
(1998) 03 PAT CK 0043
In the Patna High Court
Case No : A.F.O.O. No. 255 of 1994 (R)

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Shobha Devi and Others		RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Motor Vehicles Act, 1939 — Section 147(3), 95
Motor Vehicles Act, 1988 — Section 147

Citation : (2000) ACJ 163 : AIR 1998 Patna 94 : (1998) 46 BLJR 798

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Tapan Sen and Tapas Kabiraj, for the Appellant; S.K. Laik, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This Misc. appeal is directed against the judgment and award dated 21-7-1994 passed by the Additional Claims Tribunal, Dhanbad, in Title (MV) Suit No. 87 of 1989, whereby the Tribunal awarded a sum of Rs. two lacs to the claimants respondents and held that the entire amount is payable by the Insurance Company.

2. The aforesaid suit was filed by the plaintiff claimants for the grant of compensation on account of death of her husband by reason of motor vehicle accident. The facts of the case are not in dispute. The deceased on 13-8-1989 going from his house towards Bastacolla colliery and when he reached near a peepal tree, the trekker came from Dhanbad in a high speed and in an attempt to save another trekker dashed the deceased Pradeep Kumar Nonia causing grievous injury. The said Pradeep Kumar Nonia subsequently succumbed to the injuries on 21-8-1989. The defendant No. 1 (Respondent No. 2) being owner of the offending vehicle appeared but neither filed any written statement nor contested the suit. Defendant No. 2-appellant filed a written statement and took all possible defence available to it under the law. The Claims Tribunal after

hearing the parties and after considering the evidence came to a finding that the accident took place due to rash and negligent driving of the Trekker bearing Registration, No. BIR 1661. The Claims Tribunal further considered the evidence on the issue of quantum of compensation and assessed at Rs. two lacs. Further the Tribunal held that since the vehicle was insured the appellant-Insurance Company in terms of the policy contract (Ext. A), the entire compensation is payable by the appellant.

3. Mr. Tapen Sen, learned counsel appearing on behalf of the appellant assailed the impugned judgment and award as being illegal and contrary to the facts and evidence on record. Learned counsel firstly drawn my attention to the policy of the Insurance by which the offending vehicle was insured and submitted that the period of insurance commenced from 20-12- 1988 and expired on 19-12-1989. According to the learned counsel the New Motor Vehicles Act, 1988 came into force from 1-7-1989 and on 13-8-1989 when the accident took place, the policy issued under the repealed Motor Vehicles Act, 1939 was enforced. Learned counsel, therefore, submitted that in view of the proviso to Section 147(2) of the Act, the liability of the Insurance Company would be in terms of the Act of 1939 and the policy issued thereunder. In this connection, learned counsel relied upon the decision of a Division Bench in the case of Prabhavati Sharma and Others Vs. Brijmohan Parihar and Others, . On the other hand Mr. S.K. Laik, learned counsel appearing for the respondent submitted that under the new Act of 1988 the Insurance Company's liability is unlimited. According to the learned counsel the M.V. Act of 1988 has got retrospective effect.

4. For better appreciation of the submissions advanced by the learned counsel it would be appropriate to look into the provisions of Section 147(2)(3) of the new Act of 1988.

Sub-sections (2) and (3) of Section 147 runs as follows :--

Sub-section (2):--

Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident up to the following limits, namely;

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party a limit of rupees six thousand,;

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

Sub-section (3) of Section 147 runs as follows:--

"A policy shall be of no effect for the purposes of this Chapter unless and until

there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matter; and different forms, particulars and matters may be prescribed in different cases."

From bare reading of the above provisions it is manifest that the proviso to Sub-sections (2) and (3) saves the liability of the Insurance Company under the policy issued prior to 1-7-89 i.e. the date of enforcement of 1988 Act. According to this, policy of insurance issued with limited liability and which is in force immediately before the commencement of the New Act, shall continue to be effective for a period of four months or on the expiry of such policy, whichever is earlier.

5. In the instant case as noticed above policy of insurance with limited liability was issued by the appellant covering the period from 20-12-88 to 19-12-1989. The new Act of 1988 came into force on 1-7-89 and the accident took place on 13-8-89. Admittedly, therefore, the accident occurred with the grace period of four months from 1-7-89. In my opinion, therefore, the liability of the appellant company cannot be unlimited because of commencement of 1988 Act rather it would be limited to the extent provided under the Act of 1939 in view of proviso to Section 147(3) of 1988 Act. It can, therefore, be safely concluded that the minimum liability in respect of death or injury to a person other than passengers caused by a passenger carrying vehicle is Rs. 50,000/-, unless it isotherwise proved that on payment of additional premium unlimited liability was taken by the Insurance Company. As noticed above, the owner of the vehicle though appeared, but neither filed any written statement nor contested the claim of the claimants. Here in appeal also although pursuant to the notice issued by this Court, the owner appeared but no one is present on behalf of the respondent owner of the vehicle.

6. From the perusal of the Insurance Policy (Ext. A) a copy of which has been filed and marked Annexure 1 to the memorandum of appeal, it does not appear that the appellant Insurance Company undertook unlimited liability on receipt of payment of additional premium. On the contrary it is specifically stipulated in the policy that the limit of Company's liability in the matter of accident shall be limited to Rs. 50,000/- and/or any such amount to meet the requirement of the Motor Vehicles Act, 1939. All these facts have not been considered by the Tribunal. The Tribunal has only assumed that because the vehicle was insured, the entire compensation is payable by the Insurance Company.

7. Having regard to the facts and evidence and law discussed hereinabove, I have no doubt in my mind that out of the total compensation of Rs. 2 lacs, the appellant Insurance Company shall be liable to pay maximum of Rs. 50,000/- together with interest as awarded by the Tribunal. Rest of the amount shall be paid by the respondents, the owner of the vehicle.

8. In the result, this appeal is allowed and the judgment and award passed by the Claims Tribunal is modified to the extent that out of the total compensation of Rs. 2 lacs, the appellant-Insurance Company shall pay Rs. 50,000/- together with interest and the balance amount shall be recovered from the respondent-owner of the vehicle.

9. Mr. Sen submitted that the appellant has paid Rs. 25,000/- by way of interim compensation and Rs. 50,000/- in terms of the order dated 25-6-1997. It goes without saying that the appellant shall be entitled to adjust towards interest the excess amount already paid to the claimant.