(2009) 04 PAT CK 0027

In the Patna High Court

Case No : M.A. No. 171 of 2005

New India Assurance Company APPELLANT

Vs

Krishna Devi and Others RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2009) 4 PLJR 813

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, for the Appellant; Abul Kalam, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The New India Assurance Company, Samastipur (hereinafter referred to as "the Company") has preferred this appeal u/s 173 of the Motor Vehicles Act, 1988, (hereinafter referred to as "the M.V. Act") against an order dated 28.1.2005 passed u/s 140 of the M.V. Act by the Motor Vehicles Claims Tribunal-cum-1st Additional District Judge, Samastipur, in Claim Case No. 12 of 2001 whereby the Tribunal has granted interim compensation of Rs. 50,000/- with simple interest at the rate of 8% per annum from the date of order till payment thereof for the death of Sunil Kumar Rai, the husband of claimant No. 1 and father of claimant Nos. 2 and 3, which occurred on 20.4.2000 out of the use of a motor vehicle which met with an accident while being driven by the deceased. The Company has appended the certificate of Insurance of the vehicle as Annexure-1 which reveals that the deceased was the owner of the ill-fated vehicle and the policy was third party in nature.

2. The plea taken by the Company is that it is not liable to pay the said amount as Section 147 of the M.V. Act makes it applicable to the third party only and does not apply to the owner. Reliance was placed on the decisions of Dhanraj vs. New India Assurance Company Ltd. (2004 AIR SCW 5438) and Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, . It was also submitted that

no additional premium was paid to avail of additional exigencies such as death, bodily injury etc. to the owner.

3. In opposing the submissions on behalf of the appellant, the learned counsel for respondent No. 1 sought to place reliance on the decision of New India Assurance Company Ltd. vs. Kendra Devi reported in 2008(1) T.A.C. 14 (S.C). However, the attention of the decisions in Dhanraj (supra) and Jhuma Devi (supra) was not brought to the notice of their Lordships in Kendra Devi''s case (supra).

4. In the instant claim case, it could not be shown by respondent that the policy was in respect of other than third party risk and additional premium was paid to cover the entire risk of death or bodily injury of the owner of the vehicle also. In this situation only the risk of third party would be attracted which did not include the owner of the vehicle even if he was possessed of a valid driving licence.

5. The impugned order cannot be sustained in law and is hereby set aside. The appeal is allowed. The statutory amount deposited be returned to the Appellant.