(1996) 12 PAT CK 0042

In the Patna High Court

Case No : Misc. Appeal No. 244 of 1995

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Smt. Shobha Sinha and Others — RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 140(1), 140(3), 140(4)

Citation : (1997) 2 PLJR 393

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Uday Bhanu Roy and Ambrish Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Mishra, J.—The Oriental Insurance Company Ltd., Munger, is the Appellant in this miscellaneous appeal, which arises out of the judgment and award, dated 30.6.95 passed by the Claims Tribunal in Claim Case No. 32 of 1994, whereby the Appellant Insurance Company was directed to pay a sum of Rs. 25,000/- as ''no fault'' compensation u/s 140 of the Motor Vehicles Act, 1988, (hereinafter to be referred to as ''the Act''). The widow and her minor sons have filed a petition for compensation in terms of Section 140 of the Act. It is alleged that the deceased along with his brother was coming from his village on a motor cycle bearing Registration No. B.R. 8-4390 and when they reached near village Paharpur, a truck came from opposite direction and dashed against the motor cycle, as a result, the brother of the deceased, who was driving the motor cycle fell down and became unconscious and the deceased brother, who was a pillion rider was dashed, fell down and was crushed under the wheel of the Truck. The truck was being driven in a high speed, and, as such, the details of the truck could not be noted by the claimants or any person, who was present at the time of accident.

2. However, a first information report was lodged being Surajgarha P.S. Case No.

184 of 1994. In absence of the details of the truck, a petition was filed by the claimants along with a copy of the first information report stating therein that the motor cycle, in question, was insured with the Appellant Insurance Company and, as such, the claimants are entitled to be compensated under ''no fault liability'', in terms of Section 140 of the Act. The owner of the motor cycle, namely, the brother of the deceased as well as the Insurance Company appeared and filed their respective written statements. The owner of the motor cycle has supported the case of the claimants. The Insurance Company has not denied the statement to the effect that the motor cycle, in question, was insured with the Appellant, Insurance Company. However, it is alleged that since the owner of the truck has not been made a party and in his absence, the claim is not maintainable. The Insurance Company has further alleged that according to the case of the claimants themselves, the accident occurred due to rash and negligent driving of the truck itself, and, as such, the Insurance Company is not liable to pay the compensation on behalf of the owner of the motor cycle though the same is insured with the Appellant. The court, on consideration of the materials on record including the submissions raised on behalf of the parties, has rejected the defence of the Insurance and directed to pay the compensation of Rs. 25,000/- under ''no fault liability'' clause u/s 140 of the Act. Hence, this miscellaneous appeal by the Insurance Company.

3. Mr. Ajay Kumar, learned Counsel appearing on behalf of the Appellant Insurance Company, has assailed the judgment and award passed by the Tribunal on the ground that on the statement of the claimants themselves, the Appellant is not liable to pay the compensation, inasmuch as, according to the claimants, the instant accident took place due to rash and negligent driving of the truck and on the same basis, the criminal case, namely, Surajgarha P.S. Case No. 184/84 was also registered. The Appellant Insurance Company cannot be held liable to pay compensation in absence of the owner of the truck. It is admitted position that neither the driver nor the owner of the truck nor the registration number of the truck has been mentioned in the claim petition. It is thus submitted by Mr. Ajay Kumar that, in any view of the matter, the deceased was a pillion rider and since no extra premium was being paid by the owner of the motor cycle, the risk for payment of such compensation is not covered in terms and conditions of the Insurance policy. In order to appreciate the arguments of the learned Counsel for the Appellant, it is necessary to examine Section 140 of the Act itself. Section 140 of the Act envisages payment of compensation on the principle of ''no fault liability''. It is better to quote Section 140 of the Act, which reads as follows-

140. Liability to pay compensation in certain cases on the principle of no fault. (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of twenty five thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1), shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

4. Thus, Sub-sections (3) and (4) of Section 140 of the Act go to suggest that in any form of accident, on account of any default of the owner or owners of the motor vehicle or vehicles concerned, which are involved in the accident, the Claims Tribunal can award such compensation to the victim. Reading the scope and intent of Section 140 of the Act, the owner of the vehicle, which is involved in the accident, is liable to pay compensation. It is admitted position that the motor cycle, in question, is involved in the accident due to which the victim died. In order to give relief in terms of Section 140 of the Act, the Tribunal is not supposed to examine as to who is at fault. The moment, it comes to the knowledge of the Tribunal that such vehicle is involved in the accident, the Tribunal has no alternative but to pass order in terms of Section 140 of the Act. Having regard to the facts and circumstances of this case and having further regard to the purpose for which Section 140 of the Act has been brought on the statute, it cannot be said that the Insurance Company is not liable to pay compensation though the motorcycle, in question, was insured with the Appellant Insurance Company.

5. Having heard learned Counsel for the parties and having examined the materials on record including the judgment and award under challenge, I am of the view that the Tribunal has rightly passed the impugned award directing the Appellant-Insurance Company to pay the compensation to the claimants. There is no illegality in the order under challenge in this appeal. Accordingly, this miscellaneous appeal is dismissed, but without cost.

6. Before, however, I part with this judgment, I may observe that any observation and/or finding arrived at by the Tribunal as well as by this Court, will not prejudice the case of the parties as and when any occasion arises. Mr. Ajay Kumar, learned Counsel for the Appellant-Insurance Company further informs

that while filing this appeal, a sum of Rs. 12,500/- was deposited by the Appellant, which is lying in this Court and the same may be allowed to be withdrawn by the claimant-Respondents. He further states that the remaining amount of Rs. 12,500/- out of the total compensation amount allowed by the Tribunal to the claimant-Respondents shall be deposited by the Appellant Insurance Company in the court below within a month. On deposit of Rs. 12,500/- by the Appellant Insurance Company in the court below, the claimant Respondents shall be entitled to withdraw the said amounts with permission of the Tribunal as well as from this Court, without security but on proper identification of the claimants.

