(2014) 01 JH CK 0025

In the Jharkhand High Court

Case No : M.A. No. 305 of 2008

National Insurance Company Ltd. APPELLANT

Vs

Imrana Khatoon RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Citation : (2014) 1 JLJR 409

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : A.K. Lal, Advocate for the Appellant; R.P. Gupta, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Dhrub Narayan Upadhyay, J.—The present Miscellaneous Appeal has been preferred by the National Insurance Company Ltd. against the Judgment/Award dated 16.4.2008 passed by the learned District Judge-cum-Motor Vehicle Accident Claims Tribunal, Seraikella in connection with Compensation Case No. 22 of 2006, whereby the learned Tribunal has directed the appellant Insurance Company to pay Rs. 5,21,500/- as compensation to the claimants/R-1 to R-6. Out of the said total compensation amount, Rs. 50,000/- was paid by way of interim compensation and therefore, balance compensation amount of Rs. 4,71,500/- with interest @ 9% per annum from the date of institution of the application was directed to be paid to the claimants. The brief facts behind the institution of claim application was that the deceased alongwith two other persons had proceeded on motorcycle from Bihar Sponge Iron Limited, Chandil towards, Jamshedpur. When the deceased reached near Bhadudih village, vehicle bearing registration No. NL-01D-1458 came from behind being driving rashly and negligently and dashed the motorcycle, as a result the deceased sustained injuries and died at the spot.

2. It is submitted by the appellant that it was a case of contributory negligence and the claimants have not made the owner and insurer of said motorcycle as a

party to the claim petition. Furthermore the owner of offending vehicle bearing registration No. NL-01D-1458 has not produced valid driving license of the driver, namely, Jay Kumar Mahto. The driving license produced by Jay Kumar Mahto was not genuine and it was not issued from the office of District Transport Office, Hazaribagh which came on record after verification by the Investigator of the Insurance Company. The learned Tribunal has wrongly fastened the entire liability on the appellant Insurance Company which is incorrect. Since the owner and driver of the offending vehicle have not proved that the driver was having valid license- to drive the vehicle, right to recover the compensation amount should have been given to the appellant Insurance Company. The learned Tribunal has not decided this issue as to whether the driver of offending vehicle was having valid license or not and the report submitted by the Investigator was not properly considered.

3. After service of notice respondents No. 1 to 6/claimants have appeared but R-7 Jitendra Prasad Dhrivedi, R-8 Jay Kumar Mahto, driver of the vehicle have not appeared even after substituted service of notice published in the local newspaper.

4. The counsel appearing for R-1 to R-6/claimants has submitted that the matter of giving recovery right is between the owner, driver and the Insurance Company for which they should not suffer.

5. I have gone through the impugned judgment and the memo of appeal. The amount of compensation has not been challenged, rather the Insurance Company has challenged the impugned judgment on two counts i.e. (i) it is a case of contributory negligence, and (ii) the owner and the driver of the offending vehicle have failed to prove valid driving license.

From perusal of the impugned judgment it is evident that the Tribunal has discussed the issue relating to contributory negligence in detail and has come to a conclusion that it was not a case of contributory negligence because the motorcycle on which the deceased was moving was dashed from behind and it was a case of run over. In that view of the matter, I am not inclined to accept that point as argued in this appeal and the finding of the Tribunal is hereby upheld. So far as another issue is concerned whether R-7 was having valid license or not and whether right to recover the compensation amount from R-8 to appellant is to be given or not, I feel it desirable to remand this issue to be decided by the Tribunal, but subject to the condition that claimants shall not suffer and they shall not be harassed. They shall be considered as proforma opposite party in the case of remand, it is further made clear that the appellant Insurance Company shall satisfy the awarded amount in the terms indicated in the impugned judgment and the awarded compensation amount with interest up to date shall be paid to the claimants within 90 days from today.

6. With these observations and modifications, the appeal stands partly allowed. The appellant Insurance Company is given liberty to withdraw the statutory

amount of Rs. 25,000/- subject to the condition of final payment of the awarded compensation amount.

