

(2010) 11 PAT CK 0036

In the Patna High Court

Case No : Misc. Appeal Nos. 456 of 2003 and 183 of 2007

Sarojani Devi

APPELLANT

Vs

Sunil Kumar Sharma
 Sunil Kumar Sharma Vs Sarojani
Devi

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0036

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the parties.

2. The two Miscellaneous Appeals are heard together and being disposed off by this common order, as both arise out of the same order dated 22nd August, 2003 passed by Sri Mahendra Narain Singh, the IVth Additional District Judge-cum-Motor Accident Claims Tribunal, Chapra, in M.A.C.T. Case No. 77 of 1997, by which has granted the claim to the extent of Rs. 65,000/- + Rs. 2,000/- for funeral with interest of 10% prior to March 2002 and 6% thereafter with cost of Rs. 250/- as Advocate's fee and Rs. 50/- as Advocate Clerk fee and further held that the claimant is entitled to pay the amount exonerating the Insurance Company.

3. The grievance of the Appellant of Miscellaneous Appeal No. 183/2007, who is the owner of the vehicle, is that the owner is not liable to pay compensation and it is the Insurance Company who is liable to pay compensation as the vehicle was insured and Insurance Company has not established any violation of the term.

4. The grievance of the Appellant of Miscellaneous Appeal No. 456/2003, who is the claimant, is that the amount of compensation paid is excessively low without considering the criteria for fixing the compensation. It is further asserted that the Insurance Company is liable to pay compensation and direction ought to have been given to Insurance Company to pay amount.

5. On perusal of the record, it appears that the claim case was filed on the

ground that one Shashi Bhusan Prasad/Tinku Kumar, aged about 5 years was crushed by the truck bearing registration No. B.R.D. 9104 by rash and negligent driving of the vehicle at excessive high speed at Dahrenrea Tola, by which the deceased succumbed to injury and for which Chapra Muffasil P.S. Case No. 226/1997 lodged for offence under Sections 279, 337 and 304A and allied Sections of the Indian Penal Code, the post mortem report of the deceased was conducted in the Sadar Hospital Chapra. It has further alleged that the deceased was a promising student of St. Miachel School and a claim has been made for Rs. 2 lacs. The Oriental Insurance Company appeared and took the defence about the violation of the condition of the policy, as the driver was not proved having a valid licence, but have accepted that the vehicle was insured and liable for of Rs. 50,000/- as no fault liability.

6. However on the pleadings of the parties, the Tribunal framed five issues. The parties adduced evidence. On considering the evidence, adduced on behalf of the claimant, the Tribunal held that the accident took place due to rash and negligent driving of the truck and hence hold that the claimant is entitled for compensation. The Tribunal further held that since the Insurance Company in it's written statement has pleaded that the driver had no valid licence and since the owner of the vehicle has not produced the driving licence in the Court and hence in view of the decision of the Patna High Court reported in Narain Pathak Vs. Keshwar Paswan and Others, Insurance Company is not liable to pay the compensation rather the owner of the vehicle is liable to pay the compensation. The Tribunal further held that since the deceased was only 5 years old, but no certificate has been produced that the deceased was a promising student or was a student of St. Miachel School, fixed the quantum of compensation at Rs. 65,000/- as the full and final satisfaction of the claimant and held that since interim compensation of Rs. 50,000/- has already been secured by the claimant from Insurance Company and so the claimant is entitled to receive only Rs. 15,000/- with interest of 10% from date petition till March, 2002, and thereafter at interest at the rate of 6%, till the payment from owner and Insurance Company. Further ordered Rs. 2,000/- for funeral, Advocate fee Rs. 250/- and Advocate's Clerk fee Rs. 50/- and with direction to the owner to pay Rs. 50,000/- which has been paid by insurance to claimant as interim compensation with 7% (seven percent) interest within 30 days to the Insurance Company also, the Insurance Company shall proceed in accordance with law to get the amount.

