

(2011) 07 PAT CK 0006
In the Patna High Court
Case No : M.A. No. 758 of 2010

National Insurance Company Ltd.

APPELLANT

Vs

Ram Swaroop Yadav and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 140, 173

Citation : (2012) 3 TAC 567

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard the parties. Interlocutory Application i.e. I.A. No. 2440 of 2011 has been filed u/s 5 of the Limitation Act with a prayer to condone delay in filing the appeal. Twenty five days delay has occurred. After hearing the parties and considering the ground set forth in Interlocutory Application i.e. I.A. No. 2440 of 2011, the petition stands allowed and delay in filing the appeal stands condoned. The present appeal has been preferred u/s 173 of the Motor Vehicles Act against judgment dated 18th March, 2010 and award dated 19th May, 2010 passed in motor vehicle accident Claim Case No. 12 of 2006/7 of 2009 passed by 4th Additional District & Sessions Judge-cum-Motor Accident Claims Tribunal, Nawadah. By the said judgment the appellant has been directed to make payment of compensation amount of Rs. 1,20,000/- alongwith 6 % interest from the date of filing of the claim petition after adjusting Rs. 50,000/- which was paid u/s 140 of the Motor Vehicles Act as interim compensation. Short fact of the case is that the respondent Nos. 2 and 3 had filed a claim case before the Court below claiming compensation due to death of Mahadeo Yadav @ Mahadeo Prasad Yadav, father of respondent No. 1 and husband of respondent No. 2, who died in a motor vehicle accident on 30th December, 2005. In this case offending vehicle was a Tata Maxi bearing registration No. 13P-6539. Before the Court below in support of the claim case the claimant examined three witnesses and

produced number of documents such as copy of F.I.R. in Town P.S. Case No. 402 of 2005 which was marked as Ext.-1, Post-Mortem Report which was held on the dead body of deceased Mahadeo Yadav @ Mahadeo Prasad Yadav was marked as Ext.-2, Registration of vehicle as Ext. - 3, Insurance Policy of the vehicle in question as Ext.-4, Driving Licence of the Driver as Ext.-5, permit of the vehicle as Ext.- 6 and inspection report of vehicle as Ext-7. In the case issues were framed and after hearing the parties by the impugned judgment the learned Court below allowed the claim case as indicated above.

2. Learned Counsel for the appellant has not questioned either the quantum of compensation or other fact mentioned in the impugned order. However, he has seriously raised an objection that in this case neither driver nor owner of the vehicle had filed any show cause/written statement and they have not brought on record evidence to prove that the vehicle in question was being driven at the relevant time by a driver who was having a valid licence. It was submitted that in absence of owner or driver of the vehicle the learned Court below was not required to record a finding that driver was having a valid driving licence. Sri Shailendra Kumar, learned Counsel for the appellant in support of his contention has referred to a Single Bench judgment of this Court reported in *The New India Assurance Company Ltd. Vs. Most. Lahaso Devi and Others*. He submits that it was mandatory on the part of the driver and owner to prove that the driver was having valid licence at the relevant time. He submits that while filing written statement the appellant had raised an objection that driver was not having any valid licence and, since, the appellant had raised an objection onus was on the claimant to demolish the stand of the appellant. Since, the objection raised by the appellant was not disputed by the claimant presumption would be that driver of the vehicle was not having licence at the time of accident and as such the appellant-Insurance Company cannot be directed to make payment of compensation. It was submitted that it was the owner who was required to make payment of the compensation. On the aforesaid sole ground the learned Counsel for the appellant has questioned the impugned judgment. learned Counsel for the respondent Nos. 1 and 2/ claimant No. 4 has opposed the prayer of the appellant. It was submitted by learned Counsel for respondent Nos. 1 and 2/ claimants that driving licence was got exhibited as Ext. - 5. According to him since the driving licence was already brought on record and it was got exhibited without any objection, presumption would be that driving licence was valid and as such on the plea of absence of driving licence the judgment impugned may not be interfered with. Besides hearing learned Counsel for the parties I have also perused the materials available on record.

3. It is evident in the case that vehicle in question was insured by the appellant which was applicable from 16th July, 2005 to 15th July, 2006 which has been marked as Ext-4. Policy has been marked as Ext.-4 meaning thereby that at the time of accident the offending vehicle was insured by the insurer i.e. appellant. It is further evident that driving licence was also got exhibited. Once a document was got exhibited presumption would be that the document was valid unless it

was objected by the party. It appears that driving licence was got exhibited without any objection and as such it cannot be doubted. The claim that driver of the offending vehicle was having valid driving licence at the time of occurrence cannot be doubted. In view of the fact that the driving licence was already on record vide Ext. - 5, the Court is of the opinion that the plea taken by the appellant that driving licence was not valid cannot be accepted. So far Most. Lahaso Devi's case (supra) is concerned, perusal of the order indicates that in peculiar facts and circumstances of the said case order was passed. However, in view of the facts and circumstances of the present case i.e. the fact that there was driving licence on record, the Court is of the opinion that the appellant may not get any help from Most. Lahaso Devi's case (supra). Accordingly, in view of the facts and circumstances the appeal stands rejected. The statutory amount deposited at the time of filing of the appeal may be remitted back to the Court below for its payment to the claimant.