
(2008) 07 JH CK 0184
In the Jharkhand High Court

Muni Devi and Others

APPELLANT

Vs

Pradip Singh and Another

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Citation : (2010) ACJ 253 : (2009) 2 JCR 357

Hon'ble Judges : Gyan Sudha Mishra, C.J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the claimants/appellants against the award dated 10.1.2007 passed by the Motor Vehicle Claims Tribunal, Hazaribagh by which a sum of Rs. 1,69,500/- had been awarded to the claimants by way of compensation on account of the accident caused by a vehicle bearing No. WB-25A-25A-3265. The amount of compensation although was determined by the Tribunal it further ordered that the amount would be payable by the respondent No. 2/New India Assurance Co. Ltd. only to the extent of 50% which would come to Rs. 84,750/- as it was held therein that the liability of the vehicle insured with the respondent No. 2/New India Assurance Co. Ltd. was only partial and the vehicle which was driven by the deceased which was Tata Sumo bearing No. HR-261/2239, was also equally liable to share the liability of compensation to the tune of half of the liability that is balance 50%.

2. The appeal has been preferred by the legal representatives of the deceased who are the claimants herein on two counts First of all, it was submitted by the learned Counsel for the appellants that the apportionment of the liability of payment of compensation to the extent of half and half is legally not sustainable in the wake of the evidence adduced before the Tribunal as on perusal of the record it could be clearly inferred that the bus which was insured with the Insurance Company is alone liable to cause the accident as a result of which the deceased, who was driving Tata Sumo, suffered head on collision due to the bus and died as a consequence of the accident caused by the bus. By advancing this

argument, it was sought to be established that the liability fastened on the Insurance Company with which the Tata Sumo was insured could not be sustained in view of the evidence adduced as the bus alone was responsible for causing the accident since the evidence on record disclosed that the bus was driven at an extremely high speed and it was responsible for causing the accident. The contention, therefore, is to the effect that the bus alone was driven in a rash and negligent manner and, therefore, it was alone liable for head-on collision due to which the accident took place and the deceased died who was coming from the opposite direction.

3. The counsel for the respondent No. 2/New India Assurance Co. Ltd. countered the submission advanced by the counsel for the appellants and endeavoured hard to impress upon the Court that the bus alone cannot be held responsible to have caused the accident as there was sufficient space on the spot of the accident and two vehicles could easily cross the road. We do not feel impressed by this argument for although, there might have been enough space for two vehicles to pass the fact remains that as per the evidence it was the bus which was coming at an unreasonably high speed and there is no evidence on record to show that the vehicle which was driven by the deceased was also coming equally at a high speed. From this part of the evidence, it could reasonably be inferred that the Tata Sumo which was driven by the deceased was not at all at fault and it was the bus which was insured with the respondent No. 2/New India Assurance Co Ltd. was alone responsible to cause the accident. This is the finding recorded by the Tribunal also in which we find no infirmity or any perversity so as to set aside the same. Hence the liability of compensation could not have been apportioned between the respondent No. 2/New India Assurance Co. Ltd. and the other Insurance Company with which the Tata Sumo was insured.

4. Besides the above, we find it relevant to mention herein that the Insurance Company with which Tata Sumo was insured was never impleaded as a party before the Tribunal in such situation it would not be appropriate for the respondent No. 2/New India Assurance Co. Ltd. to raise the plea that the other vehicle was also equally at fault. Hence, for this additional reason also we feel that the plea of respondent No. 2/New India Assurance Co. Ltd., cannot be allowed to be sustained.

5. The next question that was raised by learned Counsel for the claimants/appellants is in regard to the amount of compensation which has been determined. It was submitted that the income of the deceased-driver was more than Rs. 4000/- per month which the respondent No. 2/New India Assurance Co. Ltd. had contradicted but at the same time it accepted that the deceased driver's income was Rs. 2000/- per month. It was further submitted that the Tribunal neither accepted Rs. 4000/- as the correct income of the deceased nor had accepted the version of the respondent/Insurance Company that the income of the deceased was Rs. 2000/- per month. Relying upon this argument of the respondent/New India Assurance Co. Ltd., it was submitted that if the income of

the deceased, even as per the Insurance Company, was Rs. 2000/- per month then this amount at least could have been accepted by the Tribunal and it could not have been reduced to the notional income of Rs. 15,000/-.

6. We find substance in this argument advanced by the learned Counsel for the appellants as even as per the Insurance Company if the income of the deceased as asserted by the claimants was not accepted as correct, then it least the income which was accepted by the Insurance Company ought to have been taken as the correct income. We are, therefore, of the view that the notional income ought not to have been taken as the income of the deceased but to Rs. 2000 which was accepted by the Insurance Company as the correct income of the deceased and if this amount is taken into consideration then the annual income of the deceased comes to Rs. ,24,000/-. Out of the annual income of Rs. 24,000/-, if one third is deducted as statutory deduction then the balance income comes to Rs. 16,000/- and if a multiplier of 16 is applied as per the age of the deceased according to the Schedule to the Motor Vehicles Act, then the amount comes to Rs. 2,56,000/-.

7. Out of Rs. 2,56,000/- it is stated that Rs. 84,750/- has already been paid by the respondent-Insurance Company to the appellants/claimants which was the amount accruing towards 50% of the amount awarded by the Tribunal. In addition to that Rs. 6,923/- has also been paid to the claimants-appellants by way of interest on the 50% amount of compensation awarded to the claimants-appellants. As the amount of compensation has now been enhanced to Rs. 2,56,000/- for the reasons stated hereinbefore as also the fact that the respondent/Insurance Company alone has been held liable to pay the entire amount of compensation to the claimants/appellants, it is clear that the balance amount of compensation which comes to Rs. 1,71,250/- is now payable to the claimants/ appellants by the respondent-New India Insurance Company. Apart from that, the respondent-Insurance Company shall also pay the amount of interest @ 6% p. a. to the claimants- appellants on the balance amount i.e. Rs. 1,71,250/- from the date of this order.

8. At this juncture, the counsel for the appellants submitted that the interest be paid atleast from the date of filing of the claim, if not, from the date of the award.

9. We cannot accept the aforesaid submission for the obvious reason that the amount of compensation has been enhanced by this Court from the date of the order passed by us and the respondent-New India Insurance Company cannot be attributed with the knowledge that the enhanced amount of compensation was payable from the date of the order of this Court and not from the date of filing of the claim application. Hence, interest on the enhanced amount can be held payable only from the date of this order.

The appeal thus is allowed and the impugned award stands modified to the aforesaid extent.