

(2009) 04 PAT CK 0072
In the Patna High Court

National Insurance Company Ltd.

APPELLANT

Vs

Bhagwat Bhagat and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Citation : (2009) 04 PAT CK 0072

Final Decision : Dismissed

Judgement

Ravi Ranjan, J.—Heard learned Counsel for the appellant as well as Respondents No. 1, 2 & 4. Other respondents have not appeared despite valid service of notices upon them.

2. This appeal is being heard and disposed of at this stage upon the joint requests made on behalf of the appearing parties.

3. The Appellant - Insurance Company, being aggrieved by the judgment and award dated 12.01.2006, passed by the 3rd Additional District Judge - cum - Claims Tribunal, East Champaran, Motihari in Claim Case No. 61 of 2003 (3 of 2004) whereby the Tribunal has allowed the aforesaid claim case in part and awarded total amount of compensation to the tune of Rs. 2,20,500/- along with interest at the rate of 6% per annum from the month of September, 2004 till the recovery of the same, has preferred this appeal.

4. The Appellant - Insurance Company assails the impugned judgment and award chiefly on two grounds. Firstly, that the vehicle in question was insured as a private vehicle but at the time of accident, the same was being used as passenger vehicle on hire in violation of the terms and conditions of the Insurance Policy concerned and, thus, the insurer was not liable to indemnify the owner, and, secondly, that the amount of compensation is at the higher side.

5. Shorn of unnecessary details, the short facts of the case are as follows:

The Jeep bearing registration No. RG 14-1C-6855 met with an accident on 13.06.2003 due to rash and negligent driving by the driver of the said vehicle

and it dashed one person, namely, Tulsi Ram, who died on the spot instantaneously. Due to the accident, the jeep also capsized towards western side of the road, as a result of which one Braj Kishore Dubey was also killed and other persons were injured.

6. On the basis of the aforesaid statement of one Madan Mani Tiwary, Ramgarhwa P.S. Case No. 75/03 under Sections 279, 337, 338, 304A I.P.C. was registered and on completion of investigation, Chargesheet No. 122/03 under Sections 279, 337, 338, 304A I.P.C. was submitted by the investigating agency.

7. The case of the claimants is that the victim Tulsi Ram was waiting for a vehicle near the Girls School, Ramgarhwa for returning home and, in the meanwhile, the aforesaid vehicle came being driven rashly and negligently and dashed the deceased Tulsi Ram, who died on the spot, leaving behind the claimants, who are father and mother of the deceased Tulshi Ram. It has been stated by the claimants that their deceased son was a labour and his monthly earning was Rs. 1800/-. The claimants claimed total amount of Rs. Five Lacs by way of compensation. It has come during the course of the claim case concerned that at the material time the vehicle in question was owned by Chiman Lal and the offending vehicle was insured with the Appellant - National Insurance Company Limited.

8. The case was contested by the Insurer - Appellant and the Opposite Parties No. 4 & 5 of the claim case, whereas the owner Chiman Lal filed a preliminary objection stating that the Respondent No. 4, Sharma Yadav was the owner of the vehicle as the vehicle was transferred in his name on 4.4.2003 itself and the incident took place on 13.06.2003. Opposite Party No. 4 - Respondent No. 4 filed a written statement stating therein that the vehicle was transferred to him on 29.08.2003. He has further stated in his written statement that the driver of the vehicle had a valid license and was driving the vehicle very carefully and it was the fault of the deceased Tulsi Ram that when he, under the influence of liquor, was walking across the roadside, came in front of the aforesaid jeep, and in order to save him, the aforesaid accident took place.

9. Opposite Party No. 5 - Respondent No. 5 also filed a written statement supporting the stand of the Opposite Party No. 4.

10. The Insurer - Company contested the proceedings by filing the written statement and raised certain objections, such as, the driver had no valid license at the time of accident and the owner of the alleged vehicle had deliberately handed over the vehicle to the driver, who had no valid license. Further, that the alleged vehicle was a private vehicle but, as per the First Information Report, the vehicle was carrying passengers in violation of the terms and conditions of the insurance policy and, thus, the insurer was not liable to indemnify the owner. It has also disputed the monthly income of the deceased and the amount of compensation awarded by the Tribunal. The Tribunal, in view of the above pleadings of the parties, framed the following issues:

- (i) Whether the claim case as framed is maintainable?
- (ii) Whether the claimants have got cause of action for filing present claim case?
- (iii) Whether the deceased Tulsi Ram had died on 13.6.03 in motor vehicle accident arising out of use of the offending vehicle jeep No. RJ 14-1C-6855 driving rashly and negligently by the driver as pleaded in the claim application?
- (iv) Whether the claimants are entitled to claim for compensation as claimed in their claim petition?
- (v) Whether the present claim case is not sustainable in view of objection as alleged by the O.Ps.?

