
(2002) 07 JH CK 0061
In the Jharkhand High Court
Case No : LPA No. 23 of 1998 (R)

Kashinath Poddar

APPELLANT

Vs

Smt. Archana Sahay and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95(2)

Citation : (2003) 2 ACC 241

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Rajesh Kumar and D.K. Bharti, for the Appellant; P.C. Roy and S.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The appellant-insured-owner of the vehicle, being dissatisfied with the judgment dated 9th December, 1997, passed by the learned Single Judge in Misc. Appeal No. 60 of 1987 (R), has challenged the same,

2. The case, in brief, is that deceased Shashi Bhushan Sahay was returning to his office after performing duties at the site. While he was going on the scooter bearing Registration No. BRW 5246, a truck bearing Registration No. BHU 9655, coming in rash and negligent manner, dashed the scooter. The driver of the truck did not blow horn and even after the accident, fled away with the truck. Shashi Bhushan Sahay was brought to Bokaro Hospital, where he was declared dead. The heirs-respondents herein, filed application u/s 110-A of the Motor Vehicles Act for grant of compensation, registered as Title (Compensation) Suit No. 69 of 1984, which was allowed by the learned 2nd Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Dhanbad, vide judgments dated 17th June, 1987/ And dated 27th June 1987. The learned Tribunal directed for payment of compensation to the claimants to the tune of Rs. 2,88,000/- (rupees two lakhs and eighty eight thousand), out of which Rs. 1,50,000/- (rupees one Lakh and fifty thousand) was ordered to be paid by the insurer-National Insurance

Company ("Company" in short) and rest by the insured-owner of the vehicle.

3. The insured-owner of the vehicle, being not satisfied with the same, preferred Misc. Appeal No. 60 of 1987 (R) before this Court. The main question raised was that the insured-owner of the vehicle having paid special premium of Rs. 240/- against the public risk, the policy being comprehensive, the entire risk and liability of payment was of the insurer-Company. Similar plea has been taken by the counsel for the appellant-insured before this Court.

4. I have taken into consideration the judgment dated 9th December, 1997, passed by the learned Single Judge in Misc. Appeal No. 60 of 1987 (R), wherein taking into consideration the provisions of Section 95 (2) (b) (ii) of the Motor Vehicle Act, 1939, the learned Single Judge has held that the insurer Company was only liable to pay the amount of compensation to the extent of Rs. 1,50,000/- (rupees one lakh and fifty thousand) and the rest amount will be paid by the insured owner of the vehicle.

5. It will be evident that the appellant-insured filed an application under Order XLI, Rule 27 read with Section 15 of the CPC and produced a copy of the Insurance Certificate. The evidences and Insurance Certificate were taken into consideration by the learned Single Judge, who came to a definite conclusion that there was no special contract between the insurance company and the insured-owner of the vehicle to cover unlimited liability in respect of an accident, causing death of a third party.

6. There being concurrent finding of fact on the basis of evidences, I find no reason to give a third finding nor I am inclined to differ with the finding of the learned Single Judge. The appeal is, accordingly, dismissed, but without any order as to costs.