
(2017) 08 PAT CK 0025
In the Patna High Court
Case No : 87 of 2010

Smt. Radhika Devi

APPELLANT

Vs

Sheo Kumar Shah & Ors.

RESPONDENT

Date of Decision : 11-08-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#) - Application for compensation

Citation : (2017) 08 PAT CK 0025

Hon'ble Judges : Prakash Chandra Jaiswal

Bench : SINGLE BENCH

Advocate : Ratnakar, Surendra Kumar Chaubey, Harendra Kumar, Sanjeev Kumar

Judgement

1. Heard learned counsel for the appellant and learned counsel for the respondent-United India Insurance company Limited. No one turned up on behalf of the respondent nos. 1 (i) to 1(vi) despite service of notice to advance argument in this appeal.
2. The appellant has filed this Miscellaneous Appeal against the judgment and award dated 07.11.2009 passed by the Additional District Judge-I, Bhojpur at Ara in Motor Vehicle Claim Case No. 37 of 1999, whereby dismissed the case of the appellant as not maintainable.
3. It is submitted by the learned counsel for the appellant that the learned lower court has dismissed the case only because she has not given information as required in Column Nos. 17 and 23 of the claim application rather mentioned as "not applicable" against the aforesaid two columns. The objection raised regarding the said aspect of the case by the Insurance Company during pendency of the case has already been disposed of by the learned lower court on 21.09.2002. Hence, after disposal of the said objection, the claim case ought not have been dismissed on the said ground.
4. On the other hand, learned counsel for the respondent-Insurance Company

submitted that the deceased was a gratuitous passenger in a goods carrying truck which met an accident. Hence, his wife had filed claim case regarding the aforesaid accident against the owner of the offending vehicle and the said case was compromised with the owner and by virtue of compromise, she got compensation amount. Besides the wife of the deceased, the appellant who happens to be the mother of the deceased and father of the deceased have also filed claim case at Buxar. Subsequently, the appellant filed another case at Ara. The case filed by the appellant at Buxar was dismissed as withdrawn. Moreover, the appellant has not made wife of the deceased, who happens to be one of the legal representative of the deceased and necessary party in this case as a party in the case as per the provision of Section 166 of the Motor Vehicle Act, 1988. Hence, the claim petition filed by the appellant was not maintainable and the same has rightly been dismissed by the learned lower court as not maintainable. Learned counsel for the appellant has not disclosed the filing of the case by the wife of the deceased and three other cases, two by the appellant and one by the father of the deceased regarding same accident earlier and also ending of the case filed by the wife of the deceased due to compromise. Though, he has submitted that earlier case filed by the appellant at Buxar was dismissed as withdrawn. But he failed to disclose about the fate of two other cases one filed by the appellant at Ara and another one filed by the father of the deceased at Buxar.

5. From perusal of the record, it appears that the appellant has filed Motor Vehicle Claim Case No. 37 of 1999 against the owner, driver and insurer of the offending vehicle with the case in succinct that her son, namely, Surendra Prasad Gupta was a Khalasi of the truck bearing Registration No. BR 3G 6566. The truck was proceeding from Malihabad to Behiya. The said truck turned turtle at Tikpokhar More at National Highway within Nawanagar Police Station due to rash and negligent driving of the offending vehicle by its driver. Consequently, Surendra Prasad Gupta, Khalasi of the Truck, sustained injury and succumbed to his injury on the spot.

6. The appellant has not disclosed the information as required in Column No. 17 and 23 of the claim petition rather mentioned as "not applicable" against the said column. Column No.17 requires information in respect of any claim earlier lodged with the owner or insurance and its result while Column No. 23 requires information regarding reasons or ground for late submission of the claim application. Due to not furnishing of the aforesaid information and considering concealment of the case filed by the appellant earlier and also getting of compensation by the wife of the deceased from the owner of the offending vehicle regarding the said accident, learned lower court has dismissed the aforesaid claim petition.

7. Though as per submission of the learned counsel for the appellant, claim case filed by the appellant at Buxar regarding aforesaid accident has been dismissed as withdrawn and the aforesaid objection made by the Insurance Company regarding the same has been disposed of by the learned lower court vide order

dated 21.09.2002, but the learned Counsel for the appellant failed to disclose about two other cases, one filed by the appellant at Ara and another filed by the father of the deceased at Buxar regarding the same accident. He has also not denied filing of the claim petition by the wife of the deceased regarding the same accident and ending of the same due to compromise with owner of the vehicle. The appellant has also not made wife of the deceased a party in the case either as claimant or opposite party.

8. Section 166 of the Motor Vehicle Act provides that an application for compensation arising out of an accident may be made, where the death has resulted from the accident, by all or any of the legal representatives of the deceased but where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. The said provision of law appears to be mandatory in nature. Moreover, regarding the same accident and death of the deceased due to accident, wife of the deceased has already received compensation by filing claim petition against the owner of the vehicle by compromise. So in my considered opinion, any subsequent claim petition regarding the same accident resulting into death of the deceased is not maintainable. Instead of filing claim petition regarding the same accident by the appellant, she ought to have recovered her share in the compensation amount obtained by the wife of the deceased by filing money suit against her.

9. In view of the aforesaid facts and circumstances, I find no illegality and impropriety in the impugned judgment and award passed by the learned lower court and no substance in this appeal. Accordingly, this Miscellaneous appeal is hereby dismissed and impugned judgment and award passed by the learned lower court is upheld.