

(1985) 03 PAT CK 0016

In the Patna High Court

Case No : Appeal from Original Decree No. 71 of 1979

National Insurance Company

APPELLANT

Vs

Shanim Ahmad and Others

RESPONDENT

Date of Decision : 13-03-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2), 96(2)

Citation : (1985) ACJ 749 : (1987) 62 CompCas 811

Hon'ble Judges : Satyeshwar Roy, J;Abhiram Singh, J

Bench : Division Bench

Advocate : M.Y. Eqbal and P.C. Roy, for the Appellant; S.B. Sinha and S. Anwar Alam, for the Respondent

Final Decision : Dismissed

Judgement

1. The insurance company has challenged the judgment and award of the Motor Vehicles Accidents Claims Tribunal which awarded a compensation of Rs. 20,000 to respondent No. 1, father of the injured minor boy.

2. Misbahul Haque, a boy of about 5 1/2 years old, was travelling with his grandfather in a bus bearing registration No. BRV 4605 from Lasia to Katra. The bus met with an accident due to the rash and negligent driving by the driver. In the said accident, Misbahul Haque was injured and his right hand was fractured. He was admitted in the Rajendra Medical College Hospital where his right hand had to be amputated. An application for compensation of Rs. 50,000 was filed by his father, respondent No. 1. The Tribunal awarded a compensation of Rs. 20,000.

3. Mr. Roy, learned counsel appearing on behalf of the appellant, submitted that the maximum liability of the appellant in this case was Rs. 5,000 and the Tribunal, according to him, could not have awarded a compensation of Rs. 20,000 against the insurance company. In support of his submission, Mr. Roy relied on section 95(2)(b)(ii)(4) of the Motor Vehicles Act.

4. Mr. Sinha, learned counsel for respondent No. 1, submitted that since it was a

vehicle registered to carry not more than 30 passengers, the maximum limit of compensation which could have been paid was Rs. 50,000. According to him, the clause relied upon by Mr. Roy has no application. Mr. Sinha also submitted that the appeal was not maintainable.

5. In order to appreciate the submissions made by learned counsel for the parties, it is necessary to quote the relevant provisions of section 95 of the Act which are as follows :

" 95(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :--

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle.

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,--

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect-of passengers,--

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers ;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers:

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;....."

6. It will be noticed that specific provision has been made with reference to the goods vehicles and also with, regard to some other types of vehicles. For the vehicles registered to carry not more than 30 passengers, limit of compensation has been fixed at Rs. 50,000. In the case of vehicles registered to carry more than thirty but less than sixty passengers, the limit has been fixed at Rs. 75,000 and for vehicles registered to carry more than sixty passengers, the limit has been fixed at Rs. 1,00,000. In clause (4), which has been quoted above, a provision has been made for payment of compensation of Rs. 10,000 for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case. According to Mr. Roy, the second part of clause (4) will apply in this case as the vehicle in question was not a

motor cab. In our opinion, there is no substance in this submission. When the Legislature made Specific provision for payment of compensation to passengers with specific reference to the carrying capacity of a vehicle, recourse cannot be had to Clause (4) of the Act, if it is not a motor cab or a vehicle other than those specified in Clauses (1), (2) and (3). That being the position, we hold that the maximum compensation that could have been paid because of the accident was Rs. 50,000, the vehicle in question being registered to carry passengers less than thirty.

7. The compensation awarded by the court below was not challenged by Mr. Roy on any other ground.

8. Mr. Sinha urged that the appeal was not maintainable as u/s 96(2) of the Act, no provision has been made which will entitle an insurer to challenge the compensation awarded. In *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, , the Supreme Court held that the insurer cannot take a defence not provided in section 96(2). In view of the same, the appeal is not maintainable.

9. In the result, the appeal is dismissed with costs assessed at Rs. 250.

10. By order dated July 1, 1981, further proceedings of the certificate case was stayed subject to the condition that in the event the appeal was dismissed, either in whole or in part, the appellant shall pay the amount which it might be found liable to pay with interest at the rate of 12% per annum from the date of award. We are informed that the appellant has paid Rs. 5,000 to respondent No. 1. In view of the order aforesaid, the appellant shall pay the balance amount of Rs. 15,000 with interest at the rate of 12% per annum from the date of the award.