(2020) 05 JH CK 0093

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 248 of 2014

National Insurance Company Ltd. APPELLANT

Vs

Mantu Mahato And Ors RESPONDENT

Date of Decision : 28-05-2020

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 9, 17, 131, 132, 137
Bihar Motor Vehicle Rule, 1992 — Rule 18
Constitution of India, 1950 — Article 141, 142

Citation : (2020) 05 JH CK 0093

Hon'ble Judges : B.B. Mangalmurti, J

Bench : Single Bench

Advocate : Alok Lal, Santosh Kumar, T.N. Mishra, Namita Sahay

Final Decision : Allowed

Judgement

B.B. Mangalmurti, J

1. Instant Miscellaneous Appeal has been filed against the judgment and award dated 11th April, 2014 passed by Dr. Sanjay Kumar Chandhariyavi, District Judge-III-cum-Motor Accident Claims Tribunal, Jamshedpur in Compensation Case No.105 of 2012 due to death of Gashi Ram Mahato in the road accident by which National Insurance Company is directed to draw account payee cheque for 85% of the compensation amounting to Rs.3,95,000/- in the name of Charu Devi who would receive this cheque also on behalf of minor Jantu Mahato and Santu Mahto and another cheque for 15% of compensation amount in the name of Mantu Mahato. All cheques should be drawn with up to date interest @ 9% per annum and it should be handed over to the applicants within 30 days of this order.

2. Learned counsel for the appellant-Insurance Company submitted that the Court below without appreciating the evidence available on record and applying incorrect method of computation of compensation under the Motor Vehicles Act awarded a sum of Rs.3,95,000/- Learned counsel further submitted that accident has been caused due to head on collision between tanker and tractor. The

deceased was stated to be a Khalasi on the tractor which was dashed by tanker carrying hazardous goods (Kerosene Oil) causing death of Gashi Ram Mahto. He further submitted that it is a case of composite negligence. The driver of tanker was not having valid and effecting driving license. Learned counsel submitted that according to Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989 any person driving vehicle carrying hazardous goods must have additional endorsement on his driving license. Driving license brought on record by the claimant does not bears any endorsement to drive hazardous goods. A person driving vehicles containing hazardous liquid must hold license with authorization by the licensing authority to drive such category of vehicles within the meaning of Rule 137 of Central Motor Vehicles Rules, 1989. Learned Tribunal has failed to appreciate the law in respect of driving license according to Motor Vehicles Act and Rules and as such finding of Tribunal is vitiated in the eye of law and liable to be set aside. He relied on a decision of Divisional Manager, New India Assurance Co. Ltd., Hubli Vs. Shabana reported in 2018(0) Supreme (Kar) 783 and United India Insurance Co. Ltd. Vs. Lila Ben & Others reported in 2014(4) TAC 525 (Guj.). Learned counsel for the appellant submitted that various High Courts in the similar fashion passed the order like the case of Nagamani & Another Versus Singaravelu & Another reported in 2009 Supreme (Mad) 1679. Learned counsel for the appellant submitted that a direction given by the Hon'ble Supreme Court under Article 141 of the Constitution cannot be considered as laid down by the High Court. The Hon'ble Court might have granted relief in the operative part of judgment exercising power under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. He relied on a decision of State of Punjab & Others Versus Rafiq Masih reported in 2014 AIR SCW 6256. Learned counsel submitted that in relation to pay and recover, that order cannot be passed in this case as the provisions of Rules 9, 17, 131 and 132 of Motor Vehicle Rules, 1989 have not been complied by the owner of vehicle meant for carrying hazardous goods, therefore, the law cannot be fastened upon the Insurance Company. Reference of Rule 18 of Bihar Motor Vehicle Rule, 1992, the driving license cannot be said to be valid and effective in the absence of endorsement for carrying hazardous goods by the owner of vehicle.