7. Learned Counsel for the Appellant has challenged the finding recorded by the Tribunal that the owner of the vehicle was entitled to pay compensation. It has been contended that the Tribunal misdirected itself to place reliance upon the decision reported in Narain Pathak Vs. Keshwar Paswan and Others, without any evidence adduced on behalf of the Insurance Company regarding the fact that the driver had no valid licence to drive the vehicle and it was incumbent on the Insurance Company to prove the violation of term of policy that the driver has no valid licence, as it is the Insurance Company who has taken the plea about the violation of the term of the policy and the Tribunal has wrongly relied upon the

decision reported in Narain Pathak Vs. Keshwar Paswan and Others, as the facts and circumstances of the case, reported in the judgment is not applicable, because in the said reported case, the Insurance Company proved that the driving licence was fake but in the present case, there is no evidence adduced by insurance or brought on record to show that driver have no valid licence and has placed reliance on decision reported in Binda Singh Vs. Narendra Pal Singh and Others, and asserted that since the Insurance Company has not proved or adduced any evidence to suggest that the driver was not having a valid licence and hence having not established on the violation of condition liable to pay compensation. It has further been contended that the quantum of compensation fixed of Rs. 65,000/- is excessive low and even against the principle of the 2nd Schedule of the Motor Vehicles Act, 1988, which has universal application, and has placed reliance upon the decisions reported in 2003 (2) PLJR (SC) 120 New India Assurance Co. Ltd. Vs. Satender and Others, and Smt. Pato Mondal Vs. The New India Assurance Company Limited and Another, where the claim has been assessed fixing the annual income as Rs. 15,000/-, in case of death of child who are not earning and applying the multiple, taking into consideration the age of the parents.

8. The learned Counsel for the owner, however, contended that the vehicle was insured and in the claim case No. 77/1997 filed by the claimant, the dependent deceased, the owner appeared, filed written statement and handed over all the papers to the Advocate of the Insurance Company, Insurance Company filed written statement and even order passed u/s 140 of the Motor Vehicles Act, 1988, against the Insurance Company, the Insurance Company thereafter appointed Investigator, Manjeet Singh. The Investigator wrote to the owner and the owner who is Appellant of Miscellaneous Appeal No. 183/2007 submitted paper of the vehicle including the driving licence of the driver of the vehicle as well as other papers which has been attached as Annexures-2 to 8 of the memo of appeal and the Insurance Company after verifying the papers of the vehicle accepted the liability and paid the interim compensation of Rs. 50,000/- to the claimant and thereafter the owner left the Pairvi presuming that the liability has been accepted by the Insurance Company. However, the Insurance Company at the time of hearing, raised the plea that the owner of the vehicle has not filed the driving licence and therefore, the Insurance Company is not liable to pay compensation and on this ground, the Tribunal allowed the objection of the Insurance Company mulcted the liability against the Appellant, on the ground that the owner of the vehicle has not produced the driving licence. The owner filed a review petition bearing No. 7/2003 with a petition for condoning the delay with copy of the driving licence and policy of letters. In the meantime, claimant filed the Miscellaneous Appeal numbered as 456/2003 in the Hon'ble High Court for enhancement of compensation amount and the above petition was dismissed without prejudice to the party on the ground that the appeal of the claimant is pending in the High Court and hence the appeal was filed by the owner with a limitation petition.

9. On respective submission of the party the question for consideration, whether the owner or the Insurance Company is liable to pay the compensation to the claimant and further whether the quantum of compensation fixed by the Tribunal is sufficient or requires consideration.

