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**(1998) 01 PAT CK 0018**

**In the Patna High Court**

**Case No : M.A. No"s. 199 to 202 of 1994 (R)**

New India Assurance Co. Ltd.

APPELLANT

Vs

Archana Kumari and Others

RESPONDENT

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**Date of Decision : 27-01-1998**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 147

**Citation :** (1999) ACJ 175 : (1998) 46 BLJR 574

**Hon'ble Judges :** Lok Nath Prasad, J

**Bench :** Single Bench

**Advocate :** M.S. Akhtar, for the Appellant; M.M. Banerjee and A. Sen, for the Respondent

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## **Judgement**

Lok Nath Prasad, J.—M.A. Nos. 199 to 202 of 1994 (R) were taken up together as all these four appeals had arisen from the common judgment dated 29.6.1994 passed by Mr. B.K. Sinha, 2nd Addl. District Judge, Chaibasa-cum-Motor Accidents Claims Tribunal thereby and there under the M.J.C. Case Nos. 22 to 25 of 1989 were disposed of by the common judgment by the Tribunal and compensation was allowed in part. This common judgment will dispose of all these four appeals.

2. The fact in short for the purpose of these appeals is that one Upendra Jha along with his wife Geeta Jha and two minor sons, namely, Chintu Jha aged 10 years and Mintu Jha aged 6 years were going together after hiring a Tempo van bearing registration No. BPT 6184 on 21.1.1989 towards Jamshedpur side from Gamaria. When the Tempo reached near dairy farm on Gamaria-Jamshedpur road then at about 9 a.m. or so Matador bearing No. BPJ 873 came from behind with a great speed and due to rash and negligent driving of the driver of Matador it dashed against the Tempo from behind at such a speed and that too on the side of the road killing all the four occupants on the spot. Immediately F.I.R. bearing Adityapur P.S. Case No. 14 dated 21.1.1989 was instituted as against the driver of the Matador and dead bodies were recovered and were sent for post-

mortem examination. All the four deceased were the members of a family and they died leaving behind only two daughters, Archana Kumari who is now major and one Bandana Kumari, a minor. These claimants who are the daughters of the deceased, Upendra Jha and his wife and sisters of two brothers who died in the accident, preferred as many as four claim cases bearing M.J.C. Nos. 22 to 25 of 1989 and in all the cases similar case was made out. In M.J.C. No. 22 of 1989 for the accidental death of their mother Geeta Devi they claimed compensation to the extent of Rs. 1,50,000 whereas in M.J.C. No. 23 of 1989 and M.J.C. No. 24 of 1989 regarding the death of their brothers Mintu Jha aged 6 years and Chintu Jha aged 10 years who were merely school students, they claimed compensation at the rate of Rs. 1,00,000 each. Similarly in M.J.C. No. 25 of 1989 Rs. 7,20,000 due to death of their father Upendra Jha and it has been claimed that Upendra Jha was working under the ex-landlord of Jharia and was aged about 40 years or so and his monthly income was about Rs. 2,500 and the claimants are the sole dependants.

3. The claim case was preferred as against the respondent No. 1, Dukhu Ho who is the owner of the Matador vehicle and respondent No. 4, Nukul Naik, driver of the vehicle and against the insurance company who is the appellant. The owner and the driver neither appeared nor contested all these four claim cases before the Tribunal. The insurance company contested all the four cases and it was admitted that Matador was insured with this company and the company has taken various technical issues regarding maintainability and further a plea was taken that the driver of the Tempo was also negligent and above all it was contended that the Matador vehicle was insured under the old Act of 1939 and so in view of the provision of Section 95 their liability is only limited.

4. The Tribunal on the basis of the evidence adduced on behalf of claimants so far as M.J.C. Nos. 23 and 24 of 1989 regarding the death of two school going children, the brothers of the claimants, compensation was awarded at the rate of Rs. 25,000 each. So far as in M.J.C. No. 22 of 1989 regarding the death of Geeta Devi, mother of the claimants, a sum of Rs. 58,000 was awarded as compensation and in M.J.C. No. 25 of 1989 regarding death of father of the claimants a sum of Rs. 2,46,000 was awarded besides the interest at the rate of 12 per cent per annum till the realisation. Being aggrieved and dissatisfied with this order awarding compensation the insurance company preferred all these four appeals as against the claimants who are respondent Nos. 1 and 2 and also against the owner and the driver of the offending vehicle, who are respondent Nos. 3 and 4 respectively. Respondent Nos. 3 and 4 neither entered appearance nor contested these four appeals and only respondent Nos. 1 and 2 who were the claimants in the court below, contested all these four appeals.

