
(2000) 08 PAT CK 0039

In the Patna High Court

Case No : A.F.O. No. 538 and 539 of 1991 (R)

New India Assurance Co. Ltd. and Others and Md. Hyder Ali	APPELLANT
Vs	
Laxmi Devi and Others	RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Evidence Act, 1872 — Section 63
Motor Vehicles Act, 1988 — Section 95

Citation : (2000) 3 BLJR 2376 : (2001) 1 PLJR 44

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar Sinha, J.—Miscellaneous Appeal No. 538 of 1991 (R) has been filed on behalf of the New India Insurance Company Limited and Misc. Appeal No. 539 of 1991 (R) has been filed on behalf of Md. Hyder Ali As both appeals arise out of the same impugned Award both have been heard together and are being disposed of by a common judgment. Both the appeals have been directed against the order dated 29.7.1991 passed by the Motor Vehicle Accident Claims Tribunal, Jamshedpur, in compensation Case No. 51 of 1986, whereby and whereunder the appellant of Misc. Appeal No. 539 of 1991(R) Md. Hyder Ali has been ordered to pay a sum of Rs. 50,000/- to the applicants u/s 110A of the M.V. Act as compensation together and interest at the rate of 10% per annum on the entire amount of compensation of rupees one lakh pendentelite and future till realisation is allowed. Besides cost of Rs. 500/- payable by the appellant. In addition to that, the Tribunal also ordered the Insurance Company to pay a sum of Rs. 50,000/- to the applicant No. 1 on her behalf and on behalf of other applicants (over and above ad interim compensation of Rs. 15,000) paid to them.

2. The applicants filed a claim case against the owner and driver of the vehicle besides the Insurance Company alleging therein that on 3.6.1986 at about 11 a.m. while the deceased was sitting on the back seat of the scooter and was

going to Pardih along with informant, namely, Gurdip Singh and had reached near Gurudwara, a tempo No. BHT 1946 belonging to the Opposite party No. 1 (Appellant in M.A. No. 539 of 1991 (R) which was being driven by Safdar Ali rashly and negligently in a high speed dashed the scooter as a result of which informant and the deceased namely, Kesh Chandra Kesera Lalla Fell down and sustained injuries and in course of treatment, the deceased died on 4.6.1986. The claimants asserted that the monthly income of the deceased was Rs. 1,500/- and, so, they claimed compensation of Rs. 5,40,000/-. The owner of the vehicle (Appellant of M.A. No. 539 and 1991 (R)) and the Insurance Company (Appellant of M.A. No. 538 of 1991 (R)) appeared and filed their written statements separately denying the claim. It was the specific case of the Insurance company that its liabilities were limited to the extent of Rs. 50,000/- whereas the owner of the vehicle asserted that all the liabilities in respect of the alleged accident would be covered by the Insurance Company.

3. In course of inquiry, the applicants examined 3 witnesses including the widow of the deceased. A.W. 2 Gurdip Singh, who was driving the scooter in question has deposed that at the time of the alleged accident, he was driving the scooter and the deceased was sitting on the back seat of the scooter and when they reached Gurudwara, a tempo came from the back side being driven rashly in high speed and dashed against the scooter, as a result of which, he fell down and became senseless and when he regained sense he found himself in the Tata Main Hospital and knew that Lalla Ji was also admitted in the same hospital who died later on. He further deposed that he has got scooter driving licence in his name and the police has recorded his statement in the accident case. A.W. 1 Dr. Tulsi Mahato had conducted the post-mortem examination on the dead-body of the deceased and had found several injuries on account of which the deceased died and he has proved the post-mortem report (Ex. 1) and has also deposed that the injuries were caused by road accidental due to vehicular accident. From the evidence of the witnesses examined on behalf of the applicants, it is established that the deceased died as a result of injuries sustained by him in the alleged accident. It is also established from the evidence of the witnesses that the tempo in question was being driven in a rash and negligent manner by the driver, which dashed against the scooter on which the deceased was sitting without blowing any horn from the back side and as a result of the accident, the deceased as well as A.W. 2 sustained injuries and were admitted in the Tata Main Hospital for their treatment, but in course of treatment, the deceased died on 4.6.1986. As such, I have no doubt to held that the deceased actually died due to the rash and negligent driving of tempo driver, who was driving the tempo in question. This fact was not agitated or controverted by the appellants by leading any evidence for any rebuttal.

