

(2015) 11 JH CK 0047

In the Jharkhand High Court

Case No : Miscellaneous Application No. 107 Of 2005

National Insurance Company Limited, Koderma Branch,
District Koderma

APPELLANT

Vs

Ishwar Chandra Mishra And Ors

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Indian Penal Code, 1860 — Section 279, 338

Motor Vehicles Act, 1939 — Section 95, 95(2)(b)(i), 95(2)(b)(ii)

Citation : 2016 (1) JLJR 91

Hon'ble Judges : D.N. Upadhyay, J

Bench : Single Bench

Advocate : Alok Lal, Anil Kumar

Final Decision : Allowed

Judgement

D.N. Upadhyay, J

1. This appeal has been preferred against the judgment and award dated 27th November, 2004 passed by learned Additional District Judge, Fast Track Court-7th-cum-Motor Vehicle Accident Claim Tribunal, Giridih in connection with Claim Case No. 13 of 1986, whereby the appellant-National Insurance Company Limited has been directed to pay compensation amount of Rs. 3.23 lacs with interest @ 9% per annum from the date of filing of claim application till realization of the said amount.

2. The fact, in brief, is that the claimant-Ishwar Chandra Mishra on the date of incident i.e. on 14th May, 1986 was aged about 26 years. He was working under Bank of India at Giridih Branch. He was getting salary @ Rs. 2,305/- per month from the employer-Bank of India.

3. On 14th May, 1986, at about 5:00 p.m. said Ishwar Chandra Mishra along with his companion-Ashok Kumar was coming from Bank of India, Doranda Branch on Hero Honda Motorcycle, bearing Registration No. BRY/5075 via Jamua-Koderma

Road. When the claimant reached near village Sakritand, P.S. Jamua, District Giridih, one Mahindra Jeep, bearing Registration No. BHM 8238, being driven rashly and negligently, caused dash to the motorcycle to which the claimant was driving. As a result, the claimant and his companion sustained serious injuries. Multiple fracture caused to the right leg (Tibia-Fibula). The impact of the dash was so grave that bone of the claimant broken into pieces and he sustained compound fracture and to that effect, Jamua P.S. Case No. 74 of 1986 was registered on 14th May, 1986 under Sections 279 and 338 of the Penal Code, 1860 against driver of the offending vehicle, bearing Registration No. BHM 8238. The motorcycle, on which the claimant was riding, and the offending vehicle, both, were insured with National Insurance Company Limited (appellant). The claimant was treated in nearby hospital, then referred to Sadar Hospital, Giridih and for better treatment he approached various hospitals of the country. The claimant incurred huge expenses on his treatment and also remained absent from his duty due to injuries caused.

4. Initially the claim application was filed for grant of compensation for an amount of Rs. 01.00 lac, but after amendment it was enhanced to Rs. 11,55,000/-.

5. The respondents appeared after service of notice and filed their respective show cause and written statement.

6. The appellant has preferred this appeal mainly on the ground of limited liability as appearing under Section 95(2)(b)(i) of the Motor Vehicles Act, 1939 (hereinafter to be referred to as 'the Act 1939'), which fix a limited liability to the extent of Rs. 50,000/-. Besides the above, it is contended that the appellant is not liable to pay interest on the awarded amount from the date of filing of the claim application because the matter has not been delayed by him at any occasion. The Tribunal has erred in directing the appellant-Insurance Company to pay interest @ 9% from the date of filing of the claim application. As a matter of fact, it was the claimant who had delayed the disposal of the case because the claimant had closed his evidence only in the month of February, 2004, whereas the claim case was filed in the year 1986.

7. By referring the provision of Section 95(2)(b)(i) of the Act 1939, it was submitted that the learned Tribunal has completely lost its site of the evidence and the provision and has erroneously held that the liability of insurer is unlimited and, therefore, the impugned judgment and award is liable to be set aside.

