(2006) 02 PAT CK 0045

In the Patna High Court

Oriental Insurance Co. Ltd. APPELLANT

Vs

Shiv Narain Sahani and Others RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Citation : (2006) 02 PAT CK 0045

Final Decision : Dismissed

Judgement

J.N. Bhatt, C.J.—After having heard the learned Counsel appearing for the parties and considering the facts and circumstances as well as, the ratio propounded in the decision rendered in the case of Nagappa Vs. Gurudayal Singh and Others, the amendment petition filed on behalf of the respondent No. 1, on the analogous principles of the provisions of Order 6, Rule 17 of Code of Civil Procedure, 1908, deserves to be allowed. Accordingly, it shall stand allowed.

2. By this appeal, the appellant Oriental Insurance Co. Ltd. has assailed the award passed by the Motor Accidents Claims Tribunal-cum-Second Additional District Judge, Darbhanga in Claim Case No. 15 of 1995, dated 31.1.2002, whereby the claim petition came to be granted and an amount of Rs. 2,68,200 with interest at the rate of 9 per cent per annum from the date of filing of the application till payment by way of compensation for the premature demise of the wife of the original claimant, respondent No. 1 herein, was awarded for the reasons stated therein.

3. It is true that the claim for the loss of life of the wife was for Rs. 2,00,000 (rupees two lakh). The life of the wife of respondent No. 1 was cut short at the cruel hands of the providence in a vehicular accident which had occurred on 15.6.1995 near outer gate of private bus stand, Police Station, Lalit Narain Mithila University, Distt. Darbhanga, Bihar at about 11 a.m., wherein a bus was involved, which was being driven by Sunil Kumar Kam, original opponent No. 2 and it was owned by Om Prakash Bharti, original opponent No. 1, which was insured with Oriental Insurance Co. Ltd., original opponent No. 3 and appellant before this Court. Respondent No. 1 is the husband of the deceased Mohani Devi,

whereas, respondent Nos. 2 to 7 are minor children of the deceased who sustained fatal injury and died at the spot. She was working as a hawker and selling green fruits and fishes. She was aged about 38 years at the time of unfortunate demise. Since the factum of accident was not in question and she was a third party and negligence having thus been established on the part of the driver of the offending vehicle, the Tribunal reached to the conclusion that the death of Mohani Devi was on account of rash and negligent driving on the part of the driver of the offending bus involved in the accident.

4. Insofar as quantification of damages is concerned, the Tribunal has considered the material principles of law in the light of the facts and circumstances of the case, as well as, the guidelines provided in the structured formula in Second Schedule to the Motor Vehicles Act, 1988 and awarded a consolidated amount of Rs. 2,68,200 which in the facts and circumstances of the case, as well as, considering the principles of law of Tort and the structured formula guidelines is quite just and reasonable requiring no interference in this appeal.

5. Since the initial claim for compensation of Rs. 2,00,000 was sought to be enhanced in course of the appeal by giving an application for amendment in the application on the analogous principles of the provisions of Order 6, Rule 17 of the Civil Procedure Code, it has been granted keeping in mind the principles of law enunciated in the case of Nagappa Vs. Gurudayal Singh and Others,

6. Learned Counsel for the appellant insurer has drawn the attention of this Court to the observations of the Tribunal in para 11 of the award. It is contended that it is observed that the insurance company, in view of the case-law reported in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , becomes liable to make compensation to the claimant in such a case where allegedly the driver was not holding valid licence. In this context, it is further submitted that the Claims Tribunal has observed that the insurance company may realise the amount of compensation from the owner if there was any breach of laches on the part of the owner. Since there is no appeal at the instance of the insurer the rights and the liabilities of the parties, obviously, shall stand governed by the observations made by the Tribunal as there is no question of going into the merits of those observations upon a consensus of the parties.

7. Amount if deposited by the appellant towards amount of compensation awarded or the deposit of the amount as prerequisite for filing an appeal u/s 173 of the Motor Vehicles Act, 1988, shall stand transmitted to the Tribunal concerned.

8. The Registry shall see that the said amount is transferred early. Upon such an amount being transmitted to the Tribunal concerned, it will be open for it to pass appropriate orders for disbursement in terms of the award for the best interest of the parties upon due verification and identification. If amount is short, the insurance company through its counsel undertakes to pay the remaining amount towards the amount of compensation awarded in terms of the award under

challenge in this appeal within a period of six weeks with proportionate costs and interest.

9. In the result, this appeal shall stand dismissed with the aforesaid observations.