5. At the time of hearing the learned Counsel appearing for the insurance company had not challenged this very accident which took place on 21.1.89 at 9.30 a.m. at Gamaria-Jamshedpur road near dairy farm. Moreover there is ample evidence on the record to show that Upendra Jha, his wife Geeta Devi and two

minor school going sons, Mintu and Chintu were going together in a Tempo towards Jamshedpur when the Matador bearing No. BPJ 873 came from behind with a great speed and due to rash and negligent driving it dashed against the Tempo from behind and crushed all these four occupants. So the accident took place due to rash and negligent driving by the driver of Matador on 21.8.1989 is not being challenged rather well proved. Admittedly, this vehicle was insured with appellant insurance company. It was contended on behalf of appellant insurance company that admittedly the accident took place on 21.1.89 and the vehicle was insured and copy of the insurance policy was also filed in the court below and also filed here as Annexure-1 which clearly shows that the effective date of insurance cover was 9.1.1989 and new Act of 1988 came into force on 1.7.1989. In that view of the fact u/s 147 of the new Act, i.e., Motor Vehicles Act, 1988, insurance policy issued under the old Act will be effective and the Tribunal erred in recording a finding that as the new Act came into force on 1.7.1989 so the liability of the insurance company will be governed under the provisions of new Act. Admittedly, accident took place on 21.1.1989 and the insurance policy was effective from 9.1.1989; that means the accident took place after the commencement of the new Act and in view of the provision of Section 147(2) of the Act there is specific provision that any policy of insurance issued with any limit and in force immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier. So in view of this provision there are no two opinions that the liability of the insurance company will be governed according to the terms of policy issued under the old Act, 1939 and the Tribunal committed error of law in recording a finding otherwise.

6. Learned counsel for the appellant insurance company further submitted that as the insurance policy was under the old Act and it was effective at the time of the accident then in view of provision of Section 95 (2) of the old Act it can be said that the liability of the company in respect of any one accident will be only Rs. 50,000 in all in view of provision of Sub-section (b) (i) of the said Act. If that is so and four persons died in one accident then for all those it can be treated only one accident and total liability will be of only Rs. 50,000. On the other hand, learned Counsel for the respondent Nos. 1 and 2 submitted that for each injury separate accident is to be treated for the purpose of this Act and in that view of the matter, in case of death of four persons, though in one accident, it will be deemed that each injury or death will be a separate accident and similar view was taken by the Supreme Court in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, . Thus, in view of the principle laid down by the Apex Court now the liability is well settled and for each separate injury or death though in the same accident it will be a separate accident and so a separate claim case is maintainable for every such injury or death subject to the limitation of liability under the Act of the company. In that view of the matter, all the four claim cases involving four separate deaths or injury will be treated as a separate accident and claim case will be maintainable against the appellant insurance

company.

7. So far as M.J.C. No. 23 of 1989 and M.J.C. No. 24 of 1989 are concerned it relates to accidental death of two minor brothers of the claimants-respondents, i.e., Mintu Jha aged about 6 years and Chintu Jha aged about 10 years. The Tribunal has awarded compensation at the rate of Rs. 25,000 each for the reason mentioned in the judgment. So learned Counsel for the appellant frankly conceded that he is not challenging the amount of compensation granted in these two claim cases and as the claimants-respondents have also not preferred any cross-objection so the finding of the Tribunal so far as these two claim cases are concerned is now well admitted, and does not require any interference.

8. In M.J.C. No. 22 of 1989 a sum of Rs. 58,000 was awarded to the claimants regarding the death of their mother, Geeta Devi, aged about 35 years or so who was merely a housewife. The counsel for the appellant submitted that the amount of compensation is definitely towards higher side because she was not an earning lady. No doubt the deceased was a housewife but she was also managing the household affairs and she was rendering a domestic service and so in view of service the dependency of the family has been rightly assessed at Rs. 200 p.m. Thus, after applying multiplier theory, Tribunal came to the conclusion that Rs. 48,000 will be the compensation but also added Rs. 10,000 on two different counts for loss of expectation of life, etc. I think Rs. 10,000 was awarded unnecessarily when dependency of the family due to service rendered by the lady had already been counted. In that view of the matter, the award of Rs. 6,000 and Rs. 4,000 on two different counts, in all Rs. 10,000 by the Tribunal in M.J.C. No. 22 of 1989 is hereby set aside and it is now hereby held that claimants-respondents are entitled to realise Rs. 48,000 in all for the death of their mother as compensation.

