
(2006) 05 PAT CK 0073
In the Patna High Court
Case No : M.A. No. 210 of 2001

National Insurance Company Ltd. and Another	APPELLANT
Vs	
Rekha Devi and Another	RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)(ii), 96(4)

Citation : (2006) 3 PLJR 213

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : M.P. Jaiswal, for the Appellant; Lakmesh Marvind and Anil Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Heard learned counsel for the appellants and learned counsel for the respondents. Appellant No. 1 is the insurer National Insurance Company Limited and appellant No. 2 is its Branch Manager, whereas, respondent No. 1 is the claimant and respondent No. 2 is the owner of the vehicle insured.

2. This appeal is directed against the judgment and award dated 7.8.2001, by which the learned Additional District Judge-VIII, Munger, allowed Motor Vehicle Case No. 17 of 1989 filed by respondent No. 1 directing the appellant to pay Rs. 1,33,000/-with interest at the rate of 10% per annum from the date of the application.

3. Learned counsel for the appellants submits that the date of accident was 7.5.1989 when the husband of the claimant (respondent No. 1) had died on the spot in a bus accident. He further submits that the said bus was owned by respondent no? and was insured by the appellant-Company. He further avers that on the date of the said accident as well as on the date of filing of the aforesaid claim case, the provisions of Motor Vehicle Act of 1939 (for short "the 1939 Act") were applicable as the subsequent Motor Vehicle Act, 1988 {for short

"the 1988 Act") came into force with effect from 1.7.1989. He also submits that Section 95(2)(b)(ii) of 1939 Act specially provided that a policy of insurance of such vehicle shall cover any liability incurred in respect of accident of a vehicle, in which, the passengers are carried for hire, to the limit of Rs. 15,000/- for each individual passenger. He also states that under the aforesaid circumstances, the liability of the insurer, namely, the appellant-Company was only up to Rs. 15,000/- and hence the learned court below has committed serious error in holding that the Instance Company (appellant No. 1) was liable to pay the entire amount of compensation amounting to Rs. 1,33,000/-. In support of his submission, he relies upon decisions of the Hon"ble Apex Court in the case of National Insurance Company Ltd. vs. Keshav Bahadur, reported in 2004(2) P.L.J.R. (S.C.)73 as well as of this Court in case of Taspur Prakhhand Matayajivi Swawlambi Sahkari Samti Ltd. Vs. State of Bihar and Others, .

4. Learned counsel for the appellants also avers that in the Tribunal itself, appellant-Company has already deposited a sum of Rs. 15,000/-, whereas, during the pendency of this case in this High Court, it was directed to pay a sum of Rs. 25000/-to the claimant, which the appellant-Company has already complied with. Hence, he submits that the appellant-Company has already deposited more than the amount which has to be deposited by it in accordance with law and hence there was no occasion for the learned court below to pass an order directing the appellant-Company for payment of entire compensation amount to the claimant.

5. On the other hand, the learned counsel for respondent No. 1 submits that no doubt the 1988 Act was not applicable to the instant case and the amount of Rs. 15,000/- was fixed by the 1939 Act u/s 95(2)(b)(ii) with respect to the liability of insurer, but Section 96(4) of 1939 Act specifically provides that if the amount, which an insurer becomes liable under the 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. He further submits that the said provision of the aforesaid 1939 Act has also been incorporated in the 1988 Act as Section 149(5) thereof. He also avers that this view is supported by the decision of the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. vs. Swaran Singh, reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, as well as in the case of New India Assurance Co. vs. Kamla, reported in 2001(3) P.L.J.R. S.C. 74, in which it has been specifically held that no doubt liability of the insurer was limited but if he was directed to pay the entire awarded amount as allowed by the Tribunal, he can after payment recover the remaining amount apart from the limit prescribed from the owner of the vehicle insured.

6. In the aforesaid facts and circumstances, I do not find any illegality or error in the impugned judgment and award and the appellant-Company is duty bound to pay the entire awarded amount to the claimant as per the impugned order of the

learned court below. However, since the limit of the liability of the appellant-Company in law is only Rs. 15,000/-, it will be at liberty to recover the remaining amount from the owner of the vehicle (respondent No. 2). In the result, this appeal is, accordingly, dismissed.