
(1992) 02 PAT CK 0009
In the Patna High Court
Case No : M.A. No. 28 of 1985 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

Gulam Rasool and Others

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Citation : (1992) 02 PAT CK 0009

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This Misc. Appeal arises out of an award dated 25.2.1985 passed by Mr. Chandranan Singh, Additional Motor Accidents Claims Tribunal, Giridih, in Misc. (Claim) Case No. 4 of 1982, whereby and whereunder the said learned Tribunal awarded a sum of Rs. 1,03,680/- with interest at the rate of 12 per cent per annum from the date of filing of the claim petition to the date of the realisation of the awarded amount.

2. In view of the points involved in this application, it is not necessary to notice the facts of the matter in great detail.

3. Suffice it to say that one Abdus Salam, son of the applicant-respondent Nos. 1 and 2, on 12.1.1982 was travelling in a maxi taxi bearing registration No. BHW 1610 belonging to Qumruddin Ansari, respondent No. 3 and which was being driven by Md. Imamuddin, respondent No. 4. The said maxi taxi at about 3 a.m. on the aforementioned date met with an accident while coming from Dhanbad to Chatra and being driven by the respondent No. 4 in great speed rashly and negligently as a result whereof it dashed against a tree near the Bhuiantola Nimighat and turned upside down. The said Abdus Salam received injuries on the head and other parts of the body and ultimately died. According to the applicant-respondent Nos. 1 and 2, the deceased at the relevant time was aged about only 22 years and had a monthly income of Rs. 2,000/-. It was further stated that the deceased was a good maker of brief cases being of export quality.

4. Admittedly the said vehicle was insured with the appellant, the New India

Assurance Co. Ltd.

5. The applicant-respondent Nos. 1 and 2 filed a claim application in terms of Section 110-A of the Motor Vehicles Act, 1939, claiming a sum of Rs. 8,00,000/- by way of compensation.

6. A written statement was filed by respondent Nos. 3 and 4 before the Tribunal wherein it was stated that the vehicle was insured with the appellant company. It was further alleged that the accident did not occur owing to the rash and negligent driving on the part of the respondent No. 4 but due to mechanical defect of the vehicle.

7. The appellant also filed the written statement alleging therein that there was no cause of action as against it. It further pleaded that its liability was limited.

8. The learned Tribunal in view of the aforementioned pleadings of the parties framed the following issues:

(i) Did the deceased Abdus Salam, son of Gulam Rasool, die in the alleged accident?

(ii) Whether the death of the deceased was caused due to rash and negligent driving of the vehicle?

(iii) Are the claimants entitled to compensation under the provisions of the Motor Vehicles Act, 1939 and if so, what should be the quantum of compensation?

(iv) Who is liable to pay the compensation and to what extent?

9. Before the Tribunal the respondent Nos. 1 and 2 examined four witnesses. The learned Tribunal on the basis of the evidence adduced on behalf of the parties held that accident occurred due to negligent driving on the part of the respondent No. 4. It further came to the conclusion that the annual income of the deceased was Rs. 14,400/- and for the purpose of computation of the amount of compensation he applied 16 as the multiplying factor. However, 50 per cent of the total income was decided to be deducted towards the personal expenses and on the basis thereof it was held that the total amount of compensation would be Rs. 1,15,200/-. The learned Tribunal, however, further deducted 10 per cent of the said amount allegedly on account of uncertainty of life and accelerated payment of the said sum at a time and thus awarded a sum of Rs. 1,03,680/- to respondent Nos. 1 and 2. It was further held that the respondent Nos. 1 and 2 are entitled to interest at the rate of 12 per cent per annum.

10. Before the Tribunal the certificate of insurance was proved which was marked as Exh. "B". From perusal of the said certificate of insurance it appears that it was valid from 10.3.1981 to 9.3.1982.

11. This appeal was filed as against the said award by the appellant insurance company.

12. The appellant on 15.1.1990 filed an application for production of additional evidence in terms of Order 41, Rule 27 of the Code of Civil Procedure. In the said application, it was submitted that the statutory as well as contractual liability of the appellant was Rs. 10,000/-. Upon hearing the counsel for the parties by an order dated 16.1.1990, this court allowed the said application and directed the Tribunal to record the said evidence in terms of Order 41, Rule 28 of the Code of Civil Procedure.