10. However, from the fact of the case it is apparent that the case of the claimant that boy of 5 years old was crushed to death by the said vehicle and the claim petition was filed in which the insurance Company appeared and claimed that he is not liable for the breach of condition and the owner is liable to pay compensation as the vehicle was not being driven by a person having valid licence. However, it is not in dispute that the vehicle was insured, however it is true that no evidence adduced either by the owner or by the Insurance Company that the vehicle was being driven by a person who has/has not a valid licence. Now the question for consideration that who will suffer for not establishing the fact that the vehicle was being run by a person having a valid licence or not. However, the point in dispute is not *res integra* and it has well been settled in decision reported in *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, , where it has been, held that if the Insurance Company has come with a plea about the violation of the policy, then it is the Insurance Company who has to establish that the vehicle was being driver by a person having no valid licence and in decision reported in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, The said view has considered and affirmed that when it has not been established that whether the driver was having a valid licence or not it is the Insurance Company to suffer. In decision reported in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, the accident took place by the truck and the Insurance Company even challenged in his written statement that the driver of the truck was not having valid licence. The owner did not adduce any evidence to show that the driver had not proper driving licence. The Tribunal accordingly held that the insurer was not responsible but the owner as the driver neither filed show cause or written statement nor adduced any evidence and even the driving licence was not produced and the Insurance Company who though filed the show cause and even contested the claim did not take any step either to summon the record from the District Transport Office or to direct the person concerned for production of the driving licence, and in that circumstance, it was held that not even a iota of evidence was led, by the Insurance Company to show that the driver had no valid licence and there is no other evidence that the driver had no valid licence or the owner of the vehicle was aware of the fact that the driver was not possessing a valid licence. Hence it was held that in case the Insurance Company contended that the driver had no valid driving licence and there had been a breach of one of the terms of Insurance policy, the burden of proving this fact was certainly on the Insurance Company and since the Insurance Company has not produced any iota of evidence to show that the driver had no valid driving licence and hence, it cannot be said that the Insurance Company discharged it's onus merely by making such statement in it's pleading and held that the liability under the Insurance policy remained

intact and Insurance Company is bound to satisfy the award and hence from the ratio of the case is stated that it was the Insurance Company who had to prove that the driver was not having valid licence and the owner had knowledge that the driver was having no valid licence.

11. Under the present facts and circumstances of the case, there is no evidence that the driver driving the vehicle had no valid licence and hence if the Insurance Company has taken the plea that the driver has no valid licence, then onus on Insurance Company to prove, if the same had not been proved, it is the Insurance Company who will suffer. However, the fact of the case relied upon by Narain Pathak Vs. Keshwar Paswan and Others, the Insurance Company adduced evidence in the lower Court and submitted its surveyor's report as well as the report of District Transport Officer in support of the fact that the driving licence of the driver was forged and it was admitted by the driver that the original driving licence was lost and hence in fact and circumstance of this case, it was held that since the Insurance Company has proved the licence was forged, the ratio of the case decided in Narain Pathak Vs. Keshwar Paswan and Others, is not applicable to the fact and circumstance of this case and has wrongly been relied by the Tribunal and hence the finding recorded by the Tribunal relying on Narain Pathak Vs. Keshwar Paswan and Others, is neither sustainable in law nor in fact and hence the finding recorded by the Tribunal that the owner is liable to pay the compensation is hereby set aside and it is held that it is the Insurance Company who is liable to pay the claim of the claimant.

12. The next question for consideration is about the quantum, however, the Tribunal has assessed the quantum of the compensation as Rs. 65,000/- regarding the death of the deceased without any basis on the ground that nothing has been produced to suggest about the loss and no certificate has been produced that the deceased was a promising student or was student of St. Miachel School. However, the 2nd Schedule of the Motor Vehicles Act, 1988, provides that in case of a person having no income, in that case the deceased shall deemed to have income of Rs. 15,000/- per annum and reliance has been placed on decision reported in 2003 (2) P.L.J.R. (S.C.) 120 (supra), in which case regarding the death of a boy aged about 13 years, the sum of Rs. 90,000/- awarded by the Tribunal was held to be not appropriate and the income computed as of Rs. 15,000/- per annum to be held proper, holding that there should be no departure from the multiplier method on ground that payment have made is just compensation and granted the award to the tune of Rs. 2,50,000/- and decision reported in New India Assurance Co. Ltd. Vs. Satender and Others, Supreme Court in case of death of child aged 9 years awarded the compensation to the tune of Rs. 1,80,000/- with 7.50% interest, taking into consideration, regarding the computation of the compensation of deceased child falling in the age group of 5 to 10 years as decided in Lata Wadhwa and Others Vs. State of Bihar and Others, and further in decision reported in Smt. Pato Mondal Vs. The New India Assurance Company Limited and Another, regarding the death of a boy of 15 years, the minimum compensation admissible was Rs. 1,50,000/- + Rs.

4,500/- as funeral expenses and loss of state taking the notional income of the deceased as Rs. 15,000/- and remitting 1/3rd for his personal expenses adopting the multiplier of Rs. 15,000/- (sic-15?). Hence drawing the analogue from these cases, compensation of Rs. 65,000/- for the death of the deceased is neither just nor proper nor the deviation from the multiplier system is healthy or permissible.

