

(2010) 07 PAT CK 0192
In the Patna High Court
Case No : Ma No.159 Of 2009

National Insurance Company Limited

APPELLANT

Vs

Kamlawati Devi

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Citation : (2013) 2 BBCJ 727

Hon'ble Judges : Akhilesh Chandra, J.

Bench : Single Bench

Advocate : Mr. Harendra Kumar, Advocate, for the Appellant; M/s Kaushal Kr. Singh & Niraj Kumar-I, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Akhilesh Chandra, J.— Heard learned counsel for the appellant-insurer and respondents owner and claimant in two sets and with their consent the appeal is being disposed of at the admission stage itself.

2. This appeal has been preferred by the National Insurance Company against the judgment dated 01st December, 2008 in Motor Vehicle Claim Case no.2 of 2004 by learned 01st Additional District Judge-cum-Motor Accident Claim Tribunal, Saran, awarding a sum of Rs.1,50,000/- with interest in favour of the claimant Kalawati Devi, respondent no.1, who suffered injuries while being traveling as passenger in a jeep bearing registration no.BR-IP 9343 and as stated the driver of the vehicle was driving rashly and negligently in spite of objections raised by the passengers inside. There was no change in his attitude. Ultimately, accident took place causing injuries to claimant and others.

3. Initially learned counsel for the appellant was making his submissions on the quantum of the compensation awarded by the court below but during the course of argument the learned counsels representing the parties left making any submission on quantum and confined their rival contentions as regards liability to pay of the amount so awarded. Whether it is to be paid by the insurer as directed

by the Claim Tribunal or insurer is exonerated from doing so due to alleged violation of terms and conditions of the insurance.

4. Now the moot question to be decided in this appeal is who is liable to pay the amount of Award; whether insurer or owner of the vehicle.

5. It is undisputed that vehicle in question was under cover of insurance policy issued by the appellant, National Insurance Company Limited through policy paper as also with record of appeal as Annexure-2 of memo. of Appeal. The Police Number is 176507/31/03/6100001839 valid from 18.07.2003 to 17.7.2004 and within the period under coverage accident took place.

6. The above insurance certificate indicates that vehicle involved was treated as private one. No premium was paid for its being used as a commercial vehicle or any extra premium was paid to cover the risk of any person sitting therein except owner and driver.

7. Whereas as per claim she along with others was traveling in the vehicle as passengers which goes to indicate that vehicle in question was being used as a commercial vehicle and passengers were being carried against some payment.

8. Factum of accident is also not in dispute and as stated above vehicle in question was insured as a private vehicle so this much is now crystal clear that care was not taken by the owner to carry terms and conditions of the policy. Apparently, there is breach of conditions bringing the insurer out of liability to make any payment to the claimant or any other passenger traveling in the ill-fated vehicle. It is not a case of third party. Had it been so question could have been different.

9. No doubt, the proceeding in question runs under a welfare legislation. Had the owner not appeared or participated in, this court might have been considering application of the provisions as contemplated under sections 149 (4) and (5) of the Motor Vehicles Act which reads as such:

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risk:-

x x x x x

(4). Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect;

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5). If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from, that person.:

x x x x x x "

10. When the above provision is made applicable the insurer appellant could have been directed to indemnify the liability of the owner so that sufferer (claimant) may get immediate relief and the insurer may realize the amount so paid from the owner. But here, in the instant appeal, owner is in attendance and, as stated, raising no question regarding quantum of Award.

11. There is a decision of this Court in the case of Branch Manager, v. Md. Yunus & Ors., 2010 (3) PLJR 251, wherein a number of decisions have also been discussed and thereafter it has been held in paragraph 16 that " in view of the above observations it is clear that vehicle in question was insured as private vehicle but it was being used as commercial vehicle and for that purpose the vehicle was not insured. In view of the above settled principles of law in such case the insurance is not liable to indemnify the owner."

12. The instant case squarely covers under the above decision of this court. Accordingly, the appellant insurer is exonerated from the liability of payment of Award to the claimant-respondent no.1 instead the owner respondents no.2 to 4 are directed to make payment of the amount awarded to the claimant with interest as awarded.

13. With the above modification in the impugned order, this appeal stands disposed of. The statutory amount of Rs.25,000/- deposited in the appeal is ordered to be returned to the appellant.