
(1997) 04 PAT CK 0046
In the Patna High Court
Case No : M.A. No. 439 of 1994

National Insurance Co. Ltd.	Vs	APPELLANT
Yashoda Devi and Others		RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (1999) ACJ 377 : (1998) 46 BLJR 937 : (1998) 1 PLJR 557

Hon'ble Judges : B.P. Sharma, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Ramchandra Lal Das, C.M. Saxena and Shiv Kumari Srivastava, for the Respondent

Judgement

B.P. Sharma, J.—This appeal arises out of a judgment and award passed by the District Judge-cum-Motor Accidents Claims Tribunal, Muzaffarpur on 23.8.1994 and the date of award is 3.9.1994. By the judgment and award in question the learned court below granted Rs. 1,20,000 as compensation to the claimant along with interest at the rate of 18 per cent per annum on account of death of Pradeep Shukla, a driver of tanker bearing registration No. BRJ 6366. The compensation was awarded against the National Insurance Co. Ltd., which was insurer of vehicle bearing registration No. BHE 1932. However, the Tribunal has also directed the National Insurance Co. Ltd. to pay Rs. 7,500 to the United India Insurance Co. Ltd. as the company has paid Rs. 15,000. Being aggrieved by the judgment and award the National Insurance Co. Ltd. has filed this appeal.

2. The facts of the case in brief are like this. It is said that on 9.2.1988 the vehicle, namely, a tanker bearing registration No. BRJ 6366 owned by one Ajit Kumar and driven by Pradeep Shukla, the deceased, was moving on National Highway No. 28. It was coming from north to south. At the same time another vehicle, a truck bearing the registration No. BHE 1932 driven by one Shanker Mahto was moving towards north. Both the vehicles collided with each other at a

place near the village Kodar Katta within the P.S. Motipur and the drivers of both the vehicles died in course of the accident and it is also said that a lady sitting in the truck aforesaid was also killed. There was a case registered in P.S. Motipur as Motipur P.S. Case No. 14 of 1988 under Sections 279, 337 and 304A, Indian Penal Code. This police case was registered on the statement of one Binod Kumar Choudhary of village Kodar Katta within the Motipur P.S. on 9.2.1988. According to the first information report in the case both the vehicles aforesaid were moving in the opposite directions and they collided with each other resulting in the death of three persons and the informant also further stated that both the vehicles were driven rashly and negligently. One claim application was filed by Yashoda Devi and others being the heirs/ dependants of the deceased Pradeep Shukla, the driver of the tanker and the case was got registered as Claim Case No. 63 of 1988 before the District Judge-cum-Motor Accidents Claims Tribunal, Muzaffarpur. Another case was filed by one Sheela Devi and others being the heirs and legal representatives of late Shanker Mahto, driver of truck No. BHE 1932 which was registered as Claim Case No. 45 of 1988 before the Claims Tribunal, Muzaffarpur. So far as the present appeal is concerned it relates to Claim Case No. 63 of 1988. In this case it was stated on behalf of the claimant that while the deceased Pradeep Shukla was driving on the road a truck bearing No. BHE 1932 being driven by Shanker Mahto dashed against the tanker of Pradeep Shukla on account of rash and negligent driving of the driver of the truck as a result of which Pradeep Shukla lost his life. Accordingly claim was against the owner of the truck BHE 1932 covered by the insurance policy under National Insurance Co. Ltd. (appellant), However, the owner and insurance company of the vehicle BRJ 6366, the tanker were also impleaded in the case. The Claim Case No. 63 of 1988 was tried by the District Judge-cum-Motor Accidents Claims Tribunal, Muzaffarpur and the award was made in favour of the claimants as stated above against which the insurer company has filed this appeal.

3. In course of argument it was pointed out by learned Counsel for the appellant that another Claim Case No. 45 of 1988 was tried by the 3rd Additional District Judge-cum-Motor Accidents Claims Tribunal, Muzaffarpur and the order in that case was passed on 12.3.1996. Against this order United India Insurance Co. Ltd. has filed appeal before this Court and the appeal was also disposed of on 7.10.1997 vide Misc. Appeal No. 219 of 1996.

