

(2000) 07 PAT CK 0100
In the Patna High Court

New India Assurance Company Limited and Another	APPELLANT
Vs	
Most. Sapuran Devi and Others	RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(a)

Citation : (2001) 1 ACC 568

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Judgement

Sudhir Kumar Katriar, J.—Heard learned Counsel for the parties.

2. This appeal is directed against the judgment dated 22.12.1990, passed by Sri Uma Shankar, Addl. Claims Tribunal, Hazaribagh, in Claim Case No. 11 of 1981; Sapuran Devi v. TELCO, whereby the claimants have been granted compensation amounting to Rs. 1,31,000/- under the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), alongwith interest. Respondent Nos. 5 and 6 (hereinafter referred to as TELCO), are manufacturers of trucks in their factory at Jamshedpur. After manufacturing the trucks without bodies thereupon, the same are despatched to different destinations in the country. On 4.4.1981, the chassis in question with a temporary permit had been despatched from Jamshedpur for Ludhiana. At Kujju, a village between Ranchi and Ramgarh, the chassis in question had knocked down one Upendra Majhi, who was then working as a Constable in the service of Bihar Government and was aged 26 years. He died on 6.4.1981, leaving behind claimant No. 1 (Most. Sapuran Devi), and-three children, being the other claimants. They are respondent Nos. 1 and 4 before me. Thereafter the claimants filed an appropriate application under the Act for compensation. After considering the materials on record, learned Tribunal by the impugned judgment has quantified the compensation at Rs. 1,31,000/- with interest @ 12% from, the date of the application till the date of the payment. The same was directed to be paid within a period of two months from the date of the judgment, failing which the Insurance Company shall in addition be liable to

pay interest @ 18% from the date of the judgment till the date of the realisation. The appellant has deposited a sum of Rs. 25,000/- in this Court on 19.2.1996, which is still in deposit. The order dated 20.8.1991 passed in this appeal is to the effect that the learned Counsel for the appellant states that he will not press the appeal with regard to the contention of the appellant to the effect that the vehicle in question was not insured if TELCO Ltd. files the cover-note in question even before this Court. Thereafter, TELCO filed an application in this Court on 17.4.1992 bringing on record a photocopy of the cover-note.

3. While assailing the validity of the impugned judgment, learned Counsel for the appellant submits that the impugned judgment is in the teeth of the provisions of Section 95(2)(a) of the Act which provides that the liability of the Insurance Company under the old Act is limited to the extent of Rs. 50,000/- subject to any contrary intention or terms of the cover-policy. He also submits that the rate of interest is on the higher side. He lastly submits that TELCO had not contested the claim before the Tribunal and was responsible for the delay in the conclusion of the proceeding.

4. Mr. V.P. Singh, learned Counsel for TELCO, submits that the Insurance Company has not in its show cause before the Tribunal set up a cause that its liability is limited to the extent of fifty thousand rupees. He made further submissions on merits of the matter.

5. Mr. V. Shivnath, learned Counsel for respondent Nos. 1 to 4 (the claimants), has advanced his submissions in support of the impugned judgment.

6. Having considered the rival submissions, I am of the view that contentions advanced on behalf of the appellant that its liability is limited to the extent of fifty thousand rupees in terms of Section 95(2)(a) of the Act has to be upheld. There is no indication in the insurance cover filed in this Court that there was a contrary intention therein. Learned Counsel for the appellant relies on the judgment of a learned Single Judge of this Court reported in United India Insurance Co. Ltd. Vs. Sheo Jhari Devi and Others, , and a judgment dated 14.7.2000, delivered by me in M.A. No. 127 of 1989(R) New India Assurance Co. Ltd. v. Smt. Challa Laxmi Tulsammd, upholding the same contention. I, therefore, come to the conclusion that the liability of the appellant Company in the present case is limited to the extent of Rs. 50,000/-. In that view of the matter, TELCO will have to pay the balance of the decretal amount, namely the differential amount between Rs. 1,31,000/- Rs. 50,000/- (: Rs. 81,000/- with interest.

7. In the result, this appeal is allowed in p The Insurance Company is directed to prepare the cheque or demand draft for a sum of Rs. 50,000/- with interest @ 18% from 22.12.1990 till the date of the payment in the name of respondent No. 1 herein, and be handed over to Mr. v. Shivnath, Counsel for respondent Nos. 1 to 4, within a period of two months failing which the entire amount shall be realized from personal pocket of the concerned Branch Manager. Similarly,

respondent Nos. 5 and 6 (TELCO), shall prepare a cheque for the balance amount in the name of respondent No. 1 herein with interest calculated @ 18% from the date of the judgment till the date of the payment within a period of two months to be handed over to Mr. v. Shivnath, learned Counsel for respondent Nos. 1 to 4 herein, failing which the person responsible for the same shall be liable to contempt of this Court.

8. The Registrar of this Bench is hereby directed to prepare a cheque for sum of Rs. 25,000/- deposited by the appellant Company, in the name of the appellant Company, which shall be handed over to Mr. Alok Lal, Counsel for the appellant.