

(2007) 09 JH CK 0038
In the Jharkhand High Court

Raj Kamal Prasad

APPELLANT

Vs

Mosammat Bindu Devi and Others

RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Citation : (2008) 1 JCR 253

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal by the appellant/owner of the motor vehicle, is directed against the judgment dated 10.8.1999 and Award 17.8.1999 passed by the Motor Accident Claims Tribunal, Pakur in (M.V.) Title (Claim) Suit No. 4/3 of 1997, whereby the Tribunal had awarded a total compensation of Rs. 1,12,800/- payable to the claimants/respondents 1 to 3 and had apportioned the compensation amount between the owner of the vehicle and the Insurance Company directing the owner of the vehicle to pay half of the awarded amount.

2. The claim for compensation was preferred by the claimant widow of the deceased Surendra Prasad Bhagat for herself and for her two minor children. The facts on the basis of which the claim was preferred, was that the deceased Surendra Prasad Bhagat was travelling by maxi-taxi bearing registration No. B.R.-36-6585 on 24.11.1996. The taxi was loaded with passengers and some of whom were sitting on the roof top. Due to negligent and rash driving of the vehicle by its driver (respondent No. 4), the vehicle turned turtle, resulting in fatal injuries to two persons including the deceased husband of the claimant and khalasi of the taxi, besides injuries to several other persons.

3. The owner/appellant and the insurer had contested the claim on the ground that the accident did not occur on account of any rash or negligent act on the part of the driver. The appellant had pleaded that the vehicle was duly covered under the policy of the insurance with Oriental Insurance Company (respondent

No. 3) and fitness of the vehicle was certified by the competent authority and further, that the vehicle was plying under permit which was valid on the alleged date of accident. The owner had also pleaded that as a matter of fact, the accident had occurred on account of mechanical failure of brakes and in any case, since the vehicle was covered under the policy of the insurance, which was valid on the alleged date of accident, liability to pay compensation amount rested entirely on the Insurance Company.

The Insurance Company, on the other hand, while acknowledging the fact that the vehicle was covered under the policy of insurance, had pleaded that the owner of the vehicle had committed breach of conditions of the insurance contract by allowing the vehicle to be driven by a person who did not possess any driving licence and by allowing overloading of the vehicle besides allowing passengers to sit on the roof and, therefore, the insurer was not liable to pay any compensation.

4. The Tribunal, after discussing the evidences adduced by the parties, has recorded its finding that no evidence was brought on record to confirm that the driver of the vehicle did possess a valid driving licence for driving the vehicle on the date of accident. The Tribunal has also recorded its finding that accident had occurred on account of rash and negligent driving of the vehicle by the driver of the vehicle and not on account of any mechanical failure of the vehicle. On such finding, the Tribunal had held that the owner of the vehicle is liable to contribute for the payment of compensation and since the vehicle was covered under the valid policy of insurance, the Insurance Company is also liable to pay the compensation. Accordingly, the Tribunal after assessing the total amount of compensation on the basis of evidences adduced in respect of earning of the deceased, had assessed the total payable compensation at Rs. 1,12,800/- and had directed the owner/appellant to pay half of the said amount to the claimant.

5. Learned Counsel for the appellant/owner of the vehicle, has contended that the learned Tribunal had totally misdirected itself in recording its finding that the owner had failed to prove that the driver of the offending vehicle had a valid driving licence on the date of accident, though the onus of adducing such proof rested entirely on the Insurance Company and not upon the owner of the vehicle. Learned Counsel contends further that in view of the admitted fact that the vehicle was covered under a valid policy of insurance, the learned Tribunal ought to have held that the entire liability to cover third party risk is upon the Insurance Company and not upon the owner. Learned Counsel further contends that the Tribunal has further erred in assessing the quantum of payable compensation without there being any clear and definite evidence as to the earnings of the deceased.

6. From perusal of the impugned judgment of the Tribunal, it appears that though, the applicants had pleaded that the deceased used to earn Rs. 1,500/- per month by way of imparting private tuition, the Tribunal did not accept the claim in absence of cogent evidence and had proceeded to assess the earnings of

the deceased at Rs. 700/- per month and by using the multiplier of 18, in view of age of the deceased being 25 years at the time of death, had assessed the total payable compensation at Rs. 1,12,800/-. There appears, therefore, no infirmity in the finding of the Tribunal.

7. As regards the liability of the appellant/owner, the Tribunal has recorded a clear and specific finding that though, the owner of the vehicle had claimed that the driver did possess a valid driving licence, but no such driving licence was produced either by the owner of the vehicle or even by the driver who was also impleaded as party respondent in the claim application. The Tribunal had, therefore, recorded its finding that the driver did not possess a valid driving licence and had found fault with the owner that the owner had allowed the vehicle to be driven by a person who did not possess a valid driving licence and this being a violation of the conditions of the contract of insurance, the liability was fixed therefore upon the owner of the vehicle to pay the compensation.

It may be noted that the Insurance Company has not preferred any cross appeal against the impugned Award of the Tribunal.

8. There does not appear any infirmity in the finding of the Tribunal in the matter of imposing liability for payment of compensation upon the owner of the vehicle for the reasons stated in the Award. There is no merit in this appeal. Accordingly, this appeal is dismissed.