

(2002) 09 PAT CK 0120

In the Patna High Court

Case No : Miscellaneous Appeal No. 203 of 1999

National Insurance Company Ltd. and Another

APPELLANT

Vs

Smt. Dayawanti Devi and Another

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Citation : (2003) 1 PLJR 46

Hon'ble Judges : Ashok Kumar Verma, J

Bench : Single Bench

Advocate : M.P. Jaiswal, for the Appellant; D.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—The Appellants have filed this appeal against the judgment and award passed by Additional District Judge, V. Bhagalpur, in Claim Case No. 8 of 1992, whereby the learned Additional District Judge has ordered the National Insurance Company to pay Rs. 2,40,000/- as compensation to the claimants.

2. According to the Appellants, the driving licence of the driver was fake and considering the age of the parents of the deceased higher multiplier has been awarded by the Court below.

3. The facts of the case in brief is that deceased Ashok Yadav was going on a bicycle and his cousin brother Chhabinath Yadav who is informant of Rajoun P.S. Case No. 117 of 1991 was going with him on another bicycle. When they reached beyond khaira more near the old bandh a bus bearing registration No. BEQ 635 which was coming with high speed hit the bicycle of the deceased and the bus ran over the deceased as a result of which he died. The driver of the bus bearing registration No. BEQ 635 was driving the vehicle rashly and negligently.

4. According to the petition of the claim case the deceased Ashok Kumar Yadav was aged twenty five years and his monthly income was Rs. 1000/- by private

tuition and Rs. 1640/-. According to the claimants an appointment letter for the post of Assistant Teacher on pay of Rs. 1640/- per month had been issued in the name of the deceased. The vehicle was insured with the National Insurance Company Limited, Bhagalpur. The claim case has been filed by Smt. Dayawati Devi and Braj Kishore Yadav @ Braj Mohan Yadav who are mother and father of the deceased.

5. A written statement had been filed on behalf of the National Insurance Company Limited in the Court below. According to the Insurance Company, it is an admitted fact that vehicle No. BEQ 635, which is a bus, is insured with the Insurance Company and it is covered for the period 27.8.1991 to 26.8.1992. Further, according to the Insurance Company, the claimants have not given the name of the driver who was driving the vehicle at the time of the accident and that he was having a valid driving licence.

6. It was argued by the learned lawyer for the Appellants that the Insurance Company had got the matter investigated by its investigator and Rajendra Singh, the driver of the vehicle, had no valid licence and that fact was confirmed by the certificate Issued by the office of District Transport officer, Bhagalpur. It was submitted by the learned lawyer for the Insurance Company that the accident had taken place on 5.11.1991 and the appointment letter for the post of Assistant Teacher issued in the name of the deceased is dated 2nd December, 1992, that is, after one year of the death of the deceased. It was submitted by the learned lawyer for the Respondents that according to the report of the investigator of the Insurance Company which is Exhibit "D" the licence of the driver Rajendra Singh had been issued by Licensing Officer, Assam, and the certificate of office of District Transport Officer, Bhagalpur, which is Exhibit "C" has been filed by Insurance Company which shows that driving licence was not issued in the name of Rajendra Singh from the office of District Transport Officer, Bhagalpur, and therefore it cannot be inferred from the certificate issued by the office of District Transport Officer, Bhagalpur, that the driver had no valid licence. According to the report of the Investigator which is Exhibit "D", name of the driver was Rajendra Singh and issuing authority of licence was Licensing Officer, Assam. Exhibit "A" is a copy of insurance cover note issued by the National Insurance Company Limited, Bhagalpur, which shows the number of the vehicle as BEQ 635 and it covers the period from 27.5.1991 to 26.5.1992. Therefore, at the time of accident, that is, on 5.11.1991, the vehicle was covered by the insurance policy.

7. In the Court below six witnesses had been examined on behalf of the claimants. A.W. 1 Braj Kishore Yadav is one of the applicants of the case and father of the deceased and A.W. 6 Dayawati Devi is mother of the deceased. A.W. 1 Braj Kishore Yadav has stated that Ashok Kumar Yadav was his son, aged twenty six years, and he was unmarried and he was earning Rs. 1400/- to Rs. 1500/- per month by tuition. According to A.W. 6 Dayawati Devi, the mother of the deceased, the deceased was earning Rs. 1500/- to Rs. 2000/- per month by

tuition. A.W. 2 Chabi Nath Yadav has stated that he along with the deceased Ashok Kumar was going to Rajoun on separate bicycles and they were going on the left side of the road and when they proceeded beyond Khaira Turning, a bus bearing registration No. BEQ 635 came with high speed and hit the bicycle of Ashok Kumar as a result of which he fell down on the road and the vehicle ran over him and he died at the spot. According to A.W. 3 Basudeo Yadav, the deceased was giving tuition to the boys of the village and he was earning Rs. 1000/- to Rs. 1500/- per month. A.W. 4 Niranjana Prasad Singh has also stated that the bus with high speed hit Ashok Yadav as a result of which he died at the spot. According to A.W. 5 Kishori Prasad Singh also the vehicle was coming with high speed and hit Ashok Yadav who was going on the left side of the road and he died at the spot.

8. The accident had taken place on 5.11.1991 which had caused the death of the deceased. The said letter of appointment of the deceased as Assistant Teacher was issued on 2nd December, 1992. Initial pay at the time of appointment of Assistant Teacher was Rs. 1640/-. According to A.W. 1 Braj Kishore Yadav who is father of the deceased, at the time of death the deceased was earning Rs. 1400/- to Rs. 1500/- per month by tuition. According to A.W. 6 Dayawati Devi the mother of the deceased, the deceased was earning Rs. 1500/- to Rs. 2000/- per month by tuition. According to the age mentioned in deposition of A.W. 1 Braj Kishore Yadav, father of the deceased, the age of Braj Kishore Yadav was 61 years at the time his evidence and according to the age mentioned in the deposition of A.W. 6 Dayawati Devi, mother of the deceased, her age was 50 years at the time of her evidence.

9. The deceased was aged 26 years as stated by his father A.W. 1 Braj Kishore Yadav in his evidence. Taking into consideration the said earning of the deceased at the time of his death and the fact that after his death order for his appointment as Assistant Teacher on pay of Rs. 1640/- was issued on 2.12.1992 and his future earning had he been alive, his monthly income is taken as Rs. 1640/-. Therefore annual income of the deceased comes to Rs. 19680/- out of it 1/3rd of his income is deducted towards his personal expenses. Then the annual income comes to Rs. 13,120/-. The age of the father of the deceased was 61 years and the age of the mother of the deceased was 50 years at the time of their evidence.

10. Taking into consideration the age of the mother of the deceased the suitable multiplier is taken as 13. Therefore the amount of compensation comes to Rs. 1,70,560/-. Accordingly the amount of compensation awarded by the Court below is reduced to Rs. 1,70,560/- only.

11. With the above modification in the judgment and order passed in Claim Case No. 8 of 1992, by the Additional District Judge, V. Bhagalpur, this miscellaneous appeal is dismissed.