8. The appellant has relied upon the following judgments of the Hon'ble Supreme Court:-

(i) AIR 1988 SC 719(1) [National Insurance Co. v. Jugal Kishore]

(ii) AIR 1995 SC 1113 (1) [New India Assurance Co. Ltd. v. Smt. Shanti Bai]

(iii) AIR 2002 SC 651(1) [New India Assurance Co. Ltd. v. C. M. Jaya]

9. Learned counsel appearing for the claimant/respondent has opposed the argument and submitted, there was comprehensive policy granted against the vehicle by the appellant-Insurance Company. Learned Tribunal has discussed the provisions of the Act 1939 and after elaborate discussion on the point of law as well as facts has decided the claim made by the claimant/respondent-Ishwar Chandra Mishra. The respondent has relied upon a decision of the Hon'ble Supreme Court rendered in the case of S. Iyyapan v. United Insurance Company, reported in (2013) 7 SCC 62. It was submitted that even if the appellant-Insurance Company is found liable to the extent of Rs. 50,000/-, the appellant may be directed to satisfy the award and liberty may be granted to recover excess amount than the liability from the insured.

10. I have gone through the impugned judgment and the material available on record. Since the occurrence took place in the year 1986, the provision of the Act 1939 (Act 4 of 1939) shall be applicable. Section 95 of the Act 1939 deals with the matter. It is admitted case of the claimant/respondent that he was not travelling on the offending vehicle as a passenger and, therefore, Section 95(2)(b)(i) of the Act 1939 shall be applicable. Section 95(2)(b)(i) reads as under:

"95(2)(b)(i)- in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;"

11. Learned Tribunal has misconstrued the conditions contained in the policy and considering the policy to be comprehensive has held that the liability of insurance is unlimited, which is incorrect. The judgment of the Hon'ble Supreme Court in the case of Smt. Shanti Bai (Supra) has made the situation clear, in which the Hon'ble Supreme Court has observed as under:-

"Where there was no special contract between the insurance company and the owner of the vehicle to cover unlimited liability in respect of an accident to a passenger, and the premium which was paid by the owner was at the rate of Rs. 12/- per passenger and it was clearly referable to the statutory liability of fifteen thousand rupees per passenger under Section 95(2)(b)(ii) of the Motor Vehicles Act, 1939, as it was stated in the tariff of insurance company that in respect of "legal Liability for Accidents to Passengers" if the limit of liability for any one passenger is fifteen thousand rupees, the rate of annual premium per passenger is Rs. 12/- and that in respect of unlimited liability, the premium payable per passenger is Rs. 50/- it was held that the policy covered only the statutory liability of Rs. 15,000/- per passenger. In such a case, the mere fact that the insurance policy was a comprehensive policy would be irrelevant because comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which was absent in the present case."

12. The same view has again been followed by the Apex Court in the case

of C.M. Jaya (Supra), in which it has been held as under:-

"In the case of Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under S. 95(2) of the Act and would not be liable to pay the entire amount. The deceased was riding the pillion seat of a two-wheeler when it met with a truck insured by the appellant-Insurance Company by comprehensive insurance policy. It is not the case that any additional or higher premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy and copy of the insurance policy produced before the Court shows that the liability of the Insurance Company is limited to Rs. 50,000/- in regard to the claim in question. It necessarily follows that the liability of the Insurance Company is limited to Rs. 50,000/-. The liability of the Insurance Company was not unlimited merely on the ground that the insured had taken a comprehensive policy i.e. the truck was covered by a comprehensive insurance policy."

13. In view of the judgments referred to above and also considering the provision contained in Section 95(2)(b)(i) of the Act 1939, the liability of the appellant-Insurance Company is limited to the extent of Rs. 50,000/-, which has already been paid to the claimant/respondent by the order of this Court passed on 18th October, 2006 in this appeal.

14. However, the Insurance Company is liable to pay interest on the said sum of Rs. 50,000/- and, therefore, the appellant-Insurance Company is directed to pay interest @ 9% from the date of filing of the claim application till the date of payment of Rs. 50,000/- made to the claimant. The interest amount is directed to be paid within sixty days from today.

15. So far rest of the awarded amount i.e. after deducting Rs. 50,000/- from the total amount awarded is concerned, the insured i.e. the owner of the vehicle shall satisfy the award with interest @ 9% per annum, as directed by the Tribunal.

16. With the above modification in the finding of the learned Tribunal, appeal stands allowed.