4. On consideration of all the facts and circumstances of the case, the learned Tribunal gave the Award against the Insurance Company that it was liable to pay statutory liability of Rs. 50,000/- (over and above Rs. 15,000/-already paid as ad-interim compensation) by it, together with interest @ 10% per annum

pendentelite and future interest till realisation of the same. In course of argument, the learned Counsel appearing for the Insurance Company submitted that the vehicle was ensured with the Insurance Company under Third Party risk, for which premium was paid, therefore, the liability of the Insurance Company was limited to the extent of Rs. 50,000/- only u/s 95 of the Motor Vehicles Act. In other words the Counsel for the Insurance Company did not dispute the award given by the Tribunal against the Insurance Company and I also find that the Award given by the Tribunal against the Insurance Company to the extent of Rs. 50,000/- (over and above Rs. 15,000/-paid by it as ad-interim compensation) does not require any interference by this Court, in view of the fact that the learned Counsel appearing for the Insurance Company raises no objection against the Award given by the Tribunal against the company.

5. The learned Counsel appearing on behalf of the appellant of M.A. No. 539 of 1991 (R), namely, Md. Hyder Ali who is the owner of the offending vehicle, has challenged the Award on various grounds, such as, that the Tribunal has wrongly held appellant for its vicarious liability and ordered to pay a sum of Rs. 50,000/- in arbitrary manner, that the deceased did not die as a result of the direct consequences of the accident, that there could be possibility of Contributory negligence and that the Tribunal has not applied its judicial mind in arriving at the conclusion that the driver of the tempo was driving the vehicle in question rashly and negligently. It has nowhere been stated in the memo of appeal that the liability of the Insurance Company was unlimited as the vehicle in question was comprehensively insured covering unlimited liability to the public risk. Hence, the entire liability was of the Insurance Company and there¹ was no liability of the owner of the vehicle in view of the comprehensive policy of the vehicle. In other words, the appellant/owner of the vehicle has not challenged this fact that the tempo in question was insured under the Act Policy i.e. the third party policy, under which the liability of the Insurance Company is limited to the extent of Rs. 50,000/- only.

6. The learned Counsel appearing for the Insurance Company has filed a petition praying (herein to admit the Insurance policy Annexure-1 by way of additional evidence under Order XLI, Rule 27 of the CPC Code to which a rejoinder has been filed on behalf of the appellant/owner, in which objections have been raised that the document cannot be admitted in evidence at this stage, because, it is not complete Insurance policy, that, it is inadmissible in evidence u/s 63 of the Indian Evidence Act and it cannot be admitted at this stage in order to fill up the lacuna and the document cannot be clarified unless it is proved by evidence with a right of cross-examination to the appellant and in support of his contention, he had relied upon a decision in the case of Oriental Fire and General Insurance Co. Ltd. v. Purushottam Goel and Ors. 1994 (2) BLJ 558, wherein it was held that even after the decision of the Supreme Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , the Insurance Company is not following the direction of the Supreme Court, hence, there was no reason to grant adjournments to fill up the lacuna by allowing the Insurance company to

file policy of the Insurance.

7. In course of argument, the learned Counsel appearing for the Insurance Company admitted that Annexure-1 is the xerox copy of the schedule of premium. It is, therefore, manifest that Annexure-1 is not the copy of the complete policy, which may disclose the terms and conditions of the policy. As such, I do not feel inclined to admit the document Annexure-1 by way of additional evidence under Order XLI, Rule 27 of the CPC and the prayer of the Insurance Company as contained in its petition dated 28.7.2000 to admit Annexure-1 as additional evidence is rejected.