4. It has been contended by the learned Counsel for the appellant that from the facts of the case it appears that two vehicles, i.e., the tanker and the truck had collided while driving on the National Highway No. 28 on the fateful day and as a result of this collision both the drivers have lost their lives. It is further pointed out that the first information report which was lodged in this case stated that the drivers of both the vehicles were driving the vehicles rashly and negligently. But strangely enough when the informant of the police case was examined in court when he appeared for the driver of the tanker he started saying that it was the driver of the truck who was negligent. On the other hand, when he appeared for

the driver of the truck, he blamed the driver of the tanker being negligent. It appears that the said person Binod Kumar Choudhary was examined in both the cases as AW 3. It is also pointed out by the learned Counsel for the appellant that when Misc. Appeal No. 219 of 1996 was heard an order was passed to this effect that there was clear allegation in the first information report that the drivers of both the vehicles were negligent. The Claims Tribunal should not have accepted the evidence of witness ignoring the facts stated in the first information report and, therefore, the award of the lower court was not found fit to be sustained and accordingly the award was set aside and the appeal was allowed and the case was ordered to be remanded to the court below for fresh trial. The learned Counsel for the appellant, therefore, submitted that the position is similar in this case because the same first information report relates to both the cases and in the first information report this AW 3 has clearly stated that the drivers of both the vehicles were driving their vehicles rashly and negligently. But when he was examined in court he has stated otherwise. It appears that this aspect has also been dealt with by the learned Tribunal and it has been stated in para 9 that AW 3 stated that the truck had hit the tanker by going away while the tanker was moving on the left side of the road. Thus he held the driver of the truck responsible for the accident. But it appears that during his cross-examination in court this AW 3 stated that he is unable to say as to which of the two vehicles was being driven rashly and negligently.

5. Therefore, it is contended that in view of this kind of statement of the person who is supposed to be the main eyewitness to the accident, it was not proper for the Tribunal to accept the version of the claimant that the accident had taken place on account of negligence of the driver of the truck bearing No. BHE 1932. It is, therefore, contended that as is the case in the order in Misc. Appeal No. 219 of 1996 which is reported in 1997 (1) PLJR 270, the conditions are similar and the findings of the Tribunal on the point of negligence cannot be taken to be the correct view. The court was supposed to take into consideration the point of contributory negligence of the two vehicles. Admittedly, the drivers of both the vehicles died and admittedly both the vehicles had head-on collision on the national highway. The grievance of the appellant in this case is like in the other case in which United India Insurance Co. Ltd. was held liable. The award was set aside and the matter was sent for trial to the lower court. It has, therefore, been submitted that as both the cases relate to the same accident it was proper that both the claim cases should have been tried together by the learned lower court so that a consistent finding could have been recorded. It is obvious that while the other case was tried by the 3rd Additional District Judge-cum-Motor Accidents Claims Tribunal, Muzaffarpur, the present case was tried by the District Judge-cum-Motor Accidents Claims Tribunal and, therefore, on different sets of evidence divergent views have been expressed which appear to be absurd. It is clear that both the deaths have resulted from the same accident under the same circumstances and, therefore, the different views cannot be possible regarding the same accident and it is, therefore, urged that the present appeal be allowed

and the case be sent to the lower court for trial along with the Claim Case No. 45 of 1988.

6. The learned Counsel appearing for the respondent No. 11, i.e., the Divisional Manager, United India Insurance Co. Ltd., submitted that actually this appeal itself is not maintainable in view of the decision reported in *Oriental Insurance Co. Ltd. v. Anita* 1997 ACJ 520 (Allahabad) [Full Bench] in which it has been stated that so far as the insurance company is concerned only those pleas can be taken by the insurance company in a claim case which are available u/s 149 of the Motor Vehicles Act. So far as the availability of the plea is concerned, the decision cannot be challenged and disputed but at the same time when there is a plea of contributory negligence and the plea is not accepted by the Tribunal, certainly the insurance company has right to appeal and specially when owner of the vehicle covered by the insurance company under the insurance policy has not appeared and contested the claim.

7. Thus from the facts stated above the Claims Tribunal should try both the cases together and after considering the entire evidence should try to come to a conclusion whether one of the two vehicles was responsible for the accident or both the vehicles were responsible and if both the vehicles are held responsible for the accident the liability should be apportioned according to degree of negligence. Accordingly, the judgment and award of the lower court are set aside and this appeal is allowed. However, there shall be no order as to costs. The Claim Case No. 63 of 1988 is remanded to the Claims Tribunal-cum-District Judge, Muzaffarpur for trial along with other Claim Case No. 45 of 1988 as ordered in Misc. Appeal No. 219 of 1996 as stated above. It is pointed out by the learned Counsel for the appellant that the appellant had deposited Rs. 25,000 in this case u/s 173 of the Motor Vehicles Act and that amount has been withdrawn by the claimants under orders of this Court dated 6.7.1996 so at the time of final adjudication and payment this fact shall be taken into consideration.