
(2002) 07 PAT CK 0070
In the Patna High Court
Case No : M.A. No. 665 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Sheo Pujan Singh and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0070

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—This appeal is directed against the judgment and order dated 13.10.1999 passed in C.W.C. No. 4 of 1999 by Deputy Labour Commissioner-cum-Workmen's Compensation Commissioner, Magadh Division, Gaya, whereby and whereunder the appellant company has been directed to pay compensation of Rs. 2,28,540.

2. In short, the relevant facts are that the deceased Shashi Bhushan Kumar Singh, son of respondent Nos. 1 and 2 (claimants) was working as khalasi in Trekker No. BR 26-P 4100. On 21.10.1998 while the said Trekker was proceeding from Madanpur to Aurangabad, it stopped near Kula More for passengers to get down. In the meantime, another Trekker coming from the side of Madanpur dashed the said Trekker, as a result of which a khalasi Shashi Bhushan Kumar Singh died at the spot. Trekker was insured with the appellant company and the aforesaid claim case was filed by respondent No. 1 for payment of compensation under Workmen's Compensation Act, 1923.

3. Earlier this court vide order dated 8.3.2002 called for the lower court records of the case, which has been received and notice was also issued to the claimants and owner of the vehicle and they have appeared through their counsel.

4. Respondent No. 10, who is owner of the vehicle pleaded that the vehicle was insured with the appellant company and, thus, the liability to pay compensation was of the appellant. The appellant company raised objection that the deceased being engaged as khalasi in the vehicle there was no liability of the company to

pay compensation. In this connection, the learned counsel appearing for the appellant company referred to Branch copy of the policy which is on lower court record, and submitted that on its perusal it would appear that premium was paid for 13 passengers and driver and not for khalasi, and thus no liability can be fastened on the appellant company under Workmen's Compensation Act.

5. There appears to be no dispute as regards quantum of compensation. The only dispute in the appeal is as regards the liability to pay compensation.

6. Learned counsel for the respondent No. 10 submitted that as the policy was comprehensive policy, it was the liability of the appellant company to pay the compensation. On the other hand, the learned counsel for the appellant company submitted that the fact that the insurance policy is comprehensive is of no consequence and limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability and for this purpose specific agreement and payment of separate premium is necessary. In support of his contention, he relied upon a decision of the Apex Court in the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, .

7. I find substance in the submission of the learned counsel for the appellant. The insurance policy clearly shows that the premium was deposited only for 13 passengers and driver and not for khalasi. In the present case, there is no special contract between the appellant company and respondent No. 10 to cover unlimited liability in respect of an accident to khalasi. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondent No. 10 in any manner. Comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case.

8. Thus, considering the facts and circumstances, this court finds it difficult to accept the submission made on behalf of the owner of the vehicle (respondent No. 10) that the liability to pay compensation is of the insurer. This court in similar circumstances in the case of Oriental Insurance Co. Ltd. Vs. Shanti Devi and Others , held that the liability to pay compensation as awarded by the Tribunal is of the owner of the vehicle.

9. The impugned order is, thus, set aside and the appeal is allowed accordingly. Respondent No. 10 is, however, directed to pay the amount of compensation to the claimants, namely, respondent Nos. 1 and 2 within one month.