
(2014) 01 PAT CK 0146

In the Patna High Court

Case No : Miscellaneous Appeal No. 262 of 2012

National Insurance Company Gaya

APPELLANT

Vs

Lily Hembrum

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 1 BBCJ 430

Hon'ble Judges : Amaresh Kumar Lal, J.

Bench : Single Bench

Advocate : Mr. Ashok Priyadarshi, Advocate, for the Appellant; Mr. Ravindra Kumar Singh, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.(C. A. V.) - The National Insurance Company, Insurer of the Jeep bearing Registration No. BR- 13 P/ 3936 has preferred this appeal against the judgment and award dated 11.6.2009 and 22.6.2009 respectively passed by Motor Vehicle Accident Claim Tribunal-cum-1st Additional District Judge, Gaya in Motor Accident Claims Case No. 177 of 2008/ 41 of 2004 by which the appellant has been directed to pay a sum of Rs.9,94,120/- with interest @ 8.5 percent per annum from the date of filing of the claim case till the payment of compensation amount to the claimants.

2. The claim case has been filed stating therein that on 31.12.2003 Rajiv Jyoti Hembram was going from Ranchi to Gaya by his Maruti van bearing Registration No. JH-01F/5505 and when he reached near Karmo Plant on N. H. 33, three kilometres south of Barhi police station an accident took place due to rash and negligent driving of Jeep No. BR- 13 P/3936 which dashed the Maruti van of Rajiv Jyoti Hembram resulting into his and his wife's death on spot. In this connection Barhi P. S. Case No. 252 of 2003 under Sections 279, 337, 338, 304 A and 427 IPC was lodged against driver of Maruti Van as well as commander jeep. The dead body of deceased Rajiv Jyoti Hembrum was brought to Sadar Hospital, Hazaribagh for postmortem.

3. The appellant-opposite party no. 1 appeared and contested the claim case by filing written statement stating therein that the claim case suffers from defects of non-joinder of necessary party. According to the appellant, this is a case of head on collusion between Maruti van and jeep due to rash and negligent driving of both the vehicles, apart from taking other grounds.

4. The opposite party no. 2, the owner of offending commander jeep also appeared and filed written statement stating therein that accident took place due to rash and negligent driving of Maruti Van bearing Registration No. JH -O1 F/ 5505, as such owner is not liable to pay any compensation. The commander jeep was covered under valid insurance policy, as such the liability, if any, is payable by the insurer, but the owner and insurer of Maruti Van were not added as party.

5. Learned counsel for the appellant has submitted that on the pleadings of both the parties following issues were framed by the learned Tribunal:-

(i) Is the claim case as framed maintainable ?

(ii) Have the applicants got valid cause of action for this claim case?

(iii) Whether Rajiv Jyoti Hembram died in a motor vehicle accident caused due to rash and negligent driving of the driver of the offending jeep bearing registration No. BR- 13P/ 3936 on 31.12.2003 at about 4 P.M. near Karmo Plant on N. H. 33 ?

(iv) Whether Rajiv Jyoti Hembram being the driver of Maruti Van bearing registration No. JH-01F/5505 contributed the accident by rash and negligent driving of Maruti Van at the relevant time of accident ?

(v) Whether owners of both the offending vehicles bearing registration no. BR-13P/3936 and Maruti Van bearing registration No. JH-01F/5505 violated the terms and conditions of Insurance Police cover by getting their vehicles driven by a person having no valid driving licence at the relevant time of accident ?

(vi) Are the applicants entitled to get compensation and if so to what amount and from whom ?

(vii) Are the applicants entitled to get any other relief?

Issue nos. (iv) and (v) were relevant for consideration. Both these issues have been decided without impleading the owner and insurer of the Maruti van. The main grievance of the appellant is that it is settled principle of law that the first information report, final form, and post-mortem report are the important documents of the claim case. The FIR was lodged by Chaukidar Tilak Yadav and on his fard beyan Barhi P. S. Case No. 252 of 2003 dated 31.12.2013, a certified copy of which is Ext. 1, was instituted.

