(2000) 05 PAT CK 0009

In the Patna High Court

Case No : M.A. No. 309 of 1998

National Insurance Company Ltd. APPELLANT

Vs

Sitaram Agrawal and Others RESPONDENT

Date of Decision : 17-05-2000

Acts Referred:
Motor Vehicles Act, 1988 — Section 95(2)

Citation : (2000) 3 PLJR 708

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Ram Naresh Sharma, Ashwani Kumar and Vijay Shankar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—M/s. National Insurance Company Limited is the Appellant in this Misc. appeal which arises out of the judgment and Award dated 31.3.1998 passed by the 2nd Additional District Judge-cum-Motor Vehicles Accident Claims Tribunal, Jehanabad, whereby the Appellant has been directed to pay a sum of Rs. 96,000/ - by way of compensation to the claimants along with interest payable at the rate of 10% per annum from the date of application till the realisation of the compensation amount including costs of the proceeding. Mr. Ajay Kumar, learned Counsel appearing on behalf of the Appellant has challenged the judgment and Award mainly on the ground that the liability of the Insurance Company is limited in view of the fact that the bus was ensured for 27 passengers at the rate of twelve rupees per passenger and, as such, the liability comes to Rs. 15,000/ - only in terms of Section 95(2)(b)(ii) of the Motor Vehicles Act, 1939.

2. In support of his contentions, the learned Counsel for the Appellant submitsthat not only specific point has been raised in the written statement but also produced the Insurance policy in support thereof which was marked Ext. A before the Tribunal. According to Mr. Kumar, the Insurance Company is liable to

pay only a sum of Rs. 15,000/ - in view of the provision aforesaid. The submission of Mr. Kumar is well founded. Admittedly, the premium was paid at the rate of twelve rupees per passenger for 27 passengers in all. The Tribunal has not considered this aspect of the matter as it appears from the judgment and Award under challenge in this appeal. According to Mr. Kumar, the owner is liable to pay the balance amount of compensation to the claimants. Learned Counsel for the owner however, submits that the calculation made by the Tribunal is not in accordance with law, inasmuch as the total income of the deceased assessed at Rs. 500/ - and according to the law laid down by the Apex Court, out of the total income, one-third has to be adjusted for personal expenses. The actual net income for the purpose of computation comes to Rs. 400/ - on the basis of which re-calculation is to be made. The submission of the learned Counsel is well founded. The Tribunal has assessed a sum of Rs. 500/ - per month as his total income, yet without adjusting permissible deduction of 1/3rd out of the total income, has assessed the compensation amount which is not permissible in law. In that view of the matter, the judgment and Award dated 31.3.1998 is hereby set aside and the matter is remitted back to the Tribunal for passing a fresh order in the light of the observation made hereinabove, after hearing the parties, as early as possible preferably within six weeks from the date of receipt/ production of a copy of this order. The amount of compensation so assessed in the light of the observation aforesaid, will be the liability of the owner. The grievance of the claimants, however, is that not a single farthing has been paid by the Appellant before filing of the instant appeal which is being disputed by Mr. Kumar. Accordingly, the Insurance Company will deposit a sum of Rs. 15,000/ - if not already paid, and/or deposited with interest at the rate of 10 per cent per annum from the date of application i.e. 13.8.1983 till the date of realisation within three weeks and on such deposit the claimants will be entitled to withdraw the said amount without furnishing any security. This Misc. appeal is, accordingly, allowed to that extent only.