
(2002) 07 JH CK 0050
In the Jharkhand High Court
Case No : LPA No. 126 of 1998 (R)

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Abha Sinha and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 172

Citation : (2003) ACJ 2102

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : B. Chatterjee, for the Appellant; S.N. Lal and S. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This Letters Patent Appeal has been preferred by the appellant-National Insurance Company Limited (for short "Company") against the Judgment dated 27th February, 1998, passed in Misc. Appeal No. 509 of 1991 (R)/Appeal from Original Order No. 509 of 1991 (R), whereby and whereunder, the learned Single Judge while refused to set aside the liability of compensation, entrusted upon the Insurer-Company, has modified the judgment and award of the Claims Tribunal and brought down the compensation amount from Rs. 13,16,755/- (rupees thirteen lakhs sixteen thousand seven hundred and fifty five) to Rs. 9,00,000/- (rupees nine lakhs).

One cross-objection against the award, as was filed by the claimants-respondents, having been dismissed by the learned Single Judge, the claimants-respondents have also preferred a cross-objection under Order XLI, Rule 22 of the CPC read with Section 172 of the Motor Vehicles Act, 1988. The claim for compensation has been preferred by the widow and children of Major Neeraj Sinha (since deceased), an Army Officer. It has been alleged that the deceased Major Neeraj Singh boarded on a Mini-bus bearing Registration No. BR-(L) 2223

at Koderma Railway Station in the morning of 3rd January, 1990 for coming to Hazaribagh Town. The vehicle was being driven in a very rash and negligent manner and it dashed against a roadside tree, as a result of which three occupants of the bus, including driver and the deceased, were killed. A number of other persons sustained injuries and removed to Hospital. It was brought on record that the deceased was an Army Officer, aged about 34 years and was getting salary of Rs. 5865/- per month. The claim was contested by the opposite party-Appellant, which took defence that the amount claimed for is exorbitant, being more than the liability of the insurer-Company. The Claims Tribunal after hearing the parties, disposed of the Misc. Claim Case No. 25 of 1990 vide judgment and award dated 31st May, 1991, held the accident caused due to rash and negligent driving of the bus, assessed the compensation and came to the conclusion that the claimants are entitled to compensation, amounting to Rs. 13,16,755/- (rupees thirteen lakhs sixteen thousand seven hundred and fifty five).

2. In Misc. Appeal, the appellant-insurer-Company assailed the judgment and award on different grounds. Its counsel took plea that the person, driving the vehicle, had no valid driving licence and, therefore, the insurer-Company can not be held liable for payment of compensation. The next stand taken on behalf of the Company was that the amount of compensation, awarded by the Tribunal, was highly excessive and exorbitant, against the settled principle of law of assessment of compensation.

3. The claimants-respondents while supported the judgment and award, also pressed the cross-objection for enhancement of the compensation amount. They claimed a sum of Rs. 45,00,000/- (forty five lakhs) by way of compensation and alleged that a very low amount has been awarded by the Claims Tribunal.

4. In the appeal, one application under Order XLI, Rule 27 of the CPC was filed by the insurer-Company for accepting the copy of one page of the Insurance Certificate, as an additional evidence. However, that application was not pressed at the time of hearing of the appeal.

5. The learned Single Judge vide impugned judgment dated 27th February, 1998 while held that the Tribunal has not correctly applied multiplier theory, in assessing the compensation, has further held that the Tribunal ought to have taken a maximum 18 years of purchase. By applying the multiplier theory and taking maximum 18 years of purchase, the learned Single Judge held that the claimants-respondents would be entitled to interest at the rate of 12% and compensation of Rs. 9,00,000/- (rupees nine lakhs). The cross-objection, filed by the claimants-respondents, was, accordingly, dismissed.

6. In this appeal, counsel for the appellant insurer-Company took plea that the driver, having licence of a Medium Goods Vehicle, was riot entitled to drive the Minibus. It was also submitted that the driver Upendra Kumar Singh had the valid licence up to 7th October, 1989.

This submission made on behalf of the appellant is of no substance, as the learned Single Judge has taken into consideration that the licence was subsequently renewed up to July, 1992.

Curiously the original Driving Licence of the driver was not produced either by the insurer-Company or by the insurer-owner of the bus, as there was no occasion for the driver Upendra Kumar Singh to produce the same, he having also died in the accident. The decision of the Andhra Pradesh High Court in the case of United India Insurance Co. Ltd. Vs. Malla Janaki and Others, and referred by the counsel for the appellant-Company, is not applicable in the present case, the driver having a valid licence on the date of accident. So far as the category of licence and the issue as to whether it was a Medium Goods Vehicle Licence or some other licence is concerned, this issue was neither raised before the Claims Tribunal nor before the learned Single Judge. The insurer-Company did not ask the insured-owner of the vehicle to produce the licence nor requested him to verify the document, relating to licence through the Motor Vehicles Inspector.

7. In a similar case of Rukmani and Ors. v. New India Assurance Company Ltd.. reported in 1999 (3) TAC 209 (SC) the Supreme Court held that the plea that the driver did not possess the valid driving licence at the time of accident, if taken by the insurer-Company, the burden of proof lies on the insurer-Company.

8. So far as quantum of compensation as to whether it is a just compensation or not, is concerned, it has been dealt with in detail by the learned Single Judge, who has applied multiplier theory as per the decisions of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . Detail reasons having been given and calculation having been made by the learned Single Judge, I find no reason to reduce or enhance the same, both the parties having failed to give any reason for such reduction or enhancement of compensation.

9. In the result, there being no merit, both the Letters Patent Appeal and cross-objection, preferred by the Insurer-Company and claimants respectively, are hereby dismissed. However, there shall be no order as to costs.