6. It is submitted that from perusal of FIR itself it is clear that driver of Maruti van and Mahindra jeep both were driving rashly and negligently, as a result of which both the vehicles dashed in front of each vehicle causing death of Rajiv Jyoti Hembram, the driver of Maruti Van, and a lady on the said Maruti van itself

and a boy was also injured. In commander jeep also two persons died and others got injury. It has also been clearly stated that the occurrence took place due to rash and negligent driving of both the vehicles. In this view of the matter, the accident took place due to contributory negligence on the part of both the vehicles, as such, driver, owner and insurer of Maruti Van were necessary party. In support of his contention, learned counsel for the appellant has relied upon following decisions; National Insurance Company Ltd. v. Rattani & Ors, reported in (2009) 2 SCC 75 and United India Insurance Company Ltd v. Shila Devi & another, reported in 1997 (1) PLJR 271.

7. The learned counsel for the claimants-respondents has submitted that Rajiv Jyoti Hembram was driving the Maruti van and he succumbed to the injuries on the spot, as such he could not have been made a party. It is the case of the claimants that the occurrence took place due to rash and negligent driving of the aforesaid commander jeep, as such, owner and insurer of the Maruti van were not a necessary party. The claimants have been able to prove that the occurrence took place due to rash and negligent driving of the commander jeep, as such no interference in the impugned order is required. In support of his contention, he has relied upon a decision made in the case of Branch Manager, United India Insurance Company Ltd. v. Rajni Tiwari & Ors, reported in 2012 (2) PLJR 510.

8. In the case of Branch Manager, United India Insurance Company, the fact of the case was somewhat different. The case of the claimant was that due to rash and negligent driving of the truck the accident took place causing accident of maruti car leading to spot death of the deceased Jyoti Bhushan Tiwari. In that case, there was no evidence to suggest that the driver of Maruti car contributed anything/ lapses/negligence resulting into the accident in question. Even thereafter, the Tribunal had directed to pay 60 % compensation by the Insurance Company of Offending Vehicle and 40% by Insurance Company of Car, as such the appeal was allowed and the 40% of the compensation amount by the appellant-Insurance Company i.e. Insurer of the Maruti car was absolved from the liability and the insurer of the truck was held liable to pay the whole amount of compensation. But in the present case, it has been clearly stated that there was head on collusion between Maruti van and commander jeep. Driver of both the vehicles were negligent in driving. Two persons each of the vehicles died due to rash and negligent driving of both the vehicles, as such it was a case of contributory negligence and this fact was raised by the appellant before the Claims Tribunal. The decision reported in 2012 (2) PLJR 510 is not helpful to the claimants/respondents.

9. It is settled principle of law that in the case of contributory negligence, owner, insurer and driver are necessary parties in the claim case. It appears from FIR (Ext. 1) and the charge-sheet also that there is allegation of contributory negligence against both the vehicles i.e. maruti van and commander jeep. After investigation charge-sheet has also been filed and it has been found that both

the drivers were negligent in driving the vehicles. Considering all these materials, it appears that owner and insurer of Maruti van are the necessary parties who should be impleaded as opposite parties before the learned Tribunal. Neither the claimants have added them as parties nor any direction has been given by the learned Tribunal to implead them as parties for just decision of the claim case.

10. Considering the facts and circumstances stated above, it appears that the impugned order is not fit to be sustained. It is set aside. The matter is remanded to the learned Tribunal for impleading and hearing the owner and insurer of Maruti van. The learned Tribunal is also directed to expedite the hearing of the claim petition.

11. In the meantime, the appellant is directed to pay a sum of Rs.6,00,000/- (six lakh only) to the claimants-respondents within a period of two months. This amount will be adjusted against the liability of the appellant.

12. In the result, this appeal is allowed.

13. There will be no order as to costs.