
(2011) 08 PAT CK 0186
In the Patna High Court
Case No : M.A. No. 235 of 2008

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Lalita Jha and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 146, 147, 147(1)(b), 163A

Citation : (2012) ACJ 2561

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Durgesh Kumar Singh, for the Appellant; Dhananjay Kumar, Shailendra Kumar, Bela Singh and Mr. Rajeev Ranjan, for the Respondent

Judgement

Rakesh Kumar, J.—The present appeal has been preferred by the appellant Oriental Insurance Co. Ltd., Muzaffarpur u/s 173 of Motor Vehicles Act, 1988 against the judgment dated 14.1.2008 and award dated 28.1.2008 in Claim Case No. 260 of 2005, whereby the Additional District Judge-cum-Motor Accidents Claims Tribunal, F.T.C. No. 5, Muzaffarpur (hereinafter referred to as "the Claims Tribunal") has awarded total compensation amount of Rs. 18,08,738, which was directed to be equally shared by the appellant Oriental Insurance Co. Ltd. as well as National Insurance Co. Ltd., which was arrayed as opposite party No. 2 in the claim case. The short fact of the case is that on 26.7.2007 a claim petition was filed on behalf of respondent Nos. 1 and 2 before the Claims Tribunal claiming compensation of Rs. 26,16,857 due to untoward accidental death of husband of respondent No. 1 and father of respondent No. 2. Death in the accident had occurred on 28.6.2005 near Ghenghata Mela, on NH 19 under Chapra Muffasil in the District of Saran. The husband of claimant-respondent No. 1 was the Assistant General Manager, State Bank of India, Zonal Office, Muzaffarpur and while he was going along with one Ramadhar Prasad in a car bearing registration No. BR 06-F 6112 to Chapra, their car was dashed with a tanker, bearing registration No. NL 01-D 0645 due to rash and negligent driving of the tanker. After sustaining injury, the injured Bhavnath Jha was firstly taken to a private

hospital at Patna and thereafter, he was carried to All India Institute of Medical Sciences, New Delhi. However, on 14.8.2005, he succumbed to the injuries.

In respect of alleged occurrence, an F.I.R. vide Chapra Muffasil P.S. Case No. 168 of 2005 was registered and after investigation, charge-sheet was filed against the driver of the tanker in question. Further case of the claimants was that in the accident, the driver of the car, namely, Amarjit Kumar Prajapati, who was carrying valid licence, also died. In support of the claim, the claimants examined number of witnesses and brought on record number of documents. The Claims Tribunal framed the following issues:

- (i) Whether the application for compensation by the applicants as framed is maintainable?
- (ii) Whether the accident in question was caused due to rash and negligent driving by the drivers of the offending vehicles bearing registration No. NL 01-D 0645 (tanker) and BR 06-F 6112 (car) causing the death of Bhavnath Jha within Chapra Muffasil P.S., District Saran on 28.6.2005?
- (iii) Whether the owners of the vehicles violated any terms and conditions of the policy?
- (iv) Whether the alleged accident took place due to contributory negligence of drivers of both vehicles? If so, what is the percentage of negligence of each offending vehicle?
- (v) Whether the applicants are entitled to the claim as propounded, if so, what should be the quantum of compensation and from whom?
- (vi) Whether the applicants are entitled to any other relief or reliefs as claimed for?

2. After hearing the parties and considering the materials available on record, keeping in view income of the deceased, the learned Tribunal finally determined the compensation amount to the tune of Rs. 18,58,738, out of which Rs. 50,000 was paid u/s 140 of the Motor Vehicles Act, which was directed to be deducted from the compensation amount and, as such, the total compensation amount was directed to be shared equally by the appellant, i.e., Oriental Insurance Co. Ltd. and National Insurance Co. Ltd. since the tanker in question was insured by National Insurance Co. Ltd. and the car in question was insured by Oriental Insurance Co. Ltd. (appellant).

3. It is pertinent to mention here that National Insurance Co. Ltd. has not questioned the order passed by the Claims Tribunal. However, the appellant has come before this court challenging the impugned order, whereby the appellant was directed to share equally, meaning thereby that the appellant was directed to pay 50 per cent of the compensation amount to the claimants.

