(2007) 07 JH CK 0048

In the Jharkhand High Court

Case No : M.A. No. 179 of 2005

National Insurance Company Ltd. APPELLANT

Vs

Payal Choudhary and Others RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Citation : (2008) 56 BLJR 444 : (2009) 1 JCR 488

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Advocate : Manish Kumar, for the Appellant; D.C. Ghose, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. Manish Kumar, learned Counsel for the appellant-National Insurance Company Ltd. and Mr. D.C. Ghose, learned Counsel for the United India Insurance Company Ltd.

2. The claimant-Respondent filed an application for grant of compensation on account of death of one Indu Devi in a motor vehicle accident. The facts of the case are that the deceased was travelling on a Maruti Van, bearing Registration No. BR-12A/2244 and while coming towards Dumka, it was dashed by a Truck, bearing Registration No. - WB-39-0367, as a result of which, the deceased sustained severe injuries and ultimately died. The Maruti Van was insured with the appellant-Insurance Company, whereas, the Truck was insured with the Respondent-United India Insurance Company Ltd. The Tribunal recorded a finding that the accident took place due to rash and negligent driving of both the vehicles. Consequently, the amount of compensation was apportioned between the two Companies equally.

3. Mr. Manish Kumar, learned Counsel appearing for the appellant, assailed the impugned award mainly on the ground that the compensation amount has not been apportioned in between the two Insurance Companies considering the fact that the vehicle in which the deceased was travelling, was a Maruti Van and it

was the Truck, which dashed Maruti Van.

4. Mr. D.C. Ghose, learned Counsel appearing for the Respondent-United India Insurance Co. Ltd. on the other hand submitted that no evidence was led by the appellant-Insurance Company or the owner of the vehicle in support of the fact that the Driver of the Truck was only negligent. According to the learned Counsel, the Tribunal has rightly apportioned the compensation amount in between the two Insurance Companies.

5. We have perused the judgment passed by the Tribunal. In Para 12 of the judgment, the Tribunal noticed the fact that both the vehicles were coming from the same direction and the back portion of both the vehicles dashed to each other, due to which, the Maruti Van got fire and it burnt completely. The Tribunal further considered the evidence and found that the back portion of the Truck also burnt in this accident. According to the Tribunal, therefore, it is a case of composite negligence committed by the Drivers of both the vehicles.

6. Even if there is no evidence adduced by the Insurance Companies, in the instant case, we are of the view that the principle of res ipsa loquitur will apply and both the Drivers shall be held negligent for the accident occurred on the said date. Now, the only question is as to what should be the compensation payable by both the Companies. It is well-settled that if an accident takes place due to collusion of two vehicles, in which one is a heavier vehicle and another is a lighter vehicle, then normally the liability is fixed upon the heavier vehicle. However, in the instant case, it appears that not only the portion of the Maruti Van was burnt but also the Truck was burnt and it itself suggests the composite negligence of both the Drivers. In such circumstances, apportionment of liability at the ratio 75:25 % shall be justified. In the case of reported in 1986 (1) TAG 115 in which the vehicles were a Taxi and a Bus, the Court apportioned the liability of 25 per cent and 75 per cent. In our view, therefore, the insurer of the Maruti Van is liable to pay the compensation to the extent of 25 per cent of the compensation amount awarded by the Tribunal. The rest 75 per cent amount shall be paid by the Respondent-Insurer of the Truck.

7. For the reason aforesaid, this appeal is allowed in part and the operative portion of the compensation amount is modified to the extent that the liability of the insurer of the Truck vis-a-vis the insurer of the Maruti Van shall be 75 per cent: 25 per cent.

8. It appears that in compliance of the interim order, passed by this Court, the appellant-Insurance Company had deposited 25 per cent of the compensation amount before the Tribunal as submitted by Mr. Manish Kumar, learned Counsel appearing for the appellant. We, therefore direct the Insurer-Respondent to pay the rest 75 per cent by tendering cheque.