

(2019) 03 JH CK 0042

In the Jharkhand High Court

Case No : Miscellaneous Application No. 692 Of 2018

National Insurance Company Limited

APPELLANT

Vs

Sarojini Sahu And Ors

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Motor Vehicle Act, 1988 — Section 66, 147, 149

Citation : (2019) 03 JH CK 0042

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amaresh Kumar

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the appellant Insurance Company.
2. This appeal is directed against the judgment dated 18.08.2018 passed by Presiding Officer, District Judge, XIII-cum-M.A.C.T. Judge, Jamshedpur, East Singhbhum in Compensation Case No. 204 of 2017 arising out of a case of death due to accident. Nalin Sahu, died due to accident by the offending tractor bearing registration no. JH-22A-8344 which was being driven in a rash and negligent manner. The Tribunal awarded compensation amount of Rs. 19,00,301/- to the claimants Sarojini Sahu with 6% of simple interest within one month from the date of receipt of the copy of the award failing which the same amount shall be realized through processes of the court along with the cost of realization.
3. The only challenged to the impugned award by the learned counsel for the appellant Insurance company, is that the tractor in question, on the date of accident was not having the valid permit and accordingly, it is submitted by learned counsel that the liability of making the payment of compensation should have been imposed upon to the owner of the tractor and not upon the Insurance Company. However, it is an admitted fact that on the date of accident, the tractor was insured with the appellant Insurance Company.

4. The tribunal framed some issues and one of the issues i.e. issue no. 3 was as to whether the owner of the vehicle has violated any terms and conditions of the Insurance Policy including requirement of valid Driving License. The insurance Company contended before the Tribunal that the application u/s 166 and 140 of the Motor Vehicle Act is otherwise bad in law and facts and hence, is liable to be dismissed. It was further contended by the Insurance company that the provisions of section 147 and 149 of the Motor Vehicle Act (hereinafter referred as 'the Act') regarding the limit and liability of the Insurer and exception provided with the policy of the Insurance filed.

5. The Insurance Company lead the evidence of opposite party no. 1, in examination-in-chief on affidavit at para 2 he has stated that the Tractor bearing no. JH-22A-8344 is insured in commercial vehicle, hence, permit of the said vehicle is essential. He has further stated that the owner of the vehicle has violated the terms and conditions, therefore, Insurance Company is not liable to pay any compensation to the claimants.

6. Learned counsel for the appellant draws the attention of this Court at section 66 of the Act, submitted that that the Tribunal has not given any definite finding on the point that as to whether an offending vehicle was having the permit or not. However, the compensation has been awarded and the appellant Insurance company has been settled to the liability to make the payment of compensation to the claimant. Learned counsel for the appellant further submits that the liability of payment of compensation may be fixed to the owner of the tractor not upon the insurance company.

7. Learned counsel for the appellant placed reliance upon the decision of the Hon'ble Apex court rendered in the case of Manuara Khatun and Ors. Vs. Rajesh Kumar Singh and Ors. reported in (2017) 4 SCC 796 wherein the law has been laid down as follows:

"13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the insurer of the offending vehicle i.e. (Respondent3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle Tata Sumo) Respondent 1 in the same proceedings.

14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was the subject-matter of several decisions of this Court rendered by three-Judge Bench and two-Judge Bench in the past viz. National Insurance Co. Ltd. v. Baljit Kaur, National Insurance Co. Ltd. v. Challa Upendra Rao, National Insurance Co. Ltd. v. Kaushalaya Devi, National Insurance Co. v. Roshan Lal and National Insurance Co. Ltd. v. Parvathneni.

15. This question also fell for consideration recently in National Insurance co. Ltd. v. Saju P.Paul wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act.

While allowing the appeal filed by the insurance company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence the insurance company cannot be held liable to suffer cover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

*** **

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in para 26 of Saju P. Paul case quoted Supra."

(emphasis supplied)"

8. Placing reliance on the aforesaid decision the learned counsel for the claimants submits that the appellant Insurance Company be directed to make the payment of compensation awarded to the claimants and they may be given the liberty to recover amount from the owner of the vehicle. The Tribunal has not given any definite finding on the point as to whether the offending tractor was having the permit license or not.

9. I am of the considered view that the facts of this case is fully covered by the decision of the Manura Khatun (Supra). Since the vehicle was insured with the appellant Insurance Company on the date of accident, the responsibility of making payment of compensation has rightly been fixed upon the Insurance Company. The appellant Insurance Company is directed to make payment of the awarded amount to the claimant preferably within six weeks. The appellant Insurance Company shall be free to take steps in accordance with law for recover of the amount from the owner of the tractor, if they so desire, in view of the principle pay and recover as per the law laid down in the decision cited above.

10. The claimants shall be free to withdraw the deposited amount from the court below.

11. In view of the above directions, this appeal is disposed of.

12. The registry is directed to refund the statutory amount deposited before this Court by the Insurance Company.