(2001) 08 PAT CK 0059

In the Patna High Court

Case No : Miscellaneous Appeal No. 320 of 1994

National Insurance Company Limited and Others — APPELLANT

Vs

Pramilla Devi and Others — RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0059

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—The Appellant M/s National Insurance Company Limited has preferred this appeal against the judgment, dated 13th May, 1994, passed in Motor Accident Claim Case No. 3 of 1993/13 of 1992/15 of 1989 by the Additional District Judge-cum-Motor Accident Claims Tribunal, Jehanabad, and the award, whereby the Claims Tribunal has awarded a compensation of Rs. 01,44,000/- to the claimant. According to the award of the Claims Tribunal, the National Insurance Company Limited has to pay an amount of Rs. 75,000/- with future interest at the rate of six per cent per annum and Binod Kumar owner of the Maxi-Taxi BEB 498 which was involved in the accident and its driver Bijay Kumar have to pay a sum of Rs. 69,000/- with future interest at the rate of six per cent per annum, out of the total compensation amount of Rs. 01,44,000/-.

2. According to the Appellant, the owner Binod Kumar and driver Bijay Singh of the vehicle had not appeared in the case and the case was heard ex parte against them and the Appellant had filed copy of insurance policy of the vehicle which was limited liability policy and the owner had paid premium of Rs. 180/- for the coverage of risk of fifteen passengers only at the rate of Rs. 12/-each and according to the motor tariff the maximum liability of the Insurance Company on the premium of Rs. 12/- per passenger would be Rs. 15,000/- only and according to insurance policy also the insurer''s liability is of Rs. 15,000/- only on payment of Rs. 12/- as premium'' per passenger. According to the Appellant, the judgment and award of the Claims Tribunal is fit to be set aside.

3. It was argued by the learned lawyer for the Appellant that the premium was

paid for fifteen passengers at the rate of Rs. 12/- per passenger and the liability of the Insurance Company per passenger was limited to Rs. 15,000/- only.

4. The claimant Mrs. Parmila Devi is wife of the deceased, Surendra Prasad Verma, Rocky Kumari, Sarika and Sachin Kumar are the daughters and son of the deceased. The deceased Surendra Prasad Verma was travelling in the vehicle Maxi-Taxi BEB 498 and he was going to Gaya to purchase goods for his shop. The driver was driving the jeep rashly and negligently with high speed and it turned upside- down and fell in a field as a result of which Surendra, Prasad Verma died. The death of Surendra Prasad Verma was caused due to rash and negligent driving of vehicle No. BEB 498. The post mortem examination on the dead body of the deceased was conducted at Subdivisional Hospital, Jehanabad. In respect of the accident Makhdumpur P.S. Case No. 37 of 1989 under Sections 279, 337 and 304(A) of the Indian Penal Code was registered against the driver Vijay Kumar of the Vehicle No. BEB 498. The vehicle was insured with M/s National Insurance Company Limited who is the Appellant in this Miscellaneous Appeal. At the time of the accident resulting in the death of the husband of the claimant Pramila Devi, the deceased Surendra Prasad'' Verma was holding a shop and earning nearly Rs. 2,000/- per month on the average and date of birth of the deceased was 2.8.1955 and at the time of his death in the accident his age was thirty three years and seven months.

5. The Claims Tribunal has determined the amount of compensation to be paid to the claimant at Rs. 01,44,000/- and while determining the amount of compensation the Claims Tribunal has adopted the multiplier method.

