
(2014) 05 PAT CK 0090
In the Patna High Court
Case No : Appeal No. 431 of 2009

Most. Shobha Devi

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Citation : (2014) 3 BLJud 328

Hon'ble Judges : Mr. Amaresh Kumar Lal, J.

Bench : Single Bench

Advocate : Mr. Mukesh Kumar-3, Advocate, for the Appellants; Mr. Sanjay Singh and Mr. Bimlesh Kumar Jha, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. Amaresh Kumar Lal, J.—The appellants have preferred this appeal against the judgment dated 26.5.2009 passed in M.A.C. no. 4 of 2009/2 of 2008 by the Additional District Judge cum Motor Accident Claim Tribunal, Jehanabad, whereby the claim for compensation under the Motor Vehicles Act has been dismissed.

2. The brief fact of the case is that on 29.6.2004 at about 10 P.M. the deceased Sunil Kumar along with other villagers went near the vehicle in question (Mahindra Commandar Jeep) bearing registration no. BR-25-2274 to rescue the same as it got fire due to terrorists attack and during the course of extinguishing fire the oil tanki of the vehile burst out as a result of which the deceased Sunil Kumar and others got burn injury. The deceased was immediately taken to Jehanabad Sadar Hospital and thereafter he was referred to Appolo Burns Hospital, Patna, where he died during the course of treatment.

3. Learned counsel for the appellants submits that admittedly the deceased got burn injury out of the fire coming out from the vehicle, in question and during the course of treatment the deceased Sunil Kumar died on 7.7.2004. The vehicle was not in motion but it was parked in the campus of the house of the owner and

as such, it cannot be said that the vehicle was not in use. Learned counsel submits that the present case is squarely covered by the decision in the case of Shivaji Dayanu Patil and another v. Smt. Vatschala Uttam More reported in AIR 1991 SC 1769. According to the appellants, the vehicle was insured by the United India Insurance Company Ltd. (respondent no. 1) at the time of the accident.

4. Learned counsel for the respondent-insurance company has submitted that although the vehicle was insured by the United India Insurance Company Ltd. but it does not come under the purview of the aforesaid decision. In that case the oil tank vehicle collided with another vehicle and oil was flowing out. Thereafter, the fire broke out which hit the deceased. But in this case the vehicle was parked in the campus of the house of the owner of the vehicle and it was a terrorists attack which caused fire in the oil tanki and many persons including the deceased came out to extinguish the fire. But in course of extinguishing fire the deceased got burn injury and died later on. Since the occurrence has not taken place due to any accident, the insurer is not liable to pay the amount of compensation and the learned Tribunal has rightly held that it was not an accident and , as such, no amount of compensation is payable to the claimants. Learned counsel has also submitted that the claimants have not filed any petition under Sections 166 or 163A of the Motor Vehicles Act.

5. After hearing learned counsels for both the parties and on perusal of the records, it appears that it is admitted fact that the vehicle was insured by the United India Insurance Company Ltd. and it was parked in the campus of the house of the owner of the vehicle. It is not the case of any of the parties that the vehicle was not fit to be used and, as such, it was parked in the campus of the house of the owner of the vehicle.

6. "Expression caused by" and the "Expression arising out of" have also been considered by the Hon"ble Supreme Court in Shivaji Dayanu Patil & another reported in AIR 1991 SC 1769 (supra) and it has been held that expression arising out of is a wider connotation. It is better to quote para-25 of the judgment.

" 25. These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the above-mentioned decisions, the Appellate Bench of the High Court has held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the

said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."

In M.A. no. 436 of 2009 (Branch Manager, National Insurance Company v. Meena Devi) with M.A. no. 437 of 2009 (Branch Manager, National Insurance Company v. Rajnath Rai and others), it was considered that although at the time of occurrence the oil tanker was standing but the occurrence had taken place while the tanker turned turtle causing the death of the deceased and this Court in view of the aforesaid judgment of the Hon"ble Supreme Court (AIR 1991 SC 1769) upheld that the claimants were entitled to get the amount of compensation from the insurer of the vehicle and both the appeals were dismissed vide order dated 7.3.2014. In the present case also the vehicle was standing but due to fire, arising out of the oil tank of the vehicle, the deceased got injury and succumbed to his injuries during treatment.

7. In the facts and circumstances stated above, it can be held that the deceased died due to the accident arising out of the fire coming out from the oil when oil tank of the standing vehicle burst. As such, it can be held that the deceased died due to the vehicle when the same was not moving and was stationary being parked in the house of its owner. In view of the facts and circumstances, the impugned order is not fit to be sustained. It is set aside.

8. Since the vehicle was insured by the United India Insurance Company Ltd. (respondent no. 1), it is held that respondent no. 1 is liable to pay a sum of Rs. 50,000/- as ad interim compensation under Section 140 of the Motor Vehicles Act. Respondent no. 1 is directed to pay the compensation amount with interest @ 6% p.a. from the date of filing of the claim case within a period of two months.

9. In the result, this appeal is allowed.