Learned counsel for the appellant submitted that driving license to drive the heavy motor vehicle is issued for a period of three years whereas as per the Rules 9, 17, 131 and 132 of Motor Vehicle Rules, 1989 provides for endorsement for carrying and transporting hazardous goods is issued for a period of one year only and before renewal of license one refresher course is to be attended by the driver, therefore, in these circumstances, the driver was not having a valid license to drive the vehicle for carrying and transporting the hazardous goods. Apart from it, the owner did not take insurance policy under Public Liability

Insurance Act, 1991. In this circumstance, the owner has not taken proper insurance policy as well as the driver was not having valid license to drive the vehicle for carrying hazardous goods. The Tribunal has erred in ignoring these provisions. In these circumstances, learned counsel submitted that no liability can be fastened upon the Insurance Company to pay the awarded amount.

3. Learned counsel for respondents submitted that the respondents are the claimants who are the sons of deceased Gashi Ram Mahato and wife of deceased Charu Devi has already died. He submitted that Insurance Company is liable to pay the awarded amount directed by the Court below. Learned counsel for the appellant submitted that in the case of New India Insurance Company Versus Nebura Devi & Others reported in (2011) ACJ 772 Hon'ble Supreme Court has held that in the case of death of third party it is mandatory for the Insurance Company to make payment of compensation and Insurance Company cannot escape from the liability on the ground that vehicle carrying hazardous goods for which no extra premium was paid to Insurance Company. He further submitted that it has been held by Hon'ble Jharkhand High Court in the case of United India Insurance Company Versus Usha Kiran Sharma reported in (2003) 4 JLJR 475 that if a driver was not having valid driving license still the driver would be legally capable to drive the vehicle.

He also submitted that no iota of evidence has come on the contributory negligence so no onus lies on the claimant/respondents and Insurance Company has also not produced any evidence regarding contributory negligence. In the case of Meera Devi & Others Versus H.R.T.C. & Others reported in (2014) SAR (Civil) Hon'ble Apex Court has held that to prove contributory negligence there must be cogent evidence. In the absence of a cogent evidence to prove the contributory negligence the doctrine of common law cannot be applied.

4. Considering the above submissions of the parties and on perusal of the judgment placed on behalf of appellant as well as on behalf of respondents, it appears that the admitted facts are that the father of respondent was Khalasi of truck and returning home on tractor. The tractor met with an accident with tanker bearing no.BR-16D-0922 and deceased got injuries and died during course of treatment. The charge sheet was submitted only against the driver of tanker and no charge sheet was submitted against driver of tractor. Due to this accident, the tanker turned turtled and caught fire as it was transporting Kerosene Oil. From impugned judgment, it appears that the Insurance Company took plea that the owner of vehicle vitiated the terms and conditions of the Insurance Policy as firstly it was a case of contributory negligence so both owner of vehicles should be held liable and secondly the driver of tanker was not having endorsement on his license for carrying hazardous goods nor was there endorsement of PSV so there is violation of terms and conditions of Insurance Company also. The Court below did not discuss or gave finding on it but considered the judgment of Hon'ble Supreme Court. The Court below relied on a decision of Hon'ble Supreme Court in the case of New India Insurance Company

Versus Nebura Bibi & Others (supra) and held that Insurance Company cannot escape from the liability on the ground that the vehicle was carrying hazardous goods for which no extra premium was paid to the Insurance Company. So the Court below even finding that the driver was not having endorsement on his driving license, a vehicle carrying hazardous goods, the liability was fixed upon Insurance Company as the insurance policy was valid at the time of accident. The Court below after taking account of income of deceased, passed the award directing the appellant-Insurance Company to make payment with interest @ 9%. In this case, the owner or driver did not appear before the Tribunal in spite of several steps taken by them. They also did not produce any document showing compliance of mandatory provisions of law in relation to transportation of hazardous goods. In these circumstances, it is held that the driver at the relevant time was not having a proper driving license to drive the vehicle carrying hazardous goods. Therefore, in such circumstances, Insurance Company cannot be fastened with liability of payment of the awarded amount. Although the awarded amount may be realized from the owner of tanker.

5. With these observations and directions, instant appeal is allowed setting aside the portion of award dated 11th April, 2014 passed by Dr. Sanjay Kumar Chandhariyavi, District Judge-III-cum-Motor Accident Claims Tribunal, Jamshedpur in Compensation Case No.105 of 2012, by which the payment has been ordered to be made by the Insurance Company.

6. The Insurance Company is allowed to withdraw the statutory amount.

7. I.A. No.4407 of 2015 stands closed.

