(2002) 05 PAT CK 0069

In the Patna High Court

Case No : M.A. No. 147 of 1996

New India Assurance Co. Ltd. APPELLANT

Vs

Najo Khatoon and Others RESPONDENT

Date of Decision : 09-05-2002

Acts Referred:

Citation : (2002) 05 PAT CK 0069

Final Decision : Allowed

Judgement

Someshwar Nath Pathak, J.—This appeal has been filed against the order dated 16.2.1996 granting compensation of Rs. 50,000 to the claimants-respondents and it was directed to be paid by the appellant (New India Assurance Co. Ltd.).

2. Appellant?s lawyer submitted that in the instant case, vehicle in question was ensured with the insurance company on 10.1.1995 from 4 p.m., whereas the accident took place at 12 noon of the aforesaid date. So, the insurance company was not liable to pay any compensation to claimants of the case. In this connection, learned lawyer for the driver of the vehicle in question bearing registration No. BER 8421 (respondent No. 3) submitted that this misc. appeal is not maintainable in view of the fact that it is directed against an order which is not an award within the meaning of Section 149(7) of the Motor Vehicles Act, Explanation. He further submitted that this misc. appeal was also not maintainable because the appellant did not take leave of the Tribunal to file an appeal. He lastly submitted that the policy commenced on 10.1.1995 and was valid till 9.1.1996. So, the policy will start from zero hour on 10.1.1995 and will continue till 12 p.m. on 9.1.1996. So, the time of occurrence was well covered by the insurance policy.

3. I shall first dispose of the contention that the impugned order did not indicate that it was an award. Section 168 has laid down that on receipt of an application u/s 166 of the aforesaid Act, the Tribunal shall proceed to enquire into the claim and after hearing the concerned party specify the amount which shall be paid by the owner or the insurance company or the driver in question. It has further

been laid down there that where such an application makes a claim of compensation u/s 140, Motor Vehicles Act in respect of the death or permanent disablement of any person, such claim u/s 140 of the Act shall be disposed of under Chapter X of the aforesaid Act. So, the award as mentioned u/s 168 of the Act referred to an amount of compensation which may be final or interim. Section 140 of the Act has made provision for grant of compensation on the basis of no fault liability of the driver of the vehicle which causes accident. So, interim compensation granted u/s 140 of the Act will be covered by the word ?award? as mentioned u/s 168 of the Act. So, the contention of the respondents? lawyer that this appeal is not maintainable because the impugned order is not an award, is not sustainable.

4. The next ground on the basis of which this appeal was termed as not maintainable was that the appellant did not take permission from the Tribunal to file this appeal. In this connection, respondents? lawyer relied on a decision of Apex Court in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, . However, I find that this decision has simply referred to the leave granted by the Claims Tribunal to the insurance company to contest the claim case u/s 170 of the Act on the grounds other than statutory ground. When the insurance company seeks to contest the claim case on the ground other than statutory ground under Sections 147 and 149 of the Act, it has to seek leave of the Tribunal. Appeal is a continuation of the case in the trial court. So once a leave is granted to the insurance company to contest the claim case on the grounds other than statutory ground, the insurance company is entitled to file appeal as well. In the instant case, insurance company had taken objection to the interim award granted by the court below on the basis of statutory bar, the absence of liability which was to the effect that the insurance policy itself did not come in force at the time when the accident took place. So, the insurance company, appellant, was not under any obligation to take leave of the Tribunal either to contest the case in the lower court or to file appeal before this Court. So far the third ground taken by the respondents? lawyer, the appellant has relied on a decision of Apex Court in New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors, . In the reported case also, the insurance policy commenced on 16.4.1987 from 9 p.m., whereas alleged occurrence occurred at 10 a.m. The insurance policy was effective from 16.4.1987 up to 15.4.1988 (both days inclusive). The three-Judge Bench of the Hon?ble Apex Court held that since there was a definite time from which insurance policy commenced and the accident took place before the insurance policy began, the insurance company was not liable to pay compensation. In the reported case also, the Tribunal and the High Court of Madhya Pradesh both had granted interim compensation. In the case in hand before this Court also, the insurance policy was effective from 10.1.1995 up to 9.1.1996 (both days inclusive). The time of compensation of the policy was 4 p.m., whereas the accident took place at 12 noon. In this connection, it was submitted by the respondents? lawyer that since policy began on 10.1.95 and it was valid up to 9.1.1996, the entire day of 10.1.1995 would be included for the

validity of the policy. But, however, I am sorry not to agree with the submission of the respondents? lawyer because of the ratio of law decided by the Apex Court in the reported decision as mentioned above. Respondents? lawyer referred to a decision reported in (1999) 2 SCC 680 (Sic.). This decision was rendered by the Supreme Court in which two-Judge Bench held that insurance policy shall commence from the date when it was issued. This decision did not refer to any time of commencement of the valid policy and the subsequent decision referred to specific time of commencement of the insurance policy (the decision reported in the year 1999), which I have just now referred to is a decision of three-Judge Bench and it has specifically referred to the time of insurance policy. So, I am of the opinion that the decision reported in 1999 Volume 2 is not applicable to the facts of the case. The decision referred to in 2001(2) PLJR 103 was also referred to by the respondents? lawyer. This decision referred to liability of the insurance company to pay interim compensation, even u/s 140 of the Act. Insurance policy has not been mentioned. In this connection, the appellant has not denied its liability through this appeal. It has simply challenged the impugned order on the ground that insurance policy was not valid at the time when the alleged accident took place.

5. The above discussion clearly shows that the contention of appellant regarding its absence of liability to pay interim compensation to the claimants of the claim case is well sustainable. The owner of the vehicle was noticed in the appeal and driver was also heard, but the owner neither appeared in the court below nor he appeared in this appeal. Liability to pay compensation under the Motor Vehicles Act is fastened on owner, driver and the insurance company jointly and severally. But when the insurance company is not liable to pay compensation under the facts and circumstances of the case, I think the owner of the vehicle and the driver of the vehicle in question shall be liable to pay interim compensation.

6. In the result, this appeal is allowed. Insurance company is absolved from its liability to pay any amount to claimants-respondents (1 and 2). But, however, Tribunal shall proceed to realize interim compensation amount from the owner of the vehicle as also from the driver, respondent No. 3 before this Court, either singly or after apportioning the amount of compensation between the two.