11. On analysis of the materials and the evidence, oral as well as documentary, available on record, the Tribunal came to the conclusion that the deceased Tulsi Ram died instantly due to rash and negligent driving by the driver of the vehicle concerned. It has further been found that on the date of occurrence, the vehicle was standing in the name of Chiman Lal and, thus, he was declared as the owner of the offending vehicle but it was also found that the insurance policy was for a private vehicle. After deciding the aforesaid issues and holding the owner liable for the same, the Tribunal held that the owner is, of course, liable for the accident but, on account of contractual liability, the Insurance Company is vicariously liable to indemnify the owner at present and later on, according to the law, the insurer may proceed to recover the money paid to the claimant, if it is proved that the owner has violated the terms and conditions of the policy.

12. The Tribunal has further recorded the finding that the Claimant No. 1, who has examined himself as C.W.3, is the father of the deceased Tulsi Ram, and Claimant No. 2 is the mother of the deceased and, thus, they were found heirs and legal representatives of the deceased and also in view of the evidence on record, it was proved that they were dependent on the deceased.

13. The Tribunal further taking into account the various aspects including the age and earning of the deceased and also the age of the parents of the deceased as well as future prospect in respect of enhancement of wage, etc. has come to the conclusion that the multiplier of 15 would be the appropriate multiplier to work out the amount of compensation and, on the basis of the calculation, as per the structural formula provided in the Second Schedule for compensation for third party fatal accidents, it has come to the conclusion that Rs. 2,16,000/- would be just and appropriate amount of compensation and after adding Rs. 2000/- for funeral expenses and Rs. 2500/- for loss of estate, the total amount awarded by the Tribunal has come to Rs. 2,20,500/- along with interest at the rate of 6% per annum from September, 2004 till recovery of the award of compensation.

14. Learned Counsel for the appellant submits that the Tribunal has erred in not deciding the matter with regard to liability of payment of compensation finally. Submission on behalf of the appellant is that it is apparent from the F.I.R. that the vehicle, though insured as a private vehicle, was carrying passengers and,

thus, it could safely be held that it was being used for commercial purpose. In view of the aforesaid, it is submitted that this is a clear cut violation of the terms and conditions of the insurance policy concerned. Thus, the Insurer - Company was not liable to indemnify the owner.

15. Learned Counsel for the appellant drew the attention of the Court towards deposition of C.W.1, Krishna Prasad, as stated in his examination-in-chief that the offending vehicle loaded with passengers was coming from Raxaul. In view of the above, the submission is that since the offending vehicle was not insured as commercial vehicle but was being used as such at the material point of time, the Insurance Company was not liable for payment of compensation, rather, the owner should have been saddled with such liability in terms of Section 149(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

16. Learned Counsel for the appellant relies upon a decision of the Apex Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , wherein, according to him, it was held that in view of the violation of the terms by the owner of the vehicle, High Court was not justified in holding the insurer liable.

17. Learned Counsel appearing on behalf of respondents No. 1 & 2 submits in reply that the question as to whether the Insurance - Company was liable or not has been left open by the Tribunal and an opportunity has been given by the Tribunal to raise this question at the relevant time after indemnifying the owner. The Tribunal has held in paragraph 16 of the judgment that due to contractual liability the insurer is vicariously liable to indemnify the owner at the present and subsequently it is free to recover the money paid to the claimant from the owner, if it is proved that he had violated the terms and conditions of the policy.

18. Learned Counsel for the Respondents No. 1 & 2 has also placed his reliance upon the aforesaid decision of the Apex Court National Insurance Co. Ltd. v. Challa Bharathamma and Ors. (supra). In paragraph 13 of aforesaid judgment of the Apex Court, the Apex Court took notice that in some cases the insurer has been given the option and liberty to recover the amount from the insured. It has been held therein that for the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit; rather, it may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal. It would be apt to quote the relevant passage from the aforesaid judgment of the Apex Court, which is as under:

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of

determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, i.e., the insured. In the instant case considering the quantum involved we leave to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

19. The Claims Tribunal has dealt with this issue in following manner in the impugned judgment:

16. One thing is very important to note here that the learned Counsel for the insurer has contended before this Tribunal that the insurer is not liable because the offending vehicle was not registered in the name of Chiman Lal and the offending vehicle was insured for private use only.

