

(2010) 07 PAT CK 0013
In the Patna High Court

Lakhan Chauhan and Another

APPELLANT

Vs

The Oriental Insurance Company

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0013

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—Heard the learned Counsel Sri Uday Shankar Saran Singh, appearing on behalf of the appellant and the Learned Counsel Sri Durgesh Kumar Singh appearing on behalf of respondent No. 1, Oriental Insurance Company Ltd.

2. This Misc. Appeal has been filed by the claimants appellants against the order dated 28.11.2006 passed by the District Judge - cum - Motor Vehicle Accident Claim Tribunal, Nawada, in M.V. Claim Case No. 76/05 whereby the learned Tribunal while deciding the preliminary issue held that the claim application is not maintainable.

3. It appears that the claimants-appellants filed the aforesaid claim case claiming compensation on the facts, inter alia, that the deceased Vishundeo Chauhan was a cleaner in a Truck bearing Registration No. WB 03 / 6289. The said Vishundeo Chauhan died during course of his employment when the truck was going from Vellore to Ghaziabad. The dead body was found by Chaukidar, Sudhir Paswan, under a bridge within the District of Aurangabad. The F.I.R. was lodged by him. A case under Sections 302/201/34 I.P.C. was lodged being Madan Pur P.S. Case No. 141/03. During investigation it was found that while the deceased was going in the Truck on the way some criminals captured the truck after murdering the driver and the cleaner, i.e. the deceased in this case.

4. It appears that the learned court below heard the claimants on the preliminary issue regarding the maintainability of the claim application under Motor Vehicle Act.

5. The learned Tribunal came to the conclusion that the case of the claimants is not within the purview of the accident as envisaged u/s 165 of the M.V. Act rather the death of the deceased was caused out and out due to a criminal activity. The learned Tribunal has also not relied upon the decision of this Court reported in Ranju Devi and Others Vs. Pawan Kumar Patwari and Others distinguishing the same on the ground that it is not applicable.

6. In a decision reported in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, the Hon''ble Supreme Court in similarly situated case has held that the murder of the deceased was due to an accident arising out of the use of motor vehicle. It appears that in that case the deceased Dasrath Singh was a driver of an autorickshaw. Some unknown passengers hired the autorickshaw. Subsequently it was reported that the said autorickshaw was stolen and the dead body of driver Dasrath Singh was recovered by the police. The learned Tribunal in that case held that claim application is maintainable and granted compensation to the tune of Rs. 2,81,500/ -. On appeal the Hon''ble High Court held that the case in hand was of any murder and not was an accident and, therefore, allowed the appeal and set aside the Judgment of the learned Tribunal. The claimants filed appeal before the Hon''ble Supreme Court. The Hon''ble Supreme Court at paragraphs 12, 14 and 18 has held as follows:

12. In the case of Nisbet v. Rayne and Burn where a cashier, while traveling in a railway to a colliery with a large sum of money for the payment of his employers'' workmen, was robbed and murdered. The Court of Appeal held:

That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of Challis. In the case of Nisbet the Court also observed that it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention". In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether The pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was dutybound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death to caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the

said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.

18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

7. This Court in the decision referred by the Tribunal relied upon the decision of the Hon''ble Supreme Court stated above and has followed the same but it appears that the learned Tribunal relied upon the statement made by the informant of the F.I.R. and distinguished the same without referring to the facts.

8. In view of the above facts and circumstances of the case, in my opinion, the impugned order is unsustainable in the eye of law.

9. In the result, the impugned order is set aside. The matter is remanded back to the court below for proceeding according to law. The learned Tribunal shall proceed to decide the claim on merit after noticing the opposite parties.

10. This Misc. Appeal is, accordingly, allowed.