4. Mr. Durgesh Kumar Singh, learned counsel for the appellant, at the very outset has submitted that the appellant is not questioning any finding of the

Claims Tribunal so far as compensation amount is concerned, but he has argued that in the facts and circumstances of the present case, the appellant Oriental Insurance Co. Ltd. was not liable to pay any compensation. According to the learned counsel for the appellant, in this case accident had taken place due to rash and negligent driving of the tanker in question, which was insured by National Insurance Co. Ltd. and, as such, the whole amount of compensation was required to be paid by National Insurance Co. Ltd., the respondent No. 4. Mr. Singh, learned counsel for the appellant, has drawn my attention to Annexure 1 to the Memo of Appeal and has argued that the car in question was insured as a private car and the insurance policy for the car in question was an Act policy, i.e., third party insurance and, accordingly, it was argued that since the car was insured under the Act policy, in the present case the appellant was not liable to pay any compensation amount. He further submits that the car in question was on hire at the time of occurrence and the car being a private vehicle was not required to be used on hire basis. Accordingly, the owner of the car in question had breached the policy. In sum and substance, learned counsel for the appellant on the basis of Annexure 1, i.e., purported to be insurance policy of the car in question, has argued that the owner of the car has grossly breached the terms and conditions of the policy and moreover, it was only Act policy and, as such, the appellant was not obliged to make payment of any compensation amount in such a situation.

5. The learned counsel for the appellant has further developed argument that as per the F.I.R. it was the case of the claimants that the tanker in question had dashed the car due to rash and negligent driving by the driver of the tanker and, accordingly, it was not a case of contributory liability. Learned counsel for the appellant relying on a judgment reported in M/s United India Insurance Company Limited Vs. Seraj Devi and Others, , has argued that since there was no allegation of rash and negligent driving of the car, no liability can be fastened against the concerned car and, as such, the insurer of the car cannot be directed to compensate the claimants. It was submitted that simply the collision of two vehicles is not sufficient to draw an inference that the driver of the car in question was also driving rashly and negligently. In support of his argument that since the car in question was having Act policy, the insurer of the car was not liable to pay compensation, learned counsel for the appellant has relied upon United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, . It was submitted that due to the reason that the owner of the car had violated the terms and conditions of the policy, the insurer of the said car was not liable to pay compensation. On this very point, learned counsel for the appellant has also relied on judgment in New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others, . He has specifically referred to paras 11, 12, 14 and 16 of the said judgment. It would be appropriate to quote those paras, which are as follows:

(11) Provisions relating to grant of compensation occurring in Chapters XI and XII of the Act have been enacted by Parliament in order to achieve the purpose and object stated therein.

(12) Section 146 of the Act lays down the requirements for insurance against third party risk. Where a third party risk is involved, an insurance policy is required to be mandatorily taken out.

The requirements of policies and the limits of liability, however, have been stated in section 147 of the Act. Section 147(1)(b) of the Act, reads as under:

147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

(14) It is not a case where even section 163-A of the Act was resorted to. Respondents filed an application u/s 166 of the Act. Only an Act policy was taken in respect of the motor vehicle. Submission of the learned counsel that being a two-wheeler, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident arising out of the use thereof would come within the purview of the term "a person" as provided for in section 147 of the Act, in our opinion, is not correct.

(16) Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and

the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policies is governed by Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.

6. Learned counsel for the appellant has further argued that the driver of the car was required to be impleaded as party and in his absence, the insurer was not liable for any liability. In support of his argument, learned counsel for the appellant has referred to a judgment reported in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, . He has specifically referred to para 9 of the said judgment. It would be appropriate to quote that para, which is as follows:

(9) Before we proceed to consider the main aspect arising for decision in this appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure while dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all the basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken is, therefore, entitled to show, when he moves u/s 166 of the Motor Vehicles Act, that driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed u/s 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited

company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-à-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased, was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it.

7. On the aforesaid grounds, learned counsel for the appellant has argued for quashing of the part of the judgment and award, whereby Oriental Insurance Co. Ltd. was directed to share the compensation amount equally.

8. Mr. Dhananjay Kumar, the learned counsel for the respondent Nos. 1 and 2 (claimants), has supported the impugned judgment and award. He has raised serious objection on looking into Annexure 1 to the Memo of Appeal, which is said to be a photocopy of the policy of the car in question. He submits that at the appellate stage, the appellant cannot be allowed to bring a document on record, which has not been got exhibited during the trial before the Claims Tribunal and it was argued that this court may not take notice of Annexure 1 to the Memo of Appeal.

9. Mr. Rajeev Ranjan, learned counsel for owner of the car in question, respondent No. 5, has taken a plea that in the present case the accident had taken place due to rash and negligent driving of the tanker in question, which is evident from the F.I.R. and, accordingly, charge-sheet was also filed only against the driver of the tanker.

