as per the tariff of the insurance company.

6. The question for determination now is as to whether the owner of the vehicle, which had met with an accident killing one person is liable to pay compensation to the claimant beyond the extent of Rs. 1,50,000 payable by the insurance company even when there was a comprehensive insurance policy covering the risk of the vehicle in question?

7. In the case of New India Assurance Co. Ltd. Vs. Chinta Devi and Others, , this Court held that for failure to file copy of the policy of insurance, it would invite drawing of adverse inference and inference may be drawn that the vehicle involved in the accident in question was insured and the policy covered the entire liability. Here in the instant case, the appellant had tried to make out a case that the copy of the policy of insurance was not filed before the Tribunal and, therefore, his case is squarely covered by the decision afore- said. It would be pertinent to mention here that in this appeal itself the appellant has produced the copy of the insurance certificate, as contained in Annexure-1 to the application under Order 41, Rule 27 read with Section 151 of the Code of Civil Procedure. The appeal is also in continuation of the suit and since Annexure-1 has been produced in this appeal, it would be futile to submit that the insurance policy was not filed and, therefore, the adverse inference would be drawn against the respondent insurance company. In this view of the matter, the decision aforesaid, in my opinion, has no application in the facts and circumstances of the case.

8. So far as the case of Dilip Kumar Saha Vs. Runnu Sarkar and Another , is concerned, this Court has held that since the insurance company under its policy

had undertaken to indemnify the insured of his total liability under the Motor Vehicles Act, it was incumbent upon the insurance company to pay the entire amount of compensation as claimed by the claimant and as awarded by the learned Tribunal.

9. I have already noticed above that there was no special contract between the insurance company and the owner of the vehicle to cover unlimited liability in respect of an accident causing the death of the third party. Therefore, it cannot be said that the insurance company under its policy has undertaken to indemnify the insured of his total liability. In this view of the matter, in my opinion, the ratio laid down in the case of Dilip Kumar Saha Vs. Runnu Sarkar and Another , is of no avail to the appellant.

10. It is not in dispute that the claimant was the widow of the deceased, who died in the accident as he was dashed by the vehicle in question, bearing the registration No. BIU 9655 and undisputedly the claimant has also proved her case that her husband was killed by the vehicle in question, which was being driven rashly and negligently. It is also not disputed that the age of the deceased at the relevant time was 38 years and that he was an earning member. The learned Tribunal after considering the facts and circumstances of the case and also seeing the evidence on record passed the impugned award directing the insurance company and also the owner of the vehicle to pay compensation to the extent of their liabilities as indicated above.

11. From the facts enumerated above, it is clear that the vehicle in question, of which the appellant is the owner, was insured with the insurance company (the respondent No. 2) and in absence of any special contract in between the parties to cover unlimited liability in respect of an accident where a third party was killed, the owner of the vehicle cannot be exonerated from his liabilities, even when the insurance policy was a comprehensive policy covering all the risks of the vehicle in question. In the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, , the Apex Court had held as under:

In the present case, the premium which has been paid is at the rate of Rs. 12 per passenger and is clearly referable to the statutory liability of fifteen thousand rupees per passenger u/s 95 (2) (b) (ii) of the Motor Vehicles Act, 1939. In the present case, there is no special contract between the appellant company and respondent No. 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit, of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case. Reference in

this connection may also be made to the case of M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, . The appellant company is, therefore, entitled to succeed to the extent that it has been directed to pay to respondent Nos. 1 to 3 any amount in excess of Rs. 15,000.

12. In view of the ratio laid down by the Supreme Court as noticed above and for the reasons discussed above, it must be held that the appellant is liable to pay the amount of compensation, excluding Rs. 1,50,000 payable by the insurance company (respondent No. 2).

13. In the result, therefore, I find no merit in this appeal. It is thus dismissed, but without cost.