

(2007) 01 PAT CK 0064

In the Patna High Court

Case No : Miscellaneous Appeal No. 189 of 1998

Sona Devi and Another

APPELLANT

Vs

Ram Narayan Sah and Another

RESPONDENT

Date of Decision : 03-01-2007

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 4

Motor Vehicles Act, 1988 — Section 140

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) PLJR 251

Hon'ble Judges : Syed Md. Mahfooz Alam, J

Bench : Single Bench

Advocate : Narendra Kumar and Tej Narayan Singh, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Syed Md. Mahfooz Alam, J.—This Miscellaneous Appeal has been preferred by the claimants-appellants against the order dated 5.3.1998 passed in M.V. Claim Case No. 44 of 1997, Tr. No. 7 of 1997 by 3rd Additional District Judge-cum Motor Vehicle Accident Claims Tribunal, Rohtas at Sasaram whereby he has been pleased to reject the claim of the appellants for grant of compensation u/s 140 of the Motor Vehicle Act. The brief facts of the case are as follows:--

Deceased, Bahadur Ram, resident of village Jakhini, P.O. Penar, P.S. Nokha. District Rohtas, was a truck driver and on 3.2.1997, he was driving truck bearing UP 65-B 1952 belonging to Ram Narayan Sah of village Penar, P.S. Nokha, District " Rohtas. At about 14.50 P.M. on 3.2.1997 when Bahadur Ram reached near Bakuchi Chowk, P.S. Katra, District Muzaffarpur, some miscreants threw bombs on the truck as a result of which the said Bahadur Ram sustained injuries. The occurrence was witnessed by Chowkidar Bindeshwar Paswan of village Katra, who rushed at the spot and saw some persons running away. The said Bindeshwar Paswan took the injured Bahadur Ram to Katra Hospital for medical

treatment but he succumbed to his injuries. It is said that due to the explosion the truck was also damaged and it was suspected that the criminals belonging to gang of Tuntun Singh might have committed the crime. After the occurrence, the said Bindeshwar Paswan gave his fardbeyan on the basis of which Katra P.S. Case No. 3/97 under Sections 302/34 of the Indian Penal Code and Section 3/4 of the Explosive Substances Act was instituted and thereafter the claimants, who were father, mother, widow, son, daughters, brothers and sisters, filed this claim application for grant of compensation on account of the death of Bahadur Ram which occurred when he was driving the truck bearing registration No. UP 65-B 1952. The claimants have claimed a total compensation of Rs. 5,00,000/- (Rupees five lacs).

2. It appears from the record that a petition u/s 140 of the Motor Vehicles Act was filed on behalf of the claimants for grant of compensation to the extent of Rs. 50,000/- towards no fault liability with a prayer that since the vehicle in question was insured under the New India Assurance Company Limited so the said Company may be asked to pay the entire amount. As stated above, by the impugned order the said application was dismissed by the Tribunal on the sole ground that the case was registered u/s 302/34 of the Indian Penal Code and Section 3/4 of the Explosive Substances Act and the death of the deceased Bahadur Ram was caused due to bomb blast and not due to motor-vehicle accident. The said order of the Tribunal is under challenge before this Court.

3. It has been argued by the learned Advocate of the appellants that the impugned order is illegal in view of the fact that the Tribunal has failed to differentiate between a murder which is not an accident and a murder which is an accident. The learned Advocate submitted that the murder is a felonious act where the death is caused with intent and motive but where the motive of committing an offence is not to commit murder but to commit some other offences like high-way robbery or dacoity and during the commission of the said offence if the death is caused by the criminals it is a case of accidental murder and not intentional murder. The learned Advocate submitted that in the case of accidental murder, the court is bound to award compensation for the death of the driver. The learned Advocate of the appellants submitted that this case is covered under the definition of accidental murder and not intentional murder as there is nothing on record to establish that the intention of the criminals who threw bomb on the truck driven by the deceased was to cause death of the driver rather the circumstances establish that the offence was committed in order to commit high-way robbery and, therefore, the death of Bahadur Ram was an accidental death and in such cases, the court is bound to grant compensation. In support of his argument, the learned Advocate of the appellants has placed reliance upon the decision reported in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, .

4. In the above mentioned case, the claim application was filed for the death of a auto rickshaw driver who was killed when he tried to resist some passengers who

were trying to snatch his auto rickshaw. Considering the nature of incident, the Hon"ble Supreme Court held that the stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing of the auto rickshaw is incidental to the act of stealing of the auto rickshaw and, therefore, the death of the deceased driver of the auto rickshaw was a case of accidental murder and not intentional murder. At paragraph 10 of the said decision, a distinction has been made with regard to the intentional murder as well as accidental murder and for proper appreciation, I would like to quote the said paragraph which is as follows:--

".... There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

5. It appears that after making distinction between the murder which is not an accident and murder which is an accident, the Hon"ble Supreme Court held that the murder of auto rickshaw driver was a case of accidental murder and, therefore, his heirs were entitled to get compensation.

6. On the strength of the said decision, the learned Advocate of the appellants argued that the fact of this case is similar to the facts of the case reported in AIR 2000 Supreme Court 1930. I am also of the view that the instant case falls under the category of accidental murder as there is nothing on record to establish that the miscreants/criminals who threw bomb on the truck driven by deceased Bahadur Ram were on inimical terms with the deceased and that is why they had thrown bomb on the deceased with intention to cause his death rather the circumstances and the averments made in the F.I.R. show that the occurrence was done by the members of the gang of Tuntun Singh in order to commit highway robbery. I, therefore, hold, that the incident in which deceased Bahadur Ram, driver of Truck bearing registration No. UP 65-B 1952 was killed, was the result of accidental murder and not intentional murder. Since the Hon"ble Supreme Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, has held that in the case of accidental murder, the heirs of the deceased are entitled to claim compensation, as such I am of the view that in this case also, the claimants are entitled to receive compensation. I therefore, hold that the Tribunal has illegally rejected the claim of the appellants filed u/s 140 of the Motor Vehicle Act. In the result, I find merit in this Appeal and as such this Miscellaneous Appeal is hereby allowed and the impugned order whereby the

Tribunal has rejected the application of the claimants filed u/s 140 of the Motor Vehicle Act for grant of compensation amounting to Rs. 50,000/- under no fault liability is hereby set aside and it is ordered that the claimants are entitled to get compensation to the tune of Rs. 50,000/- under no fault liability as provided u/s 140 of the Motor Vehicle Act. It is further ordered that the Insurance Company shall pay the entire amount within two months from the date of this order as the vehicle in question was insured at the time of occurrence. It is further ordered that if the amount is not paid within the stipulated period then the amount will be payable with interest at the rate of 12 per cent till the date of payment.