

(1997) 04 PAT CK 0058

In the Patna High Court

Case No : Appeal from Original Order No. 77 of 1983 (R)

Smt. Prabha Dey

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1997) 2 PLJR 199

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Tapen Sen and Prabhash Kumar, for the Appellant; Alok Lal, for the Respondent

Final Decision : Allowed

Judgement

Prasun Kumar Deb, J.—In this appeal it appears that notice was sent to the Respondent M/s New India Assurance Co. Ltd., but the service report was not received and, as such, service report was accepted as deemed service. Mr. Alok Lal, who generally appears for and on behalf of the Respondent-Insurance Company was called upon by the Court to assist the Court for and on behalf of the Respondent.

2. This appeal has been preferred against the judgment passed by the District Judge-cum-M.A, C.T., Giridih, in Misc. (Claim) case No. 79/79, whereby and whereunder the claim petition filed u/s 110 of the Motor Vehicles Act had been dismissed.

3. The fact of the case, in brief, is that the Appellant Mrs. Prabha Dey was the owner of Bus No. BHP 9311 and on the fateful day i.e. on 1.6.79 in that bus, her husband Sri Narayan Chandra Dey was travelling from Hazaribagh to Jaina More. But on the way at Jarangdih Railway Bridge while the driver of the bus was negotiating a sharp bent, it fell down into the ditch and the husband of the Appellant died at the spot. After the accident occurred, F.I.R. was lodged and the

copy of the same had been submitted before the Tribunal. Post mortem report and the chargesheet against the driver of the offending vehicle had also been filed. There was a petition from the side of the Appellant to the Respondent for admission of those documents. It further appears that letters were written by the Appellant to the Insurance Company for assessment of the damage of the fateful bus due to the accident and on that letter of the Appellant, the Insurance Company also took steps. During the course of enquiry in the claim case, except the Appellant none Ors. have been examined. Insurance Company filed objection before the Tribunal taking all usual pleas as are being taken by the Insurance Company including the plea of statutory liability.

4. The learned Tribunal in the impugned judgment while deciding issue Nos. 3 and 4 at the former part of it had held that the accident has occurred and the husband of the Appellant died in that accident and the vehicle was insured at the relevant time. But afterwards under these two issues, he had observed that except the evidence of the Appellant there is no other evidence available on record regarding the factum of accident and he had taken the plea of gratuitous passenger, although from the evidence of the Appellant, I do not find any such statement being made by the Appellant. So, the learned Tribunal tried to make out a third case and the impugned judgment suffers from contradiction on the face of it. But definitely, there are laches on the part of the Appellant. Factum of accident ought to have been proved for the purpose of proving rash and negligent driving of the vehicle. Only because some documents have been filed testifying the factum of accident and if those documents are not being proved legally those can not be taken into consideration for the purpose of enquiry. But definitely, if the accident occurred and even if the husband of the Appellant was travelling in the bus on the date of the accident and he died due and to the accident then there is scope for holding that the Appellant is entitled for compensation. It must be further mentioned here that the deceased left behind some minor children at the time of his death and they have not joined their mother for the purpose of claiming compensation but during the pendency of this appeal, they have already attained majority and filed petition supported by Vakalatnama for making them as parties in the appeal. The children of the deceased are proper parties in the claim case. Hence, their petition is hereby allowed. But as the judgment is contradictory in respect of factum of accident and when the factum of accident has not been proved with cogent and reliable evidence and the documents regarding the factum of accident have not been brought on the record legally, there is no other alternative but to send back the case to the Tribunal again after setting aside the impugned judgment. Accordingly, I do so.

5. Thus, the appeal is allowed and the matter is sent back to the Tribunal for proceeding according to law giving opportunities to both the parties to adduce further evidence. If any petition is filed before the Tribunal regarding inclusion of the children on the deceased as claimants the same may be allowed by the Tribunal.

6. As the case is very old one, the Tribunal is hereby directed to dispose of the case within three months next positively from the date of receipt of the records of the case and, if necessary, hearing may be done on day to day basis. On receipt of the record, the Presiding Officer of the Tribunal shall first of all give notices to the parties for appearance.

7. Send down the records of the lower Court immediately. In the nature and circumstances of the case, no cost is awarded to either of the parties.