(2014) 02 PAT CK 0016

In the Patna High Court

Case No : Miscellaneous Appeal No. 78 of 2006

National Insurance Company Ltd. APPELLANT

Vs

Ram Prasad Yadav RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 158(6), 166

Citation : (2014) 3 ACC 194

Hon'ble Judges : A.K. Lal, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, Advocate for the Appellant; Sunil Kumar Gupta and Randhir Kumar Singh, Advocate for the Respondent

Judgement

A.K. Lal, J.—This appeal is directed against the judgment and award dated 30th September, 2005 and 9th December, 2005 passed by the Motor Vehicles Accident Claims Tribunal-cum 1st Additional District Judge, Bhagalpur in Claim Case No. 95 of 2002 by which the appellants has been directed to pay the amount of compensation to the claimants. The claim application was filed under Section 166 of the Motor Vehicles Act on account of the death of Dabloo Yadav, aged about 21 years, the son of the claimant in the road accident on 15th May, 2000 at about 5 p.m. due to rash and negligent driving of a bus bearing Registration No. 10-A 2786. Later on by amendment it has been mentioned as bus No. BR-IP 2786.

2. The written statements were filed on behalf of opposite party No. 1, owner of vehicle (respondent No. 3) and also opposite party No. 3, National Insurance Company Ltd. (appellant).

3. In the written statement filed by the owner of the vehicle it has been stated that offending vehicle BR-1P 2786 was insured by the National Insurance Company Ltd. vide Insurance Policy (Ext. 3) for the period 29th November, 2001 to 28th November, 2002. The Insurance Company also supported the written statement filed on behalf of owner but denied the claim of the claimants. Admittedly, the vehicle was insured by National Insurance Company-appellant.

4. Following issues were framed by the Tribunal:

(i) Whether the application is maintainable in its present form?

(ii) Whether the claimants/applicants have got cause of action for his claim case?

(iii) Whether Dabloo Yadav died in the road traffic accident on account of rash and negligent driving of vehicle bearing Registration No. B.R. IP 2786?

(iv) Whether the claimants/applicants are entitled to receive compensation and if so, from whom?

(v) What should be the just and proper amount of compensation payable to the claimants?

(vi) To what other relief or reliefs, if any, the claimants entitled to?

5. After leading evidence and hearing the parties, learned Tribunal has held that the claimants are entitled to get Rs. 1,64,500 and the National Insurance Company was directed to pay amount of compensation with interest @ 6 per cent per annum and also indicated that if the amount of interim compensation under Section 140 of M.V. Act is paid that should be excluded.

6. The main contention of learned Counsel for the appellant is that FIR, charge-sheet, post-mortem report are the basic documents for the settlement of claim cases under Rule 226 of Bihar Motor Vehicles Rule, 1992. These are basic documents to be attached in the claim petition itself. It is apparent from FIR (Ext. 1) that Ram Prasad Yadav-claimant No. 1 made Fardbeyan before the ASI, Nagar Police Station, Godda on 16th May, 2002 at 7 hours in Pakariya Village that on 15th May, 2002 at about 5 p.m. he got information by telephone that his son Dabloo aged about 22 years met with an accident while travelling in Shri Hari Bus bearing Registration No. BR 10-A 2786 near Dhaka More by rash and negligent driving of bus. Later on, in collusion with the owner of the vehicle an amendment has been made by the claimants that the bus involved in the accident was bearing Registration No. BR-1P/2786. In any manner, the number of the vehicle has not been amended in the FIR. It appears that owner is in collusion with the claimants of this case, as such the Insurance Company-appellant is not liable to make the payment of the amount of compensation. In support of his contention, he has referred following decisions, National Insurance Co. Ltd. Vs. Rattani and Others, and United India Insurance Company Ltd. Vs. Shila Devi and Pradeep Kumar Lal, .

7. He has further submitted that the amount of compensation has already been deposited in the Court together with interest and which has been given to the claimants. He has also submitted that the statutory money of Rs. 25,000 deposited in the High Court should be returned to the appellant. The liberty should be given to the appellant to realize the amount of compensation from the owner of the vehicle.

8. No one appears on behalf of claimants.

9. Learned Counsel for owner of the vehicle-respondent No. 3 has submitted that owner is not in collusion with the claimant. The claim petition was filed on 28th June, 2002 stating therein that the occurrence took place by the Bus bearing Registration No. BR 10A 2786. It also appears from the FIR that claimant No. 1 has received telephonic message regarding the occurrence. Admittedly, he was not with the deceased. It appears from the record that an amendment petition date 21st November, 2002 was filed to correct the number of bus as B.R. IP/2786. The amendment petition was allowed vide order dated 6th January, 2003 by the Tribunal that the bus involved in the occurrence was BR IP/2786.

10. The owner of the vehicle filed his written statement dated 26th March, 2003 stating therein that Bus No. B.R. IP 2786 was insured by the National Insurance Company vide insurance policy (Ext. 3) with effect from 29th November, 2001 to 28th November, 2002. It has also been mentioned that on the date of occurrence, the bus was being plied by an expert driver having valid licence and the driving licence was valid upto 18th February, 2005 which covers the period of alleged accident.

11. The National Insurance Company-Insurer had appeared and filed written statement on 10th December, 2002, prior to filing of the written statement of the owner of the vehicle.

12. There is provision under Section 158(6) of the Motor Vehicles Act that as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this Section is completed by a police officer, the officer in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.

13. This provision hardly comes into play. In this case also it appears from the record that no such information has been given to the Tribunal by the police the certified copy of the FIR and the police report have been filed by the appellant which have been marked as Ext. 1 and post-mortem report (Ext. 2), Insurance Policy (Ext. 3). All these documents have been adduced by the claimants and not by the police.

14. It appears that the fardbeyan was made by claimant No. 1 who is the informant of this case, after getting information through telephone. It appears that after knowing the correct number of vehicle the petition for amendment has been filed before the Tribunal to correct the registration number of the vehicle but it has not been corrected in the FIR/Fardbeyan and on this ground the claim of the claimants cannot be frustrated. The correct number of the bus has been brought on the record by filing amendment petition which has been allowed by the Tribunal vide order dated 6th January, 2003 prior to filing of the written

statement dated 26th March, 2003 by the owner of the vehicle. The witnesses examined on behalf of the claimants have also stated that the number of vehicle involved in the occurrence was BR IP 2786 and this matter has also been considered by the Tribunal in Issue Nos. 3 and 4 and discussed on paragraph 6 of the impugned judgment.

15. The appellant has also failed to prove that the owner of the vehicle was in collusion with the claimants. The appellant-insurer has also failed to prove that the owner has violated any terms of the policy. The decisions cited by the learned Counsel for the appellant are not helpful in the facts and circumstances of the present case, as the FIR has been lodged by the appellant on the basis or telephone message. In this case, when it has come to the knowledge about the correct number of offending vehicle, the same has been amended by the informant/claimant himself.

16. The amount of award has already been deposited in the Court below with interest and released in favour of the claimants as it appears from the order dated 22nd May, 2009 passed in M.J.C. No. 534 of 2008.

17. Considering the facts and circumstances stated above, I do not find any ground to interfere with the impugned judgment/award.

This appeal is dismissed.

18. The statutory amount deposited by the appellant may be returned to the appellant. The parties will bear their own costs.