9. So far as quantum of compensation in M.J.C. No. 25 of 1989 regarding the death of Upendra Jha, father of the claimants, is concerned the Tribunal awarded a sum of Rs. 2,46,000. From the evidence on record and the documentary evidence the Tribunal recorded a finding that the monthly income of deceased Upendra Jha who was merely working as munshi of ex-landlord of Jharia was Rs. 1,500 and as he was working at Jharia and the family was living at Jamshedpur, Tribunal deducted Rs. 500 towards his personal expenses and fixed Rs. 1,000 as the dependency of the family. So the Tribunal has rightly assessed Rs. 1,000 as dependency of family and the annual dependency thus comes to Rs. 12,000. But the Tribunal multiplied the same annual dependency by 20 times, i.e., apparently wrong in view of the principle laid down by the Apex Court, that the maximum limit for multiplying the annual dependency is only 18 times and the deceased was aged about 40 years. In that view of the matter, it should have been multiplied by 13 and thus, it comes to Rs. 1,56,000. Thus it is hereby ordered that the claimants-respondents are entitled to realise compensation of Rs. 1,56,000 due to death of their father in M.J.C. No. 25 of 1989.

10. So from the discussions made above now it can be said that in M.A. No. 199

of 1994 (R) which had arisen from M.J.C. No. 25 of 1989 the claimants-respondents are entitled to realise only an amount of Rs. 1,56,000 from the appellant insurance company and similarly in M.A. Nos. 201 and 200 of 1994 (R) relating to M.J.C. Nos. 23 and 24 of 1989, claimants are entitled to realise Rs. 25,000 each as compensation due to death of their two brothers as awarded by the Tribunal. It is further ordered that in M.A. No. 202 of 1994 (R) which had arisen from M.J.C. No. 22 of 1989 the claimants-respondents are entitled to realise Rs. 48,000 due to death of their mother.

11. Now the question for consideration is as to what will be the liability of the appellant insurance company to pay the quantum of compensation to the claimants. It was held above that in these cases insurance policy which was issued on 9.1.1989 in respect of the Matador vehicle which was offending vehicle, under the Act of 1939 and also as the accident took place on 21.1.1989 when the policy was in force, so under the old Act the liability of the appellant insurance company is to be ascertained. In view of the provision of Section 95 of 1939 Act, it can be said that under Sub-clause (2) (b) (i) the liability in respect of other than passenger is fixed at only Rs. 50,000 in all. Admittedly no additional amount was paid in view of the terms and conditions of the policy which is on the record and also filed in these appeals as Annexure-1 and as such the maximum liability of the insurance company is only to the extent of Rs. 50,000 only for each accident. Under the circumstances, the insurance company is liable to pay the entire compensation amount of Rs. 25,000 each so awarded in M.J.C. No. 23 of 1989 and M.J.C. No. 24 of 1989 which relates to M.A. No. 201 of 1994 (R) and M.A. No. 200 of 1994 (R) because these amounts are covered within the liability of the insurance company. Similarly, in M.A. No. 202 of 1994 (R) which relates to M.J.C. No. 22 of 1989 it was held above that the claimants-respondents are entitled to realise Rs. 48,000 in all by way of compensation. So this entire amount is also to be paid by the insurance company. Accordingly it is ordered that M.A. No. 201 of 1994 (R) and M.A. No. 200 of 1994 (R) are hereby dismissed without any costs and the insurance company will pay the entire amount of award at the rate of Rs. 25,000 each to the claimants less the amount already paid together with interest at the rate of 12 per cent per annum from the date of application till realisation. It is also ordered that M.A. No. 202 of 1994 (R) which relates to M.J.C. No. 22 of 1989 is allowed in part and the insurance company is hereby directed to pay compensation to the claimants-respondents in all Rs. 48,000 less the amount already paid together with interest at the rate of 12 per cent per annum. So far as the M.A. No. 199 of 1994 (R) which relates to M.J.C. No. 25 of 1989 is concerned it is also allowed in part and the respondent Nos. 1 and 2, the claimants are entitled to realise Rs. 1,56,000 by way of compensation due to death of their father in this accident involving the Matador vehicle but they are entitled to realise Rs. 50,000 only less the amount the appellant insurance company has already paid together with interest at the rate of 12 per cent per annum and the balance of Rs. 1,06,000 is to be realised from the owner of Matador, i.e., respondent No. 3, namely Dukhu Ho together with

interest at the rate of 12 per cent per annum from the date of application till realisation,

12. In the result, all these four appeals are disposed of in the manner indicated above.