
(2015) 01 PAT CK 0023

In the Patna High Court

Case No : Miscellaneous Appeal No. 520 of 2011

New India Assurance Company Ltd.

APPELLANT

Vs

Mira Devi

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 01 PAT CK 0023

Hon'ble Judges : Akhilesh Chandra, J.

Bench : Single Bench

Advocate : Shailendra Kumar, for the Appellant; Dronacharya Krishna Kumar Yadav, Advocates for the Respondent

Judgement

Akhilesh Chandra, J.—Heard the parties.

2. This is an Appeal preferred against judgment and award dated 19th February 2011 passed by the Additional District Judge-cum-M.V.A.C. Tribunal, Saran, Chapra (hereinafter referred as to the "Tribunal") in Claim Case No. 10 of 2001 by the Insurer appellant.

3. This is relevant to mention that one Ajay Kumar was driver of a bus bearing No. BR-04/9995, owned by respondent Nos. 4 and 5, who died due to sudden collision with a truck, driver of which also died at the spot but claim application was preferred without impleading the owner, insurer and heirs of the deceased driver of such truck and also no details whereof the same was mentioned in the claim application. The Insurer and the bus on his appearance in written statement has taken objection of their being not impleading a party to the proceeding. In spite of such objections nothing could be done.

4. The Tribunal, on the materials available on the record, allowed as sum of Rs. 4,41,000/- (rupees four lac forty one thousand) as compensation against death of the deceased payable by the appellant.

5. Since authority of the claims, coverage of insurance of the vehicle of which the

deceased was driver etc. besides, date and place of the accident is undisputed there is no necessity to go into further details.

6. The Appeal has been preferred mainly on the ground of contributory negligence on the part of two colliding vehicles, consequently, sharing of the liability. Learned counsel representing appellant submitted that had owner etc. of the offender truck was made party to the proceeding on basis of their objections and evidence the liability could have been divided and the appellant's liability accordingly could have been reduced or even negatived. On the other hand, learned counsel representing respondents, by placing reliance upon the decisions rendered in the cases of Karnataka State Road Transport Corporation Vs. K.V. Sakeena and Others, and Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, submits that even ignoring the negligence or other parts, now even of death of the deceased in an accident, his heirs are liable to be compensated and since, bus in question, was under coverage of insurance, the appellant is liable to pay and at the same time, if at all, it appears necessary to correct the owner etc. to another colliding vehicle impleaded for proper determination matter may be remitted back to the claim tribunal below for further needful.

7. When the learned members of the Bar were confronted with the factual position of this case arising out of an accident taken place in the year 1999 and objection of nonjoinder of necessary parties was taken at the initial stage by the appellant in its written statement and coupled with the lapse of about 16 years making it virtually next to impossible to now locate the heirs of driver of the truck, its owner as well the insurer or even if, they are located another round of litigation may consume substantial period besides expenditures as well compensation to the parties contesting the claim and the interest if any accrued upon the award.

8. On considering such aspects, it is now submissions of the Bar that in stead of going further in the matter assuming another offender vehicle liable for 50% of loss suffered by the claimants are now at this stage cannot be realized. The appellant i.e. insurer of the bus may pay half of the amount which shall satisfy its liability.

9. Taking into consideration all such aspects and submissions of the Bar which seems acceptable to serve interest of justice, this Appeal, accordingly, with modification in the award dated 19th February 2011 passed by the Additional District Judge-cum-M.V.A.C. Tribunal, Saran, Chapra in the light of submissions made above stands disposed of.

10. The appellant is directed to make payment of 50% of the award with interest as awarded deducting the amount, if any paid within a month from today.

11. Let statutory amount, if any, deposited be remitted back to the Tribunal below for further needful.