

(2014) 09 PAT CK 0087

In the Patna High Court

Case No : Misc. Appeal Nos. 359 and 360 of 2012

Nikha Devi and Others

APPELLANT

Vs

The Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 165, 166, 166(2)

Citation : (2015) 1 PLJR 616

Hon'ble Judges : A.K. Lal, J

Bench : Single Bench

Advocate : Sarita Bajaj, Advocates for the Appellant; Bimlesh Kumar Jha, Advocates for the Respondent

Judgement

A.K. Lal, J.—Since both the appeals arise out of the judgment/order dated 15.3.2012 and award dated 30.3.2012, they have been heard together and are being disposed of by this common order. Heard learned counsel for the appellants and learned counsel for the respondent Nos. 1 and 2. No one appears on behalf of the other respondents in spite of service of notice.

2. The appellants have preferred both the appeals against the judgment/order dated 15.3.2012 and award dated 30.3.2012 passed by the learned Additional District Judge-IIInd-cum-Motor Accident Claims Tribunal, Naugachia, District-Bhagalpur in Claim Case No. 8 of 2010 and Claim Case No. 6 of 2010 by which both the Claim Cases have been disposed of holding that Claim Case No. 89 of 2009 filed by the appellants, Ranghni Murmu and others of M.A. No. 360 of 2012 shall not proceed in the Tribunal at Naugachia. Since both the claim cases arise out of the same accident and they are analogous, as such, claimants of both the cases have been directed to pursue their remedy at Dumka as the accident took place within the jurisdiction of Dumka Court and both the parties are of Dumka.

3. Learned counsel for the appellants has submitted that Claim Case No. " 6 of 2010 (Ranghni Murmu & Ors. v. Oriental Insurance Company & Ors.) was filed in the court of Motor Accident Claim Tribunal-cum-District Judge, Bhagalpur, under

Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act"). As they were presently resident of village-Narayanpur, Newalal Das Tola, P.O. & P.S.-Ismailpur in the district of Bhagalpur, the claimants are entitled to file the claim case in view of the provisions contained in Section 166(2) of the Act. As such, the case was admitted by the District Judge-cum-Motor Accident Claim Tribunal, Bhagalpur, vide order dated 9.2.2010 passed in Claim Case No. 6 of 2010 and the case was transferred to the 4th Additional District Judge-cum-Motor Accident Tribunal, Naugachia and thereafter notices were issued to them. Some of the respondents also filed their written statement. Similarly, Claim Case No. 8 of 2010 was filed by the claimant, Nikha Devi, under Section 166 of the Act in the Court of District Judge-cum-Motor Accident Claim Tribunal, Bhagalpur, on 28.1.2010 and the case was admitted for hearing vide order dated 9.2.2010 and it was transferred to the court of 4th Additional District Judge-cum-Claim Tribunal, Naugachia for disposal. Accordingly notices were issued to the opposite parties and some of them appeared and filed their written statement. In due course both the cases were transferred to the court of 2nd Additional District-cum-Motor Accident Claim Tribunal, Naugachia. Both the cases were made analogous vide order dated 12.9.2011 passed in Claim Case No. 6 of 2010. The issues were framed. Thereafter, the evidence on behalf of the claimants were adduced. Documentary evidence were also adduced. A petition dated 27.4.2011 filed on behalf of the respondents-The Oriental Insurance Company and its rejoinder dated 18.6.2011 were heard on 23.1.2012. It was stated on behalf of the Insurance Company that Ranghni Murmu & Others (claimants) of Claim Case No. 6 of 2010 have filed Claim Case No. 89 of 2009 which was pending in the District Claim Tribunal, Dumka and for the same relief they have filed Claim Case No. 6 of 2010. Both the cases cannot proceed together for the same relief. As such, Claim Case No. 6 of 2010 should be dismissed. This case was fixed for orders on 7.2.2012 but the order could not be passed. Later on, the case was heard again and ultimately the impugned order dated 15.3.2012 has been passed. She has further submitted that although no claim petition was filed by Nikha Devi, the claimant in Claim Case No. 8 of 2010, but both the cases have been disposed of by the impugned order holding that the claim petition is not maintainable at Naugachia and they should pursue their remedy in Claim Tribunal at Dumka.

4. It has been further submitted on behalf of the appellants that since the evidence has already been adduced in both the cases, which were made analogous and the evidence on behalf of the claimants and witnesses were examined and cross-examined and documentary evidence were also filed and the evidence on behalf of the claimants were almost complete and the respondents have to adduce evidence, if any.

5. Considering these facts, Ranghni Murmu and Ors., appellants of M.A. No. 360 of 2012 arising out of the Claim Case No. 6 of 2010 have withdrawn Claim Case No. 89 of 2009 filed under Section 140 of the Act for interim compensation pending in the Court of Additional District Judge-I-cum-Motor Accident Claim

Tribunal, Dumka and have filed a certified copy of the order dated 31.3.2014 passed by the learned Addl. District Judge-I, Dumka, vide supplementary affidavit dated 16.6.2014.

6. Learned counsel for the respondent Nos. 1 and 2 has fairly submitted that since appellants of Claim Case No. 6 of 2010 have withdrawn the Claim Case from the Dumka Court and since the appellants reside at Naugachia, therefore, Naugachia Court has jurisdiction to pass the order according to the merit of the case.

7. After hearing the learned counsel for both the parties and on perusal of the records, it appears that contention of the learned counsel for the appellants is correct. Although the accident had taken place on 11.7.2009 at Deoghar Hansdiha Pakka Road in Village-Baratar in the district of Dumka but claimants Ranghni Murmu and others (claimants of Claim Case No. 6 of 2010) reside at Village-Narayanpur, Newalal Das Tola, P.O. & P.S.-Ismailpur in the district of Bhagalpur and was earning in the village where they were residing at the time of filing of the Claim Case No. 6 of 2010. It is also apparent from the affidavit of P.W. 1 Ranghni Murmu & Ors. Similarly, Nikha Devi has filed Claim Case No. 8 of 2010 in the court of Motor Accident Claim Tribunal cum District Judge, Bhagalpur where she was residing at village-Gonarchak, P.O.-Khagra, P.S.-Sahu Parbatta in the district of Bhagalpur, as she was carrying on business within the district of Bhagalpur. It appears from the provision contained in sub-section (2) of Section 166 of the Act that an application for compensation arising out of an accident specified in sub-section (1) of Section 165 of the Act shall be made at the option of the claimant, either to the Claim Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides.

8. In this view of this matter and in the facts and circumstances stated above, the claim applications filed within the jurisdiction of the District Judge of Bhagalpur is maintainable. It was noticed earlier that both the claim cases have been filed before the District Judge-cum-Motor Accident Claim Tribunal, Bhagalpur and after admission" both the cases were transferred to the Tribunal at Naugachia within whose jurisdiction the claimants were residing.

9. Considering the facts and circumstances stated above, in my opinion, the impugned order/award is not sustainable. It is accordingly set aside.

10. Both the claim cases are remanded to the Court of Additional District Judge-IInd-cum-Motor Accident Claim Tribunal, Naugachia (Bhagalpur) for fresh hearing and disposal. The learned Tribunal will take steps for an early disposal of both the cases, since the occurrence had taken place on 11.7.2009 and the dependants have not received a single farthing and have been struggling for the compensation.

11. In the result, both the appeals are allowed. The parties will bear their own

costs. Let the lower court records be sent down immediately.