8. The learned Counsel appearing for the Insurance Company, however, submitted that the owner of the vehicle was in possession of the policy and it was his duty to produce the policy in course of inquiry but he had failed to do so. Hence, in such view of the matter, the owner of the vehicle shall be liable to pay the entire liability over and above the statutory liability payable by the Insurance Company under third party act policy. In support of his contention, the learned Counsel for the Insurance Company has relied a decision reported in the case of National Insurance Company Ltd. Vs. Ram Khelawan Paswan and Another, , in which the decision reported in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, has been relied upon. In the said decision, it was held that if the Insurance Company contents the claim by pleading specifically that the vehicle was not insured with it, then it is the duty of the owner of the vehicle to disclose in the written statement and in the evidence, the policy particulars of the vehicle and the copy of the policy. Failing which the owner of the vehicle shall be bound to pay the entire compensation so awarded by the Tribunal. Relying upon the aforesaid decision, it was submitted by Mr. Alok Lal, learned Counsel for the Insurance Company, that the owner/appellant (M.A. No. 539 of 1991 (R) of the vehicle in question has not specifically asserted in the written statements that the vehicle, which was admittedly insured covered the unlimited liability to the public risk, nor any evidence has been led by the owner, to that effect and the admitted position is that the policy which was in the custody of the owner/appellant was never produced and in such circumstances no adverse inference can be drawn against the Insurance Company for non-filing of the policy and in support of his contention the learned Counsel has relied upon a decision in the case of Kashi Nath Poddar Vs. Archana Sahay and Others, .

9. Apart from that, it was vehemently argued by Mr. Lal that neither in the written statement nor in the memo of appeal the owner/appellant has taken any specific plea to the effect that the Insurance Company had unlimited liability to cover the risk against the third party because no extra premium was paid for the additional coverage of unlimited liability nor the plea of the Insurance Company that it has limited liability has been challenged. Therefore, it will have to be held in the facts and circumstances of the case that the liability of the Insurance Company was limited to the tune of Rs. 50,000/- only u/s 95 of the Motor Vehicles Act and the award given by the Tribunal in excess of that amount is

payable by the owner of the vehicle in question.

10. The aforesaid submission of the learned Counsel appearing for the Insurance Company could not be controverted by the learned Counsel appearing for the appellant/owner of the vehicle in question, who contended that since the Insurance Company has not filed the copy of the policy its liability was unlimited and the owner has got no liability to pay anything to the claimants. The submissions of Mr. P.P.N. Roy, learned Counsel for the appellant/owner of the vehicle in question has got no substance in it because it was the primary duty of the owner, who was admittedly in possession of the policy of the Insurance, to produce the same in course of the inquiry before the Tribunal which was not done by him and the same was surreptitiously withheld, hence, in view of the decision cited above on behalf of the Insurance Company, I am of the view that no adverse inference can be drawn against the Insurance Company in the facts and circumstances of the case to reach to the conclusion that Insurance Company had unlimited liability to public risk as suggested by Mr. P.P.N. Roy. Moreover, there is neither any pleading nor any evidence on record, which may uphold the contention of the learned Counsel for the appellant/owner of the vehicle, so much so, that in the memo of appeal no ground has been taken by him that Insurance Company had unlimited liability, in view of the policy.

11. For the reasons stated above and in view of the materials on record, I am of the view that the learned Tribunal was quite justified in giving Award against the appellant/owner of the vehicle ordering him to pay a sum of Rs. 50,000/- to the claimants besides interests, and the same does not suffer with any illegality, which they require any interference by this Court, and, hence, the same is upheld. Accordingly, I do not find any merit in M.A. No. 539 of 1991 (R) filed on behalf of the owner of the vehicle, which is dismissed.

12. So far as M.A. No. 538 of 1991 (R) filed on behalf of the New India Insurance Co. Limited is concerned, it is also liable to be dismissed, in view of the submission made by the learned Counsel appearing for the Insurance Company and the findings recorded by me above.

13. In the results, therefore, both the appeals are dismissed. In the facts and circumstances of the case, there will be no Award as to the costs.