(2004) 08 JH CK 0011

In the Jharkhand High Court

Case No : MA No. 5 of 1997

National Insurance Co. Ltd. APPELLANT

Vs

Kameshwar Prasad and Others RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Citation : (2004) 4 JCR 88

Hon'ble Judges : Vishnudeo Narayan, J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Harendra Kumar Singh, for the Appellant; S.L. Agarwal and D.C. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal and Vishnudeo Narayan, JJ.—This appeal, at the instance of the appellant-National Insurance Company Limited is directed against the judgment and award dated 8.10.1996 passed by Additional Motor Vehicles Accident Claims Tribunal, Jamshedpur in MJC Case No. 60/1984 whereby he has awarded compensation of Rs. 35,000/- and held that both the owner and the insurer of the pickup van bearing registration No. BHS 6367 along with the owner of Tempo are jointly and severally liable to pay compensation.

2. The facts of the case lie in a narrow compass :--

It appears that on 9.6.1984 the deceased was returning from Jugsalai along with his family on a tempo bearing registration No. BHN 6679. While the tempo reached near Adityapur, a goods carrying tempo, bearing registration No. BHS No. 6367 came from the opposite direction and suddenly collided head on with the tempo on which the deceased along with his family members were traveling. Due to the said accident the occupants of the tempo sustained injuries and the daughter of the claimant was declared dead.

3. The appellant-Insurance Company filed written statement and denied the insurance of the said goods carrying tempo bearing registration No. BHS 6367.

The Tribunal after hearing the parties passed the impugned judgment and award holding that the appellant-Insurance Company is jointly and severally liable to pay compensation.

4. In course of- argument, learned counsel for the appellant- Insurance Company drew out attention to Annexure-2 which is a copy of the written statement filed by the Insurance Company denying insurance of the vehicle. Learned counsel further drew our attention to Annexure-2/1 which is an application filed by the appellant-Insurance Company reiterating that the goods carrying vehicle bearing registration No. BHS 6367 was not insured with the appellant-Insurance Company.

5. The Tribunal held the appellant jointly and severally liable to pay compensation on the ground that the appellant has not specifically denied that the said vehicle was insured with it and further that no suggestion denying the factum of insurance has been given at the time of cross-examination of the applicants'' witnesses. For better appreciation para 16 of the judgment on the basis of which the Tribunal held the appellant liable is quoted hereinbelow :--

"Now the question is as to who are the persons liable to sustain the burden of making payment of compensation. As held above, the offending vehicle No. BHS 6367 was clearly responsible for causing the accident and for that reason the owner of the said vehicle i.e. OP No. 3, is clearly liable to pay the compensation in discharge of his vicarious liability towards the tortuous deed of his employee OP No. 4. The OP No. 5 has not specifically denied that the said vehicle was insured with it, rather, no such suggestions denying the factum of insurance of the said vehicle with OP No. 5 has even been made at the time of the cross-examination of the application s witnesses by the OP No. 5. Therefore, OP No. 5, National Insurance Co. Ltd, is held jointly and severally liable with the OP No. 3 to bear the burden of paying compensation."

6. It is well settled that primary liability for payment of compensation in a case of death or injury caused by a motor vehicle rests with the owner of the vehicle. It is only when it is found that the offending vehicle was insured with the Insurance Company then the Insurance Company is made party and is given opportunity to contest the claim by taking such defences which are available to it under the provisions of Motor Vehicles Act. But, curiously enough, in the instant case, the owner of the vehicle neither categorically asserted in the written statement that the offending vehicle was insured with the appellant- Insurance Company not produced any chit of paper to suggest that the vehicle was insured with the appellant-Insurance Company. In absence of any pleading or evidence from the side of the owner of the vehicle the Tribunal ought not to have held the appellant-Insurance Company jointly and severally liable for payment of compensation merely o(SIC) he basis of conjectures and surmises and on the basis that no suggestion was given to the claimant''s witnesses at the time of cross-examination. We are, therefore, of the view that the finding of the Tribunal that the Insurance Company is jointly and severally liable for payment of

compensation, cannot be sustained in law.

7. For the aforesaid reasons, this appeal is allowed and it is held that the appellant-Insurance Company is not liable to pay compensation. The judgment and award challenged in this appeal is modified to that extent.

