

(2001) 11 PAT CK 0019
In the Patna High Court
Case No : Misc. Appeal No. 23 of 1992

Oriental Insurance Company Ltd.

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 01-11-2001

Acts Referred:

Citation : (2001) 11 PAT CK 0019

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—This appeal is directed against the judgment and order dated 23.7.1992 passed in Workmen Compensation Case No. 11 of 1991 by the Workmen Compensation Commissioner-cum-Deputy Lat Commissioner, Saran Division, Chapra, were by and where under the Appellant company has been directed to pay compensation of Rs. 90,552/- to Respondent Nos. 1 & 2.

2. In short, the relevant facts are that Binod Sah son of Respondent Nos. 1 & 2 (claimants) fell out of the vehicle bearing No. BR 01-B/9817 (Maxi-Taxi) which has insured with the Appellant-company and died whereupon the aforesaid claim case was filed by Respondent Nos. 1 & 2 for payment of compensation under the Workmen Compensation Act. Respondent No. 3, who is owner of the vehicle pleaded that the vehicle was insured with the Appellant-company and, thus, the liability to pay compensation was of the Appellant. The Appellant-company raised objection that the deceased being engaged as Khalasi in the vehicle there was no liability of the company to pay the compensation u/s 147 of the Motor Vehicles Act. The Insurer's liability is only with respect to those covered by the first proviso to Section 147. Workmen compensation Commissioner-cum-Deputy Labour Commissioner, Saran Division, Chapra vide impugned order on consideration of the materials on record has awarded a sum of Rs. 90,552/- payable way of compensation to the claimant Respondent Nos. 1 & 2).

3. There appears to be no dispute as regards quantum of compensation. The only dispute in the appeal is as regards the liability to pay compensation.

4. learned Counsel for the Appellant has submitted that in view of the clear provision as well as the law settled by the Apex Court in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, which has dealt with the similar provision existed earlier in the Motor Vehicles Act, 1939 with respect to the words "any person"--in the main provision, an exception was made by enacting the first proviso so as to restrict liability of the Insurer with respect to the employees and door, not cover any one employed as Khalasi in a vehicle insured.

5. Mr. Verma, learned Counsel appearing for the claimant, however, has submitted that the provision contained in Section 147 is a beneficial legislation and the words any person in the main provision has to be given wider meaning to include all employees of the insured vehicle though engaged even as Khalasi.

6. Although Respondent No. 3 has entered appearance through Mr. Shailendra Kumar Singh, learned Advocate, but he has no appeared to defend Respondent No. 3.

7. Having heard learned Counsel for the parties and considering the facts and circumstances, this Court finds it difficult to accept the submission of Mr. Verma that the liability to pay compensation is of the Insurer. The case of the claimant before the Commissioner was not that he was engaged in driving the vehicle, although employed as Khalasi. Moreover, no evidence appears to have been led on the above line. Under such circumstances, this Court is unable to accept the submission of Mr. Verma that even Khalasi is covered by the first proviso to Section 147 of the Act. However, Mr. Verma has then rightly submitted that in absence of any dispute with respect to quantum of compensation the liability in the facts and circumstances of the present case is of the owner of the vehicle, namely, Respondent No. 3 who may be directed to pay the same to the claimant. As there is no contest despite representation on behalf of Respondent No. 3, this Court finds that the liability to pay compensation as awarded in the facts and circumstances of the present case is of Respondent No. 3.

8. The impugned order is, thus, set aside and the appeal is allowed accordingly. Respondent No. 2 is however, directed to pay the amount of compensation to the claimants, namely Respondent Nos. 1 & 2 within one month of the date of receipt/service of the copy of this order.