So far ownership of the vehicle is concerned I have already discussed that the offending vehicle was standing in the name of O.P. No. 3 Chiman Lal on the date of occurrence and he was registered owner and insurance policy is also in his name. So far policy for private vehicle is concerned I am of the view that this plea is not sustainable so far the claim of the claimants is concerned because 3rd party is not knowing that the vehicle is registered in whose name and it is insured or not and if insured in whose name. So, owner O.P. No. 3 is of course liable for accident but on account of contractual liability the insurer is vicariously liable to indemnify the owner at present and later on according to law insurer will proceed to recover the money paid to the claimants if it is proved that the owner had violated the term and condition of the policy for which the insurer will have to proceed in accordance with law and not at present matter will be decided....

20. In view of the judgment of the Apex Court in National Insurance Co. Ltd. v. Challa Bharathamma and Ors. (Supra), it would not be proper for this Court to disturb the findings of the Claims Tribunal since the Insurance Company has already been granted opportunity to raise this issue with the owner of the vehicle at the appropriate time and stage.

21. Considering the beneficial object of the Act, it would be proper for the Insurance Company to satisfy the award for the present and, if it wants to contest the question of liability of payment of compensation, it may raise this issue and proceed to recover the same from the owner of the vehicle in appropriate proceeding in accordance with law as such liberty has already been granted by the Claims Tribunal.

22. Learned Counsel for the appellant, next, contests the amount of compensation granted by the Claims Tribunal and submits that the amount of compensation awarded by the Tribunal is an excessive amount in the facts and circumstances of the case. Learned Counsel submits that though u/s 149(2) of the Act the Insurance Company can raise the objections which are allowed to be raised therein, which do not include challenging the compensation amount, but in the present case, leave has been granted by the Tribunal to the Insurer Company u/s 170 of the Act to contest all or any ground without prejudice to the provision contained in Sub-section (2) of Section 149 of the Act.

23. In support of his submission learned Counsel for the appellant relies upon Annexure-3, which is a copy of the order dated 25.08.2005, passed by the Claims Tribunal concerned, whereby a petition of the Insurance Company filed u/s 170 of the Act has purported to have been allowed. Learned Counsel further submits that the Claims Tribunal has merely considered the age of the deceased whereas it could have considered all the relevant aspects including the age of the claimants for the purpose of determining the appropriate multiplier for the purpose of determining the amount of compensation, as per Second Schedule under the Act.

24. Learned Counsel for the appellant places reliance upon a decision of the Supreme Court in Ramesh Singh and Another Vs. Satbir Singh and Another, , wherein the Apex Court has held that merely the Second Schedule is not to be used for referring to the age of victim and fixing compensation etc. but other factors relevant therefore including the short life expectancy of the claimants should also be taken into consideration and, thus, the Apex Court has refused to raise the compensation amount with regard to death of a minor.

25. Learned Counsel appearing on behalf of the respondents No. 1 & 2 submits that in the present case the Claims Tribunal has considered almost all the aspects including the age of the victim, the earnings of the victim, age of the claimants and also the future prospect in respect of enhancement of wage as well as the price index and, thus, has come to the conclusion that "15" would be the appropriate multiplier in determining the compensation amount. Learned Counsel further contends that in the aforesaid decision, the Apex Court was considering the death of a minor in the accident, who was a non-earning member, whereas in the present case, it has been held by the Tribunal that the deceased was an earning member and the claimants were dependent upon him and, therefore, has almost considered all the aspects of the matter. Further submission is that the Apex Court in other decisions even in the case of death of minors of 13 years of age has held that Rs. 15,000/- per annum would be a notional income and multiplier of 15 would be an appropriate multiplier. For the aforesaid purpose, he places reliance upon the decision of the Apex Court in Manju Devi and Anr. v. Musafir Paswan and Anr. reported in 2003 (2) PLJR 120 (SC). He also places reliance upon a few other decisions with regard to minor. However, the same would not be relevant consideration here because this is not a case with respect

to death of a minor, rather it is a case of death of an earning member, whose earning has been found to be Rs. 60/- per day by the Claims Tribunal. Learned Counsel for the appellant could not show any reason which may lead to upsetting the aforesaid findings of the Claims Tribunal.

26. Thus, I am of the view that the compensation awarded by the Claims Tribunal is just and proper and requires no interference by this Court. Hence, this appeal is devoid of any merit.

27. As a result, this appeal is dismissed, however, without any order as to costs.