6. In this case five witnesses have been examined on behalf of the claimant. P.W. 1 is Pramila Devi the wife of the deceased who has stated that her husband was holding a shop in Vishunganj Market. According to her, her husband had died while he was going to Gaya by a Maxi-bus bearing No. BEB 498 and the vehicle had met with an accident and her husband died in that accident and at the time of his death her husband was aged about 35 to 36 years. She has stated that her husband died leaving behind her, two daughters and one son and her husband was earning about Rs. 2,000/- per month from the shop and after his death the shop was closed. She has also said that due to the negligence of the driver the Maxi had met with the accident. P.W. 2 is Mithlesh Kumar Jyoti brother-in-law of the deceased who was also travelling in the same vehicle. According to him, the driver was driving the vehicle very fast and when the vehicle turned upside-down its wheel ran over the face and head of his brother-in-law (Surendra Prasad Verma) and Surendra Prasad Verma died on way to hospital and at the time of his death his age was about 34-35 years. He has also stated that his brother-in-law was holding a shop and his income was about Rs. 2,000/- per month from the shop. He has said that he had informed the police about the accident and on his statement Makhdumpur P.S. Case No. 37 of 1989 was registered and the accident of the vehicle had taken place due to the negligence of Vijay Singh. He has said in his cross examination that he was knowing Vijay Singh owner of the

vehicle from before and the name of the driver was Vinod Singh. P.W. 3 is Pannalal Gupta. According to him, he was also travelling in the Maxi and it had met with accident and he had also sustained injury and one person had died in the accident who was travelling in that Maxi and his name was Surendra Prasad Verma and he was holding a shop at the time of his death and his income was Rs. 2,000/- per month and his age was about 32-34 years and the number of the Maxi was BEB 498. He has stated that Surendra Prasad Verma died on way to hospital and due to the negligence of the driver of the vehicle accident was caused. P.W. 4 is Kaushlendra Kumar. He has stated that he was also in the Maxi which had met with the accident and the number of the Maxi was BEB 498 and he had also sustained injury in that accident and Surendra Prasad Verma had died in that accident. P.W. 5 is Chandradeo Prasad. He has stated that he was going to Gaya from Vishunganj on Maxi No. BEB 498 and according to him the vehicle met with the accident and he and his son Kaushlendra Kumar had sustained injury in it and Surendra Prasad Verma had sustained serious injury who died. According to him, the accident was caused due to negligence and fast driving.

7. The learned Additional District Judge-cum-Motor Accident Claims Tribunal, Jehanabad, had allowed the application for claim ex parte against the opposite party No. 1 Vinod Kumar and opposite party No. 2 Vijay Singh and on contest against the rest.

8. It was submitted by the learned lawyer for the Appellant National Insurance Company Limited that the insurance policy of the vehicle is Exhibit ''A'' in this case.

9. The insurance policy which is in the name of Shri Binod Kumar shows that it was valid for the period from 16.11.1988 to 15.11.1989. In the present case the accident had taken place on 27.3.1989 and so the period of accident is covered by the insurance policy. According to Insurance Policy liability to public risk is Rs. 15,000/-. It was submitted by the learned lawyer for the Appellant that the premium paid for fifteen passengers was Rs. 180/- at the rate of Rs. 12/- per passenger.

10. No one had appeared on behalf of Respondent during the hearing of the appeal.

11. It was submitted by the learned lawyer for the Appellant that limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability. In support of his contention the learned lawyer for the Appellant placed his reliance on a decision of the Supreme Court, reported in New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, It was also submitted by the learned lawyer for the Appellant that comprehensive policy in respect of vehicle does not mean comprehensive (unlimited) coverage for passengers and where the owner has paid premium for comprehensive coverage of vehicle but paid only at the rate of Rs. 12/- per passenger, then the liability of

the Insurance Company is up to the statutory limit of Rs. 15,000/-. In support of his contention the learned Counsel placed his reliance on a decision of Ranchi Bench, reported in Jay Singh Vs. Lal Muni Devi and Another,

12. In the facts and circumstances of the case, The National Insurance Company Limited will pay Rs. 15,000/- to the claimant with future interest at the rate ordered by the Motor Accident Claims Tribunal and opposite Party No. 1, Binod Kumar, owner of the Maxi-Taxi BEB 498 and opposite party No. 2 Bijay Kumar, driver of the Maxi-Taxi BEB 498, will pay the rest amount of Rs. 01,29,000/- with future interest at the rate ordered by the Motor Accident Claims Tribunal.

13. With the above modification in the judgment and award passed by the learned Additional District Judge-cum-Motor Accident Claims Tribunal, Jehanabad, this Miscellaneous Appeal is dismissed.

14. In the facts and circumstances of the case, there would be no order as to coasts.

