

(2008) 09 PAT CK 0001
In the Patna High Court
Case No : M.A. No. 11 of 2005

New India Assurance Company Ltd.

APPELLANT

Vs

Hasne Bano and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 140
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2008) 09 PAT CK 0001

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Jha, J.—Heard learned counsel for the appellant on I.A. No. 5055/2005 filed u/s 5 of the Limitation Act. It is stated in the petition that after passing of the impugned order dated 6.1.2004, the appellant-Insurance Company filed a petition on 4.2.2004 for review" amendment of the order dated 6.1.2004, which was dismissed. Then sometime after the X"mas holidays, the appeal was filed before this Court on 7.1.2005.

2. In the facts and circumstances, delay in filing the appeal is hereby condoned.

3. Accordingly, I.A. No. 5055/2005 is hereby allowed.

4. The order under challenge is dated 6.1.2004 passed by the learned Additional District Judge-IV, Motor Accident Claims Tribunal, Patna, in Claim Case No. 129/2001, whereby and whereunder the petition filed on behalf of the respondents u/s 140 of the Motor Vehicles Act seeking interim compensation of Rs. 50,000/- (Fifty thousand) has been allowed.

5. Heard learned counsel for the appellant-New India Assurance Company Limited and the respondents.

6. Admitted fact is that the offending Truck bearing Registration No. BPL 7374 came and dashed behind the back of Md. Zafir on 31.5.2001 at about 11.15 A.M, while he was coming on bicycle as a result of which he died on way to Patna Medical College Hospital.

7. Phulwarisharif PS Case No. 209/ 2001 was registered under Sections 279, 304A IPC against the driver of the said Truck and the Police after investigation submitted charge-sheet against the driver of the Truck.

8. Admitted position is that the offending vehicle was insured with the present appellant i.e. New India Assurance Company Limited being Cover Note No.PAT/2001-35082, Branch Code No. 540101, Agency Code No. 54804 valid up to 30.5.2002 and the driver was also having valid licence bearing D.L. No. 48/ 93 PE Patna valid up to 22.12.2001.

9. The only point which has been raised here on behalf of the appellant is in respect of the time which is very crucial when such accident took place. It was 11.15 AM on 31.5.2001 when the accident took place whereas the Truck was insured on the same day at 1.30 PM meaning thereby that the insurance cover for the aforesaid Truck was issued after about two hours of the accident.

10. Learned counsel for the appellant has submitted that in the circumstances there cannot be presumption of valid insurance and for which the Insurance Company cannot be directed to pay the interim compensation amount of Rs. 50,000/- (Fifty thousand) which is under challenge here.

11. On the other hand, learned counsel for the respondents has submitted that the impugned order is mainly based on facts which are to be ascertained from several factors and evidence has to be led in course of trial before the learned Tribunal on behalf of the parties and not at this stage.

12. According to him, the premium was paid at 10.30 AM on 31.5.2001 when the Truck in question was inspected by the Insurance Company and then the accident took place on the same day at 11.15 AM whereas the insurance cover note was issued at 1.30 PM on the same day.

13. So, in the present facts and circumstances, claim for interim compensation cannot be denied. The impugned order is also very clear wherein it has been held that the Insurer will be entitled for refund of that amount from the owner of the vehicle, if it will be found that the insurer is not liable under insurance policy to pay the compensation amount.

14. Having considered the aforesaid facts and circumstances, for the present I do not find any reasonable ground to interfere with the impugned order. Accordingly, this appeal stands dismissed. However, it will remain open for the learned Tribunal to decide the matter finally and pass an appropriate order in accordance with law. The amount deposited here to the tune of Rs. 25,000/- (Twenty-five thousand) may be returned to the appellant for utilising the same for payment of interim compensation to the claimants.