(2000) 07 PAT CK 0086

In the Patna High Court

Case No : A.F.O.O. No. 127 of 1989 (R)

New India Assurance Co. Ltd. — APPELLANT

Vs

Challa Laxmi Tulsamma and Others — RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1939 — Section 110A

Citation : (2001) 1 ACC 679 : (2002) ACJ 1086 : (2000) 48 BLJR 1903 : (2000) 4 PLJR 52

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Advocate : Alok Lal, for the Appellant; V.K. Prasad and P. Gangopadhyay, for the Respondent

Judgement

Sudhir Kumar Katriar, J.—This appeal is directed against the judgment dated 17.6.1989 passed by Mr. D.N. Chakra-vorty, 1st Addl. District Judge, Jamshed-pur, in Compensation Case No. 4 of 1981, Challa Laxmi Tulsamma v. Hameed Khan, whereby the claimants'' application u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as ''the Act''), has been allowed and the appellant insurance company has been directed to pay a sum of Rs. 1,26,000 to the applicants with interest at the rate of 6 per cent from the date of the accident, i.e., 11.9.1980.

2. One Challa Venkatarama Rao was moving on his scooter in Bistupur area in the township of Jamshedpur on 11.9.1980, when a minibus bearing No. BRX 3221 coming from the opposite direction in a reckless speed had knocked down the scooter. The driver of the minibus did not stop and fled away running over his body. He was removed to the hospital but died on the same day. Opposite party Nos. 1 to 7 herein preferred an application u/s 110-A of the Act before the Claims Tribunal, Jamshedpur, for compensation. Opposite party No. 1 herein, Challa Laxmi Tulsamma is the widow, opposite party Nos. 2 to 5 are the daughters of the deceased, opposite party Nos. 6 and 7 are the father and

mother, respectively of the deceased. Opposite party No. 8 was the driver of the vehicle and opposite party No. 9 (Devendra Kumar Dubey) was the owner of the vehicle. The claimants examined a number of witnesses in support of their case. The insurance company did not produce the insurance policy. The Claims Tribunal recorded a finding that the deceased was aged 45 years on the date of his death leaving behind his widow, three daughters, a son and the parents. He was Manager in a public sector bank and on consideration of the materials on record came to the conclusion that the applicants are entitled to compensation of Rs. 1,26,000 with interest at the rate of 6 per cent with effect from the date of the accident, i.e., 11.9.1980 from the insurance company, the appellant herein.

3. Mr. Alok Lal, learned Counsel for the appellant, has at the outset pressed his application under Order 41, Rule 27, CPC seeking to bring on the record a true copy of the complete policy, being the contract between the insurer and the insured by way of additional evidence. It is stated in this application that the main portion of the same was before the Tribunal and was marked Exh. X for identification, but was not allowed to be marked as an exhibit because it was incomplete, as a result of which the entire liability has been fastened on the insurance company. This application was allowed before a learned single Judge of this Court on 13.7.1990 and the parties were directed to file counter-affidavit to the same. No counter-affidavit has been filed to the same nor any opposition has been made by learned Counsel appearing for respondent Nos. 1 to 5. Learned counsel for the respondents only submitted that no explanation has been offered in this application as to why complete policy was not filed before the court below. Learned counsel for the appellant has placed reliance on a number of reported judgments which lay down that additional evidence can be allowed in the interest of justice to be brought on record at this stage. I content myself by citing the judgment of a learned single Judge of this Court in Md. Shahjaha v. Administrator, Patna Municipal Corporation 1997 (1) PLJR 3, wherein, under similar circumstances, an application under Order 41, Rule 27, CPC was allowed and the insurance policy was taken on record by way of additional evidence on payment of costs quantified at Rs. 7,500 payable by the insurance company. That judgment was dated 12.5.97. In that view of the matter, I allow the present application under Order 41, Rule 27. The complete insurance policy is taken on record by way of additional evidence subject to payment of costs quantified at Rs. 10,000 payable by the appellant to the opposite party No. 1 along with the balance of the decretal amount.

4. Learned counsel for the appellant next submitted that it is manifest from a plain reading of Section 95(2)(b)(i) that the liability of the insurance company is limited to a sum of Rs. 50,000 only. He relied on the judgment in the case of Md. Shahjaha 1997(1) PLJR 3, wherein the appeal of the insurance company was allowed on just the same ground after holding that the appellant insurance company was liable to pay a sum of Rs. 50,000 only and the respondent owner of the vehicle shall be liable for the balance of the liability under the insurance policy. The contention is well founded and it is accordingly directed that liability

of the present appellant is limited to the extent of Rs. 50,000 with interest at the rate of 18 per cent from the date of accident (i.e., 11.9.1980), till the date of payment of the said sum of Rs. 50,000, which was paid by the order dated 13.7.1990 of this Court . The Branch Manager of the insurance company at Jamshedpur shall (Sic.) pay and opposite party No. 1 shall receive the same on behalf of the remaining claimants. The balance of the decretal amount, i.e., Rs. 76,000 shall be paid by opposite party No. 9 herein, the owner of the vehicle, namely Devendra Kumar Dubey along with interest at the rate of 6 per cent from the date of accident till the date of payment within a period of three months from today. It will be open to opposite party Nos. 1 to 7 to report non-compliance of this order to this Court .

5. In the result, this appeal is allowed in part and it is hereby held that the liability of the appellant insurance company is limited to the extent of Rs. 50,000 with interest at the rate of 18 per cent from the date of the accident till the date of payment along with costs of Rs. 10,000. The balance of the awarded amount, i.e., Rs. 76,000 shall be payable by Devendra Kumar Dubey with interest at the rate of 6 per cent from the date of the accident till the date of payment within a period of three months from today which shall be paid by A/c payee cheque or A/c payee demand draft in favour of opposite party No. 1 herein, who shall receive the same on behalf of the remaining claimants. Non-compliance of this order in any way shall be treated to be contempt of this Court and it will be open to any one of the claimants to report the same to this Court for appropriate action.

