
(2012) 04 PAT CK 0073

In the Patna High Court

Case No : Misc. Appeal No. 573 of 2008

Oriental Insurance Company Ltd.

APPELLANT

Vs

Ram Babu Choudhary and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173

Citation : (2012) 3 PLJR 481

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Shri Durgesh Kumar Singh, Learned Counsel for the appellant, Shri Randhir Kumar Singh, Learned Counsel, who has appeared on behalf of respondent No. 1/ Owner and Md. Anisur Rahman, Learned Counsel for respondent nos. 2 and 3/Claimants. The appellant has preferred the present appeal u/s 173 of the Motor Vehicles Act against the judgment dated 25.4.2008 and award dated 8.9.2008 passed by Shri Harendra Nath Tiwary, learned 1st Additional Sessions Judge-cum-Motor Vehicles Accident Claims Tribunal, Sitamarhi in Claim Case Nos. 5 of 2003/40 of 2007, whereby the learned Tribunal has directed the appellant/insurer of the offending vehicle to make payment of compensation amount of Rs. 1,62,000/- to the claimants after deducting Rs. 50,000/-, which was already paid as interim compensation u/s 140 of the M.V. Act. Meaning thereby, after deducting interim compensation amount, Rs. 1,12,000/- alongwith 9% interest from the date of filing of the claim petition till the date of payment was directed to be paid.

2. Short fact of the case is that on 5.12.2002, son of respondent nos. 2 and 3, namely, Md. Dilkash was dashed by Bus bearing registration No. BR6P 8653 due to rash and negligent driving by the driver of the offending bus. In the said accident, the victim died on spot and as such a case vide Pupri P.S. Case No. 151 of 2002 was got registered and thereafter, father and mother i.e. respondent

nos. 2 and 3 filed a claim petition under the provisions of M.V. Act in the claims tribunal, which was registered as Claim Case No. 5 of 2003. In the said case, it was disclosed that the offending vehicle was insured by the appellant and it was under insurance covered at the time of accident. In the case, the appellant/insurer appeared and took the plea that the driving license of the driver of the offending vehicle, which was brought on record on behalf of the claimant was not genuine since as per enquiry conducted by the Insurance Company, it was found that said driving license was not issued by the Regional Transport Office, Gauhati in the name of driver namely, Dineshwar Prasad Singh. A plea was taken that on the basis of fictitious license having Driving License No. 16073 of 1987, the District Transport Officer, Sitamarhi had issued renewal of the driving license and as such since the main driving license was found to be not genuine, the renewal of the said license was not required to be taken into consideration as valid and on this ground alone, it was pleaded that in the case, compensation amount was to be paid by the owner of the offending vehicle.

3. Shri Durgesh Kumar Singh, Learned Counsel for the appellant has tried to persuade the court that Annexure-1 to the memo of appeal makes it clear that main driving license i.e. D.L. No. 16073 of 1987 was not issued in name of Dineshwar Prasad Singh, who was driver of the offending vehicle and as such renewal was not genuine.

4. Learned Counsel for the claimant has vehemently opposed the prayer of the appellant. It was submitted that before the claims tribunal, Annexure-1 was not brought on record and as such at the time of hearing of the present appeal, this Court may not look into the genuineness of Annexure-1 to the appeal. He submits that before the claims tribunal, such document was not brought on record and as such it cannot be said that driver of the offending vehicle was not having valid driving license. Similarly, Learned Counsel for the owner of the offending vehicle has submitted that the driver of the offending vehicle was having valid driving license, which was issued by the District Transport Officer, Sitamarhi. The driving license was having number as D.L. No. 807 of 1993, which was valid up to 26.2.2006. Meaning thereby, that on the date of accident i.e. 5.12.2002, the driver of the vehicle was having valid driving license.

5. Besides hearing Learned Counsel for the parties, I have perused the materials available on record. From the impugned order itself, it is evident that before the claims tribunal on behalf of the appellant/insurer, it was admitted that driving license was having number as D.L. No. 807 of 1993 and valid up to 26.2.2006. On the record of the court below, the appellant had not brought the alleged certificate issued by the District Transport Officer, Gauhati, the copy of the same has been brought on record as Annexure-1 to the appeal. Since before the claims tribunal, there were no sufficient materials for coming to the conclusion that driving license was not valid, the learned tribunal keeping in view the fact that offending vehicle was insured by the appellant at the time of accident and driver of the vehicle was also having valid driving license has rightly directed the

appellant to pay the compensation amount.

6. The judgment and award of the claims tribunal is not required to be interfered with.

7. The appeal stands dismissed with a direction to the appellant to pay the compensation amount in terms of the judgment and award of the tribunal within a period of two months from the date of receipt/production of a copy of this order. In view of rejection of this appeal, statutory amount deposited at the time of filing of appeal is directed to be remitted back after preparing a Bank Draft in the joint name of respondent nos. 2 and 3 forthwith.