(2014) 05 PAT CK 0007

In the Patna High Court

Case No : Miscellaneous Appeal No. 130 of 2005

Shobha Devi APPELLANT

Vs

Mala Devi RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2014) 4 PLJR 633

Hon'ble Judges : A.K. Lal, J

Bench : Single Bench

Advocate : Manoj Kumar Jha, Advocate for the Appellant

Judgement

A.K. Lal, J.—Heard learned counsel for the appellants and learned counsel for respondent No. 3. Respondent Nos. 1 and 2, the owners of the vehicle have not appeared even after service of notice.

2. The claimants-appellants have preferred this appeal against the judgment dated 19.1.2005 and award dated 11.2.2005 passed by the learned 7th Additional Sessions Judge-cum-Motor Accident Claim Tribunal, Bhagalpur in Accident Claim Case No. 15 of 1991 by which respondent Nos. 1 and 2 the owners of the offending vehicle have been directed to make payment of the amount of compensation to the claimants.

3. The case of the claimants-appellants, in brief, is that Suman Kumar Pathak (deceased) aged about 27 years earning Rs. 36,000/- per annum was the driver of the ill-fated vehicle bearing Registration No. BR-8M-1739 which was owned by respondent Nos. 1 and 2 and insured by respondent No. 3 had met with an accident, fell in the ditch causing the death of the driver, conductor and helper of the aforesaid bus (Tata Maxi) on the spot.

4. The owner of the vehicle did not file written statement. The case proceeded against him as ex-parte. The insurer of the vehicle filed written statement stating inter alia that the claim is not maintainable against the insurer. The driver died

due to his own fault.

5. After considering the evidence learned Tribunal has held that the owner of the vehicle is liable to make payment of the amount of compensation as the insurer has not admitted that the vehicle was insured by it. It was obligatory on the part of the owner to establish that the vehicle was insured by the insurer.

6. Learned counsel for the appellants has submitted that a petition dated 29.4.2004 was filed on behalf of the claimants to make exhibit the documents relating to FIR, final report, post mortem report, insurance policy and driving licence. All these documents were marked Exts.-1, 2, 3 and 4 respectively, but the photo copy of the policy was left to be marked due to mistake. The photo copy of the insurance policy of the offending vehicle is already on the record which shows that the offending vehicle was insured by the National Insurance Company Ltd. A copy of the aforesaid petition was also given to the learned counsel for the insurance company. A copy of the petition dated 29.4.2004 is at page 62 of B File of the record of the Tribunal. The photo copy of insurance policy is also at page 12 of B File of the record of the Tribunal, as such it can be marked exhibit even now and considered as additional evidence under the provision of Order XLI, Rule 27 CPC.

7. From perusal of the insurance policy it appears that the offending vehicle was insured for the period 16.3.1990 to 15.3.1991, whereas, the date of occurrence is 21.2.1991, as such the offending vehicle, in question, was insured at the time of accident. The driver of the vehicle is also covered under the insurance policy, as such the claimants are entitled to get the amount of compensation from the insurer.

8. Learned counsel for insurance company has submitted that the occurrence has taken place due to negligence of the driver and the driver has violated the terms of the policy, as such no amount of compensation is payable to the claimants from the insurer of the vehicle.

9. After hearing learned counsel for both the parties and on perusal of the record, it appears that the contention of learned counsel for the appellants is correct. The claimant had filed a petition dated 29.4.2004 for making exhibits of the documents including the photo copy of the insurance policy. Several documents have been marked as FIR (Ext.-1), Final Report (Ext.-2), Post mortem Report (Ext.-3) and driving licence (Ext.-4), but the photo copy of insurance policy which is at page 12 of the B File of the record of Tribunal, has not been marked. The insurance policy is a vital document for just decision of this case, as such the photo copy of the insurance policy is marked as Ext.-5 in view of the provisions contained in Order XLI, Rule 27 CPC.

10. Since the quantum of amount of compensation has not been pressed by learned counsel for both the parties, no interference is required by this Court to this extent.

11. Since the offending vehicle was insured by the National Insurance Company Ltd. (respondent No. 3), the insurer is directed to pay the amount of compensation to the claimants within a period of two months.

12. To this extent, the impugned judgment and award is modified. This appeal is allowed with the above modification in the impugned judgment and award.

