(2010) 05 PAT CK 0044

In the Patna High Court

National Insurance Company Ltd. APPELLANT

Vs

Most. Sugandhi Devi and Others RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0044

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—Heard the learned Counsel for the parties under Order 41 Rule 11 C.P.C.

2. This appeal is being disposed of at the admission stage itself,

3. The National Insurance Company Ltd. appellant, tiled the present appeal against the Judgment sand Award dated 22.6.2005 and 1.2.2005 respectively passed by Sri Sanjay Kumar. 4th Additional District Judge-Cum- Motor Accident Claim Tribunal, Motihari in Claim Case No. 34/2000 / 6/04 whereby and thereunder the learned court below has directed the appellant to pay Rs. 1,27,000/- after deducting Rs. 50,000/- as ad-interim compensation. The tribunal also directed to pay the compensation with interest at the rate of 6% per annum from the date of filing of the case till the payment.

4. The claimants respondents no, 1 to 5 filed the claim application alleging that on 27.2.2000 the deceased Sachida Nand Mishra was going on the tractor bearing Registration No. BR-05A/9773 from Motihari to Mananpur. In the way the tractor turned turtle as a result of which Sachida Nand Mishra received serious head injury and ultimately died on 29.2.2000. At the time of accident the owner Dhrub Narayan Mishra was driving the tractor rashly and negligently. The owner is respondent No. 6 in this appeal. It is alleged that the deceased was aged about 35 years and was supervisor in Premier Markentile Company, Kolkata. He was earning Rs. 4000/- per month.

5. The respondent No. 6 was O.P. No. 1 in the court below, appeared and filed contesting written statement against the claim of the claimants. He admitted that

he was driving the tractor at the time of accident. He also admitted the manner of accident. According to him due to mechanical fault the accident took place. He has filed the driving licence. It is stated by him that the tractor in question was insured with the National Insurance Company Ltd. As such the Company is liable to pay the compensation.

6. The appellant, the National Insurance Company Ltd. was O.P. No. 2, filed contesting written statement and stated that the owner has violated the terms of the policy. The vehicle was being plied without displaying any registration number.

7. On the pleadings the learned Tribunal framed issues and after trial passed the impugned Judgment and Award.

8. The learned Counsel for the appellant submitted that it is the case of the appellant which is admitted by the parties that the deceased was traveling on a tractor. It is not the case of either the owner or the applicants that at the time of the accident the tractor was being used for agricultural purposes. According to the claimants itself it was driven by the owner and the deceased was sitting on the tractor as a passenger. Therefore, according to the learned counsel the Insurance Company Ltd. is not liable at all to indemnify the owner. The learned Counsel submitted that at best it can be said that the deceased was a gratuitous passenger on the tractor.

9. On the other hand, the respondent No. 1 contended that since the tractor was insured with the Insurance Company, therefore, Insurance Company is liable to pay. It may be mentioned here that no body appears on behalf of the owner, respondent No. 6.

10. The Hon''ble Supreme Court in Civil Appeal No. 1718 of 2007/S.L.P. (c) No. 3900/2006 (Oriental Insurance Company Ltd. v. Natthi Bai) in similarly situated case has held that indisputedly the tractor was to be used only for agricultural purpose and not for carrying any passenger. In that very case referring to the decisions of the Hon''ble Supreme Court reported in National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, and New India Assurance Co. Ltd. Vs. Vedwati and Others, the Hon''ble Supreme Court has held that the liability of the insurer would be limited to a 3rd party and not to a gratuitous passenger. In this very decision the Hon''ble Supreme Court has also held that the passenger referred to the Insurance Company covered evidently would mean the driver of the tractor and not any passenger who can travel on the mudguard of the tractor. There would not be any seat for a passenger on the tractor which was to be used for agricultural purposes. Before the Hon''ble Supreme Court it was contended that in view of the Motor Vehicles Amendment Act, 1994 "any other person" would also be covered under the Insurance Policy to which the Hon''ble Supreme Court did not accept.

11. In United India Insurance Company Limited Vs. Serjerao and Others, The Hon''ble Supreme Court at paragraph 8 relying upon the earlier decision of the Hon''ble Court in Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, held that

the Insurance Company has no liability regarding labourers traveling in trollies is concerned.

12. In decision reported in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, the Hon''ble Supreme Court has held that inspite of the amendment of 1994 the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of Insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, specially gratuitous passenger, who were neither contemplated at the time of contract of insurance was entered into, nor any premium was paid to the extent of benefit of insurance to such category of people. In another decision reported in New India Assurance Co. Ltd. Vs. Asha Rani and Others, the Hon''ble Supreme Court while considering this aspect of the matter reiterated that carrying of passenger in a goods carriage is not contemplated under the 1988 Act. As the provision of 1988 Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in goods vehicle, insurer would not be liable. Therefore, in the present case at our hand, it is admitted fact that the vehicle involved is a tractor which is used for agricultural purposes only. It is not the case of the applicant or the owner that it was used for other purposes also. It is also admitted case that the deceased was traveling on the tractor. In what capacity he was sitting on the tractor is not disclosed. Only the submission is that he was traveling and, therefore, at best he was a gratuitous passenger. In the various decisions of the Hon''ble Supreme Court referred to above it has been clearly held that the insurance company is not liable to pay the compensation in the case of gratuitous passenger. Moreover, the Hon''ble Supreme Court in the above referred decisions of Nathi Bhai has clearly held that the Insurance Company is not liable to pay compensation for the passenger traveling in a tractor.

13. In view of the above said decisions it appears that the present case is squarely covered by the settled principles of law laid down by the Hon''ble Supreme Court.

14. From perusal of the impugned Judgment it appears that the learned Tribunal has not at all considered this aspect of the matter that the deceased was traveling on the tractor which was being driven by the owner. The Tribunal has fasten the liability on the Insurance Company, the appellant, only on the ground that the tractor was insured with the appellant Company.

15. In view of the above discussion I come to the conclusion that the deceased was traveling as gratuitous passenger on the tractor and, therefore, the Insurance Company, the appellant. is not liable to pay the compensation awarded by the learned tribunal. In view of the above finding the Judgment and award passed by the learned Tribunal is hereby modified to the extent that the claimants may recover the awarded amount from the owner of the vehicle. The

statutory amount deposited by the appellant Rs. 25,000/- may be returned to the appellant.

16. So far quantum is concerned no arguments were advanced.

17. In the result, this Misc. Appeal is allowed and the Judgment and Award are modified to the extent indicated above.