
(2001) 07 PAT CK 0091

In the Patna High Court

Case No : Misc. Appeal No. 356 of 1995

National Insurance Company Ltd.

APPELLANT

Vs

Giribala Singh and Others

RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

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

Citation : (2001) 2 AnWR 421 : (2001) 2 BLJR 1540 : (2001) 3 PLJR 463

Hon'ble Judges : Someshwer Nath Pathak, J

Bench : Single Bench

Judgement

Someshwer Nath Pathak, J.—This Miscellaneous appeal has been preferred by the National Insurance Company against the award passed by the Additional District Judge-IV cum-Claims Tribunal in Claim Case No. 3 of 1987. The Insurance Company has not challenged the quantum of award granted to the claimants of the claim case. It has simply maintained in the appeal that its liability is limited only upto Rs. 50,000/-, as per Section 95(2)(v)(i) of the Motor Vehicle Act, 1939.

2. In substance, the wife, minor sons and widowed mother of deceased Surendra Kumar Sinha had filed the claim case, alleging therein that the deceased who was riding a Motorcycle was knocked down by trekker bearing Regd. No GHY 1882 driven by O.P. No. 2. An application being preferred by those claimants, the Tribunal, on contest, by all the parties to the case, gave an award of Rs. 3,00,000/- (three lacs) with interest @ 9%, if the amount is paid within three months from the date of order and 12 per cent, if not paid within that period. The Tribunal also held the owner, the driver and the Insurance Company all jointly liable for payment of the award money.

3. Before me, the appellant-Insurance Company confined its appeal to the extent of its liabilities under the statute. The owner of the trekker, respondent No. 5 contested this appeal and its main grievance was that the entire amount of award was to be paid by the Insurance Company and the plea of limited liability

was not sustainable because the Insurance Company failed to file the copy of the Insurance Policy in the trial Court.

4.I find that admittedly the copy of the policy of the respondent No. 5 was filed by either of the parties to the claim case. However, it was none of the duties or responsibilities of the claimants to file the copies of the Insurance Policy, because they are not supposed to be in possession of the same nor they were expected to obtain it without untold hardship and inconvenience. Normally, it is the liability of the owner to pay the compensation amount to the dependents of the deceased, unless the Vehicle is insured. Of course, if the vehicle is insured, the liability to pay the combination amount shifts to the Insurance Company; but the moot question in the instant case was as to whose onus it was to produce and prove the Insurance Policy in the trial Court. In the instant case, the owner and the Insurance Company, both appeared and contested the claims case. The Insurance Company took the plea that its liability was limited by virtue of statute itself because the accident took place during the period when the M.V. Act 1939 was in force. So, when the owner had appeared, and he was taking the plea of shifting entire liability of payment to the Insurance Company, in spite of the statutory limit fixed by the statute, it could not shift its liability or onus to produce the Insurance Policy in order to show that it covered unlimited liability upon the Insurance Company. In a case reported in 1995 A.C.C. 668, it has been held by the Hon'ble Supreme Court presided over by Hon'ble the Chief Justice and some other Hon'ble Judges that even if the Insurance Policy is a comprehensive one, there should be a separate agreement for unlimited liability on the part of the Insurance Company. The Hon'ble Court held like this:

Comprehensive Policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto estimated value of the vehicle. It does not mean that the limit of liability with regard to 3rd party risk becomes unlimited or higher than the statutory liability u/s 95(2)(b)(i) & (ii) of the M.V. Act, 1939.

So, the liability of the Insurance Company cannot go beyond the statutory limit covered by the policy. In the instant case, the owner of the vehicle had appeared and he was also examined as O.P.W. 1, Ram Pravesh Singh (respondent Nos. 5 & 6). This witness said that all the papers, such as, owner book, tax token, road permit, etc. as also the Insurance papers were with him. He had filed photostat copies of the same in Court. On 4th December 1986, his vehicle was very much insured with the National Insurance Company. He had also filed photo copy of the aforesaid policy. However, it is to be mentioned that in the lower Court, the owner of the vehicle had simply filed the cover note (Ext-A) of the policy. It had not filed the Insurance Policy. Perhaps, it failed to file the Insurance Policy in order to avoid the fact that premium paid for 3rd party risk was only for limited liability upon the Insurance Company and not unlimited. Of course, the Insurance Company also failed to file the policy. However, in this appeal, schedule of the policy has been filed by the Insurance Company. This schedule shows and refers

to the same Insurance policy number in favour of Ram Pravesh Singh. So, I think this schedule (Annexure-1) which was filed with the Memo of appeal could very well be used by this Court, because it is the photo stat copy of the Insurance Policy, duly certified by some authorities of the Company.

5. The schedule shows that 8 passengers and one crew of the concerned trekker were insured. Under the head schedule of premium, I find that an amount of Rs. 120/- was paid for 3rd party risk and an amount of Rs. 96/- for 8 passengers @ Rs. 12/- was paid, Rs. 8/- was paid for risk of the crew (one). So it is apparent that limited liability was covered by the concerned policy; so far the risk to 3rd party (other than the passengers and the crew) was concerned. It was submitted before me by the appellant's lawyer in this connection that since the Insurance Company had not filed the entire policy, this schedule was not reliable. In this connection, I am of the opinion that it is the schedule which covers the payment of premium and the persons insured and so non-filing of the entire policy which would refer to terms and conditions will not mean that the liability of the Insurance Company was unlimited. Besides the above, by referring to this Schedule (Annexure-1 to the Memo of appeal), it was submitted by the appellant's lawyer the figure "120" appeared against the head, limited liability of the passengers and the other figures, i.e. "96" and "8" also appeared against other heads, but the contention of the appellants' lawyer does not appear to be convincing. This is so because under the heading "Schedule of Premium" in the right side, there are five heads. The first of the headings; is mentioned as "B-Liability with public risk" and thereafter other heads appeared which referred to limited liability to driver and cleaner and then there is a head, 3rd party limit. So, apparently there are 4 heads and the figures against these heads are only three. So, the figure typed (photo stat copy of course), would be counted from the lot head which would refer to liability to "Public risk" and calculated on this basis, the figure "120" will refer to public risks (the 3rd party), I find that there is no figure against the head "3rd party limit, Figures "96" and "8" would be treated to be against the heads "passengers" and "driver" etc.

6. On the discussions of facts, as stated above, it is apparent that the liability of the Insurance Company was limited as per the premium paid. So, I am of the opinion that the appellant was liable to pay Rs. 50,000/- (fifty thousand) only with 9 per cent of interest. The rest of the compensation amount, with interest, was to be paid to the claimants by the owner of the vehicle (respondent No. 5).

7. In this appeal, cross-objection was filed by the claimant through which it was submitted that they had claimed compensation amount of Rupees six lacs and odd Whereas the Tribunal awarded only Rupees three lacs. They have also claimed an amount of Rs. 30,000/- for loss of consort whereas the Tribunal has awarded only Rs. 15,000/-. However, I am of the opinion that the Tribunal came to the conclusion on the basis of evidence and fixed the amount of compensation upon the discussion of the entire gamut of evidence. So, I am not inclined to modify the amount of compensation nor there is any justification for the same.

So, the cross-objection is rejected.

8. Although the appellant had challenged the entire award, but the appellant's lawyer during the course of argument, confined himself to the extent of liability of the Insurance Company. So, this appeal is dismissed in part and allowed in part.