10. The present appeal has been vehemently opposed by Mr. Shailendra Kumar, learned counsel for National Insurance Co. Ltd., respondent No. 4. It was submitted that it was a case of head-on collision, in which the husband of respondent No. 1 succumbed to his injury and since it was a case of head-on collision adopting principle of contributory liability, the learned Claims Tribunal has validly directed the insurer of both the vehicles, i.e., the tanker and the car to equally share the compensation amount. Mr. Shailendra Kumar, learned counsel for respondent No. 4, has also argued on the line of argument advanced by learned counsel for respondent Nos. 1 and 2 (claimants) that Annexure 1 to

the Memo of Appeal, which is purported to be a copy of the insurance policy of the car, may not be looked into at this stage. It was submitted that while hearing an appeal against the judgment and award of the Claims Tribunal, this court is required to examine or look into only those documents and evidence which were brought on record during the trial.

11. In support of his argument that in case of head-on collision, the insurer of both the vehicles can be directed to equally compensate the claimants, learned counsel for respondent No. 4 has relied on a judgment in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, . He argued that in case of head-on collision, it is difficult to come to a definite conclusion as to which of the vehicles was exactly at fault. Moreover, in the present case, the evidence has come that the accident had taken place due to error of the drivers of both the vehicles. Mr. Shailendra Kumar, learned counsel for respondent No. 4, has specifically referred to para 12 of *Bijoy Kumar Dugar's* case (*supra*). For just decision in the matter, it is appropriate to quote para 12 of the said judgment, which is as follows:

(12) Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the M.A.C.T. recorded under issue No. 2. It is the evidence of Rajesh Kumar Gupta, PW 2, who was travelling in said Maruti car along with the deceased Raj Kumar Dugar on the day of the accident. He stated that while coming from Digboi, Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. M.A.C.T. has not accepted the evidence on PW 2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW 2 wanted the court to believe, it was but natural for the deceased as a prudent man to have taken due care and precaution to avoid head-on collision when he had already seen the bus from a long distance coming from the opposite direction. It was head-on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. M.A.C.T., in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well reasoned order of the M.A.C.T. on this point. The M.A.C.T. has awarded interest at the rate of 10 per cent per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the M.A.C.T. and, in our view, the discretion exercised by the M.A.C.T. cannot be said to be inadequate and inappropriate.

12. Besides hearing the learned counsel for the parties, I have also perused the materials available on record, particularly the impugned judgment and award. In whole of the argument, learned counsel for the appellant has mainly taken the plea that the car in question was having Act policy in view of Annexure 1 to the Memo of Appeal and accordingly, he has elaborated his argument that in view of breach of the policy by the owner of the car in question, the insurer of the car cannot be held liable to pay the compensation to the claimants. However, after going through the judgment of the Claims Tribunal, it is evident that on behalf of the appellant, no such plea was taken before the Claims Tribunal. On the contrary, on behalf of Oriental Insurance Co. Ltd., appellant, it was accepted that the car was having policy and it was valid on the date of occurrence. This fact has been noticed by the learned Claims Tribunal in para 3 of its judgment. It is appropriate to quote relevant portion of para 3 of the judgment of the Claims Tribunal, which is as follows:

O.P. No. 4 Oriental Insurance Co. Ltd. has also confirmed policy of car bearing No. BR 06-6112 to be valid on the date and time of occurrence.

13. In view of specific stand taken on behalf of appellant before the court below, it would not be appropriate to take notice of Annexure 1 to the Memo of Appeal, which is otherwise not required to be looked into while hearing an appeal against the judgment and award passed by the Claims Tribunal. Moreover, neither such document was produced before the court below nor any such plea was taken. Accordingly, it is advisable for this court to refrain from looking into such document; like Annexure 1 to the Memo of Appeal. Since it was not at all a case of Oriental Insurance Co. Ltd. before the court below that owner of the vehicle breached the policy, the cases, i.e., United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, ; New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others, and M/s United India Insurance Company Limited Vs. Seraj Devi and Others, , which have been referred by learned counsel for the appellant, have got no relevance in the facts and circumstances of the present case. Similarly, the plea of learned counsel for the appellant that the driver of the vehicle, i.e., the car in question was not impleaded as a party before the court below and reliance was placed on The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , is equally not applicable in the facts and circumstances of the case due to the reason that driver of the car in question had also died in the accident. This fact is evident from the judgment of the Claims Tribunal. The court is in agreement with the submission of Mr. Shailendra Kumar, the learned counsel for National Insurance Co. Ltd., respondent No. 4, on the point that it was a case of contributory liability due to the reason that it was a case of head-on collision.

14. In view of the facts and circumstances as discussed above the court is of the opinion that the learned Claims Tribunal has not committed any error in directing both Oriental Insurance Co. Ltd. (appellant) and National Insurance Co. Ltd., respondent No. 4, to equally share the compensation and pay the amount to the

claimants. I do not find any merit in the appeal and, as such, the appeal stands rejected without any costs. Let the statutory amount deposited by the appellant at the time of filing of the appeal be remitted back to the court below for its payment to the claimants.