13. Before the Claims Tribunal, thereafter, one Pinaki Chatterjee was impleaded and 14.6.1990 was the date fixed, on which date the case was adjourned to 28.6.1990 but subsequently the lawyers of the appellant company appeared on 21.6.1990. Hajri was also filed on behalf of the driver and owner through their lawyers and the matter was moved before the court and ultimately on a prayer made by the appellant company, Pinaki Chatterjee, Manager of the Giridih Branch of the appellant, was examined and cross-examined on 21.6.1990 itself. However, in the order-sheet the date was shown to be 22.6.1990.

14. Respondent Nos. 1 and 2 thereafter filed an application on 27.8.1990 alleging, inter alia, therein that the appellant with the connivance of respondent Nos. 3 and 4 manoeuvred to prepone the date of hearing of the case and got the purported insurance policy marked as exhibit illegally and behind the back of the said respondents. Upon hearing the counsel for the parties, by an order dated 20.12.1990, this court passed the following order:

In the facts and circumstances of this case, the order dated 22.6.1990 is set aside. The learned District Judge, Giridih, is directed to act in terms of this court's order dated 16.1.1990 himself.

The learned District Judge, Giridih, is further directed to make an enquiry into the entire affairs and submit his report to this court together with the additional evidence which may be recorded by him.

Let a copy of this order together with the record of the court below be transmitted to the court of the District Judge, Giridih, being the Claim Case No. 4 of 1982, immediately.

The counsel for the parties shall appeal" before District Judge, Giridih, on 15th January, 1991.

15. Thereafter the appellant company examined one K.R. Narayan. The Tribunal thereafter sent the records of the case to this court with the said additional evidence as also a purported copy of the insurance policy.

16. Mr. M.Y. Eqbal, the learned counsel appealing on behalf of the appellant, submitted that in the written statement filed by the appellant, it was contended that its liability was limited to Rs. 10,000/- only. The learned counsel further submitted that the owner of the vehicle did not file the insurance policy despite the same having been called for and thus the secondary evidence was made and the said insurance policy was marked on 23.11.1991 as Exh. (ka).

17. The learned counsel further submitted that before the aforementioned secondary evidence was adduced a notice dated 30.3.1990 had been sent by the lawyer of the appellant to the lawyer of the owner of the vehicle asking him to produce the original insurance policy, but the same having not been complied with, the appellant was entitled to lead secondary evidence.

18. The learned counsel submitted that as the said exhibit was marked without objection, the admissibility thereof cannot be questioned by the respondent.

19. The learned counsel in this connection has placed reliance upon a decision in P.C. Purushothama Reddiar Vs. S. Perumal, .

20. The learned counsel further submitted that from perusal of the insurance policy, it would appear that additional premium of a sum of Rs. 120/- having been paid, the limit of indemnity of the insurer was raised to Rs. 10,000/- as its statutory liability was only to the extent of Rs. 5,000/-. The learned counsel submitted that as the deceased was a passenger of a taxi, the liability of the insurance company could not exceed more than Rs. 10,000/- in the facts and circumstances of the case.

21. The learned counsel in this connection has relied upon British Indian General Insurance Co. Ltd. v. Maya Banerjee 1986 ACJ 946 (SC) and M.K. Kunhimohammed Vs. P.A. Ahmedkutti and Others, .

22. It was further submitted that only because the policy was a comprehensive one, the limited liability of the insurer was not extended.

23. The learned counsel in support of this proposition relied upon a decision of the Supreme Court in National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC) and Oriental Fire and General Insurance Co. Ltd. v. Barun Kumar Pandey 1989 ACJ 697 (Pat).

24. Mr. M.S. Anwar, learned counsel appealing on behalf of the respondent Nos. 1 and 2, on the other hand, submitted that as this court set aside the order of the court below dated 22.6.1990 by an order dated 20.12.1990 it was obligatory on the part of the respondents to prove the said insurance policy in accordance with law.

25. The learned counsel pointed out that on the later occasion, Pinaki Chatterjee, who was a competent witness, did not examine himself and one K. Rabi Narayan was examined.

26. The learned counsel took me through the evidence of the said K.R. Narayan and submitted that the document has not been proved. He further submitted that the said document is not a genuine one.