13. The learned Counsel for the Insurance Company, however, relied upon the decision reported in *Oriental Insurance Co. Ltd. Vs. Paspati Prasad and Others*, where a 6 years old child having died in motor accident and Tribunal awarded Rs. 1,25,000/- as compensation on adopting the notional income. It was held that in case of death of a child, compensation must be awarded on lump sum basis considering the status and financial condition of the family, future expectancies and loss of love and affection, reduced the award from Rs. 1,25,000/- to Rs. 50,000/- in decision reported in *Oriental Insurance Co. Ltd. Vs. Paspati Prasad and Others*, and the decision reported in *National Insurance Company Vs. Smt. Phoolbharan Devi and Others*, respectively held that in case of the death of a child 50,000/- is sufficient. However, in view of the decision reported in *Oriental Insurance Co. Ltd. Vs. Paspati Prasad and Others*, which is decision of the Hon"ble High Court, whereas, the decision reported in *Narain Pathak Vs. Keshwar Paswan and Others*, *New India Assurance Co. Ltd. Vs. Satender and Others*, and *Smt. Pato Mondal Vs. The New India Assurance Company Limited and Another*, are the decisions of the Supreme Court, hence the decision reported in 1998 (2) P.L.J.R. (supra) (SIC)ands overruled by the decision of the Supreme Court.

14. The learned Counsel for the Appellant relied upon the decision reported in *Lata Wadhwa and Others Vs. State of Bihar and Others*, the Hon"ble Supreme Court held that Rs. 5,000/- be the compensation regarding the death of a child. However, it was the case for issuing a writ of mandamus for prosecution of the officers of TISCO or organizer for alleged negligence in organizing a function with a direction that appropriate compensation be provided to the victims by the State Government as well as TISCO and the fact of the case that on 150th birth anniversary of Jamshed Jee Tata was being celebrated in the factory premises and the children have already been invited but the organizer did not take adequate safety measure violating the Factory Rules and Act and a devastating fire engulfed the V.I.P. Pandal causing death of several persons and suffering with burn injury and death toll reached six and there also in that case it has been held the acceptability of the multiplier method and even added Rs. 50,000/- in those multiplier taking into fact that the children were died, in that case also the heirs of the deceased above 10 years were granted compensation to the tune of Rs. 1,57,000/-. However, it was a case of a fact and circumstance regarding the accidental fire in a programme organized by TISCO, however not applicable to the fact under the Motor Vehicles Act, 1988 and hence the ratio decided in decisions reported in 2003 (2) P.L.J.R. (SC) 120 (supra), *New India Assurance Co. Ltd. Vs. Satender and Others*, and *Smt. Pato Mondal Vs. The New India Assurance Company Limited and Another*, is applicable to the facts and circumstance, if the quantum of compensation granted to the claimant to the

tune of Rs. 65,000/- by the Tribunal is hereby held to be low and the quantum of Rs. 65,000/- is neither just nor sufficient and hence is set aside and in view of the decisions of the Supreme Court as per 2nd Schedule of the Motor Vehicles Act, 1988, "the income of the victim is assessed as Rs. 15,000/- per annum" and applying the multiple of 15, taking into consideration the age of parents the income of the deceased's annual be assessed as 2,25,000/- and subtracting 1/3rd regarding the expenses on the deceased and hence the claimant is liable to compensation to the tune of Rs. 1,50,000/- as the dependency and Rs. 4,500/- be added in the amount regarding the expenses for the funeral and loss of state and hence the claimant is entitled to compensation to the tune of Rs. 1,54,500/-.

15. However, out of Rs. 1,54,500/-, Rs. 50,000/- has already been paid by the Insurance Company and hence the claimant is entitled to receive Rs. 1,04,500/- with 6% interest from the date of this petition till the date of payment from the Insurance Company and hence the Insurance Company is directed to pay Rs. 1,04,500/- with an interest of 6% from the date of the filing of the petition till the date of the payment.

16. With these observations and directions, both the Miscellaneous Appeals are allowed to the extent mentioned above.