(2001) 07 PAT CK 0109

In the Patna High Court

Case No : M.A. No. 520 of 1998

Oriental Insurance Company Ltd. and Another — APPELLANT

Vs

Ramji Choudhary and Others — RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0109

Judgement

S.K. Katriar, J.—This appeal is directed against part of the order dated 7.8.98 passed by the learned 2nd Additional District Judge-cum-Motor Vehicles Accident, Claim tribunal, Kaimur at Bhabhua, in Motor Vehicles Claim Case No. 35/33 of 1994/1996 Ramji Choudhary and Ors. v. Pankaj Kumar Singh and Ors. whereby he has allowed the claimants application u/s 140 of the Motor Vehicles. Act, 1988 (hereinafter referred to as ''the Act''), and directed the Appellant company to pay interim compensation amounting to Rs. 25,000/- to the claimants (Respondent Nos. 1 to 4 herein) on no fault basis. The grievance of the Appellants is confined to the limited question that interim compensation should in the facts and circumstances of the present case be equally apportioned between the two insurers. The other insurer is National Insurance Company Ltd. (Respondent Nos. 7 and 8 herein).

2. One Chirkutia Devi (deceased) was travelling in a bus bearing registration No. BR 24-P-6621 on 19.12.93, which was insured by the Appellant company. The bus collided against a truck bearing registration No. UP 13-9642 which was insured by Respondent Nos. 7 and 8 herein. Chirkutia Devi died in the accident. The heirs of the deceased (Respondent Nos. 1 to 4 herein) filed an application u/s 166 of the Act before the Claims Tribunal. The claimants filed an application u/s 140 of the Act praying for interim compensation on no-fault basis. The same has been disposed of by the impugned order dated 7.8.98, whereby it has been held held that opposite parties are liable to pay interim compensation to the claimants u/s 140 of the Act, and has directed the Appellant company to pay the entire amount of interim compensation of Rs. 25,0007/-. As stated hereinabove, the Appellants make a grievance only of that part of the order whereby it has been

directed to pay entire compensation amount instead of half of it, and Respondent Nos. 7 and 8 should be directed to pay the balance half.

3. Learned Counsel for Respondent Nos. 7 and 8 has raised a preliminary objection as to the maintainability of this appeal. Relying on the following judgments of learned single Judges of this Court, he submits that a civil revision application alone is maintainable in this case:

(i) Sri Vidya Sagar Singh Vs. Shanti Devi and Others,

(ii) Shishupal Prasad @ Shishupal Kumar Vs. Mosomat Malti Devi and Others,

(iii) Chiteshwar Nath Dubey @ C.N. Dubey Vs. Maheshwari Manjhian,

(iv) United India Insurance Co. Ltd. Vs. Katukuri Raghavareddy and Others,

Learned Counsel for the Appellants has taken the stand that the appeal is maintainable in view of the Division Bench judgment of this Court as reported in Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi alias Md. Moya and Others She has also relied on an unreported order dated 18.8.2000, passed by a Division Bench of this Court in L.P.A. No. 1125 of 2000 Ranjit Kumar v. State of Bihar and Ors. In view of the position obtaining in the present case, I do not wish to go into the question of maintainability of this appeal, inter alia, for the reason that a Misc. Appeal or a Civil Revision application against the Impugned order would be taken up in this Court by single Judge under the High Court Rules. The contention raised by the parties on the merits of the matter in the instant case can be entertained under both the jurisdictions. The position would have been fundamentally different if one or the other of the two jurisdictions were either not exercisable by this Court, or one would have been exercisable by a single Judge Bench and other one by a Division Bench, Therefore, the issue will have to await a more appropriate case for a thorough discussion.

4. Coming to the merits of the case, learned Counsel for the, Appellants submits that it has now been held by various decisions that the owner in the context of section 140 of the Act includes insurer. She relies on the judgment of a learned single Judge of this Court reported in Oriental Insurance Co. Ltd. Vs. Jagdeo Paswan and Others, Learned Counsel for Respondent Nos. 7 and 8 has countered the submission and has gone to the extent of submitting that it is the owner alone which can be fastened with the liability of interim compensation in terms of section 140 of the Act. Therefore, in his submission, the impugned order is in the teeth of the provisions of section 140 of the Act. The relies on the judgment of the Supreme Court reported in (1996) 2 SCC 376 K. Nand Kumar v. Managing Director Thanthal Periyar Transport Corporation).

5. Having considered the rival submissions, I am of the view that the Appellants'' contention must succeed. It is manifest from a plain reading of sub-section (1) of section 140 of the Act that...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. This provision clearly lays down that in a case where the owners of two vehicles are involved, the liability can be fastened jointly and severally. It has been held by a Division Bench of this Court reported in 2000 (3) PLJR 103 Kanhai Rai v. Dharampal to which I was a party, paragraph 20 of which is relevant in the present context and set out herein below for the facility of quick reference:

20. In view of my conclusions arrived at above, it is clear that the insurer can not escape from the liability to pay the interim compensation u/s 140 of the Act provided other conditions, as enumerated above, are-fulfilled. Once it is found that the insurance policy is in force with regard to use of a motor vehicle at a public place, the Tribunal can pass order against the insurer also. However, at the stage of considering an application u/s 140 of the Act, the Court has to take prima-facie view in the sense that once on the basis of the materials on record it is proved that there is insurance policy in force in terms of provision contained in Chapter XI of the Act against the liability of a third party risk, the Tribunal may pass an order for payment of interim compensation against the insurer. At that stage, the Tribunal cannot hold a mini enquiry nor can it take into consideration the defence, which is available to the insurer, which has to be considered at the time of final determination of the said question u/s 168 of the Act. If at the stage of section 140 the insurer is allowed to take defence as provided u/s 149(2), then that will frustrate the very, object, for which the provision has been made as it cannot be disposed of expeditiously in terms of the statutory provision and the proceeding will linger and in all purposes will assume the character of determination of a final compensation u/s 168 of the Act.

It is thus manifest that in the context of section 140 of the Act, it will include the insurer, and if it is ultimately found after conclusion of the trial that the insurer was not liable, it shall be entitled to reimbursement from the owner of the vehicle. Learned Counsel for the Appellants has, therefore, rightly relied on the judgment of a learned single Judge of this Court in Oriental Insurance Co. Ltd. v. Jagdeo Paswan (supra) the facts of which are same or similar. In that case also as in the present case, the deceased was travelling in one, vehicle which had met with an accident against another vehicle, and the insurers were different. The learned single Judge held that both the companies were liable to the extent of 50% each in terms of section 140 of the Act.

6. In that view of the matter, the appeal succeeds. The impugned order is'' hereby modified. The Appellant and the other insurer, namely, Respondent Nos. 7 and 8 are hereby directed to pay half and half amount of the interim compensation determined by the Claims Tribunal. It appears from the record that the Appellants have deposited Rs. 12,500/- in this Court as a condition precedent for maintaining this appeal. Let the same be returned to the Appellants through their counsel. Let the two insurance companies, namely, the Appellants, and Respondent Nos. 7 and 8, hand over cheques for Rs. 12500/- each, in the name of Respondent No. 1 (Ramji Choudhary), to the Claims Tribunal who, in his turn,

shall hand over the same to the learned Counsel for the claimants before him.

7. Before I part with this case, I must record my appreciation of the manner in which Ms. Seema presented the case on behalf of the Appellants.

8. The appeal is accordingly disposed of.