27. The learned counsel further took me through the insurance policy itself and submitted that from a perusal thereof, it would appear that the same is a forged one.

28. The learned counsel further submitted that as the insurance policy was not properly proved and in any event, is not a genuine document the insurer is liable to pay the entire amount.

Learned counsel has relied upon Sagar Prasad Vs. Shyam Sundar Prasad and Others, and Chandro Devi and Others Vs. Jit Singh and Others, .

29. The learned counsel also submitted that as the insurance policy has not been proved, the liability of the insurer must be held to be unlimited. In this connection learned counsel relied upon Ajit Singh v. Sham Lal 1984 ACJ 255 (P&H) and Amur Singh v. Moti 1985 ACC 451 as also a decision of this court reported in The Oriental Fire and General Insurance Company Ltd. Vs. Barun Kumar Pandey and Another, .

30. The short question which, therefore, arises for consideration, is as to whether the appellant has brought on record the insurance policy in accordance with law so that its liability may be limited to Rs. 20,000/- only.

31. K.R. Narayan was an Administrative Officer of the appellant. He in his deposition alleged that Pinaki Chatterjee who was the Branch Manager of the appellant company has been transferred to Jamshedpur. He also alleged that the original insurance policy was handed over to respondent No. 3.

32. According to this witness, from a perusal of Exh. "ka" it would appear that the liability of the insurance company was Rs. 5,000/-.

33. He further asserted that the amount of Rs. 10,000/- mentioned in page No. 2 of the policy was a clerical mistake.

34. However, in cross-examination, he admitted that he had no occasion to handle the papers earlier and he had come to court on that date for giving evidence.

35. He further admitted that in the first page of the policy, Exh. (ka), the form numbers have been printed and the date of printing was 1.2.1984 which showed when the said form was printed. He stated that before 1989, he had no occasion to see the documents. He admitted that after the first page all the subsequent 7 pages did not contain anybody's signature. He further admitted that the third and fourth pages of the Exh. (ka) were printed in May, 1985 and the sixth page was printed in November, 1982. This witness further stated that the original policy was not, handed over to the owner of the vehicle in his presence. He also could not say as to whom the said policy was given and when. He has stated the fact as to when the said policy was sent, could be ascertained from the records. He further admitted that five copies of the insurance policy were prepared together.

36. He, however, denied the suggestion that the said Exh. "ka" was a manufactured document.

37. From a perusal of the said insurance policy, it appears that somebody has

signed on the first page as certified to be "true copy". The witness did prove that signature. There is also no evidence as to that who compares the said document with the original. No such endorsement appears in the subsequent pages nor it has been proved as to who had filled up the blank portions of the printed forms. Obviously enough, as noticed hereinbefore, the 1st page of the said document was printed in December, 1984, the second page was printed in December, 1979, third page was printed in May, 1985, 4th page was also printed in May, 1985; whereas the last one being the sixth page was printed in November, 1982.

38. Apart from the aforementioned fact, the witness examined on behalf of the appellant categorically admitted that five copies of the insurance policy were prepared together. Thus even assuming that the original copy of the insurance policy was handed over to the owner of the vehicle, there cannot be any doubt whatsoever that four other copies were available with the appellant.

39. No reason has been assigned nor any explanation has been offered as to why the said other four copies which if had been prepared in the same process and thus would have been an original document, could not be produced by the appellant.

40. Further, as noticed hereinbefore, the said witness even did not state as to who compared the copy of the insurance policy produced before the court below with the original one and who certified the same to be a true copy of the original.

41. Section 63 of the Evidence Act reads as follows:

63. Secondary evidence.-Secondary evidence means and includes-

- (1) certified copies given under the provisions hereinafter contained;
- (2) copies made from the original by the mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

42. It is, therefore, clear that the conditions precedent for production of secondary evidence did not exist so as to make the aforementioned insurance policy admissible in evidence.

43. It appears that as the said document was marked as Exh. "ka" purported to have been proved by Pinaki Chatterjee on 22.6.1990 and the same had been referred as Exh. "ka" by the learned court below.

44. A secondary evidence which could not have been allowed to be brought on record is not admissible evidence, only because it has been referred to as an

exhibit.

In P.C. Purushothama Reddiar Vs. S. Perumal, , upon which reliance has been placed by Mr. Eqbal is not applicable to the facts of this case.

45. In P.C. Purushothama Reddiar Vs. S. Perumal, , the police reports in question were duly proved which were in original. No objection was taken with regard to the mode of the proof. It is only in that context, the Supreme Court stated that as those reports were marked without objection, it is not open to the respondents to question its admissibility.

46. In AIR 1929 110 (Privy Council) which decision was followed by the Supreme Court, it was held as follows:

A document was produced consisting apparently of some loose sheets of paper with entries which if they were accurate and contemporary, show that the appellant had used 5,650 dollars belonging to his principal in making this advance. Nobody suggests that the document was ever shown to the respondents. It is said to have been admissible in evidence by the law of the Federated Malay States. Their Lordships do not think it necessary to consider whether that was so or not. No objection seems to have been taken to its admissibility at the trial. The document, if accurate, records a most remarkable and extraordinary transaction in the use of the principal's money for part-performance of the agents' loan, and their Lordships think that even if admissible it is very far from being a satisfactory document, and even if it were admissible and satisfactory it would not go a very long way towards proving the appellant's case.

47. In this case, this court directed the Tribunal for recording evidence in exercise of its power under Order 41, Rule 28 of the Code of Civil Procedure. On receipt of the said evidence, it is for this court to consider the admissibility of the said document. Evidently, the counsel for the respondent Nos. 1 and 2 could not have questioned the admissibility of the said document before the Tribunal and thus it is only before this court the said question can be raised.

48. It is, therefore, clear that neither Privy Council nor the Supreme Court has suggested that even if the document is not admissible in evidence under the provision of the Evidence Act, the same can be looked into only because it has been marked as an exhibit.

49. Apart from the fact that the said document was not legally proved, no secondary evidence could have been adduced in the facts and circumstances of this case.

The said purported certified copy of the insurance policy is also not a genuine document as would be evident from the records stated hereinbefore.

50. In this situation, it cannot be said that the appellant has brought on records the insurance policy in accordance with law.

51. Further the conduct of the appellant is also not above board. There does not appear to be any cogent reason as to why on 21.6.1990 Pinaki Chatterjee was examined as a witness behind the back of the respondent Nos. 1 and 2 which was not the date fixed for hearing of the case. No explanation was also offered as to why Pinaki Chatterjee who was a competent witness was not produced again before the Tribunal. Adverse inference, thus, is liable to be drawn as against the appellant.

In this situation, I am of the view that the purported additional evidence cannot be looked into for any purpose whatsoever.

52. It is admitted that the certificate of insurance has been brought on records. A certificate of insurance when brought on records conclusively proves that the vehicle in question is insured. It was for the appellant to prove the policy in accordance with law. [See Chandro Devi and Others Vs. Jit Singh and Others,].

53. In The Oriental Fire and General Insurance Company Ltd. Vs. Barun Kumar Pandey and Another, , I had occasion to consider National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, and various other decisions. In that decision it was held:

Unfortunately, however, the appellant has not produced the policy of insurance. It was the bounden duty of the insurer and/or the owner of the vehicle who were in possession of the said policy to produce the same before the learned Tribunal.

54. This court in that case further held that if the insurance policy is not brought on records the insurer would be liable to pay the ? entire amount of compensation, subject to its right of recovery of the excess amount paid, from the owner of the vehicle in terms of Section 96(4) of the Motor Vehicles Act, 1939.

55. In the aforementioned case, decision of the Punjab and Haryana High Court in Ajit Singh Vs. Sham Lal and Others, , was also followed. To the same extent is the decision in Amur Singh's case 1985 ACC 451 and Chandro Devi and Others Vs. Jit Singh and Others, .

56. Following the aforementioned decisions, I hold that as the insurer could not bring the insurance policy on records it is estopped and precluded from contending that its liability is limited to the extent covered u/s 95 (2) (b) of the Motor Vehicles Act.

For the reasons aforementioned, it is not necessary to consider the other submissions raised at the Bar.

57. In the result, this appeal is dismissed. In the facts and circumstances of the case and particularly in view of the conduct of the appellant, it must also be held to be liable to pay costs to the respondent Nos. 1 and 2 which is assessed at Rs. 2,500/-.