
(1973) 03 PAT CK 0005
In the Patna High Court
Case No : Misc. Appeal No. 9 of 1968

The Howrah Insurance Co. Ltd.	Vs	APPELLANT
Shri Yuktinath Jha and Others		RESPONDENT

Date of Decision : 02-03-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(B), 110(D), 96(2)

Citation : (1974) ACJ 18 : AIR 1973 Patna 326 : (1973) 43 CompCas 552

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : Nawal Kishore Prasad Sinha, for the Appellant; Padmanand Jha and Surendra Narain Jha, for the Respondent

Final Decision : Dismissed

Judgement

Madan Mohan Pasad, J.—This is an appeal u/s 110-D of the Motor Vehicles Act against an award made by the Claims Tribunal Purnea, dated the 11th of February, 1967.

2. It appears that respondent No. 1 was going in his Fiat Car, and there was a collision between his car and a truck which was coming from the opposite direction. The truck aforesaid belonged to one Balobind Lohia and was being driven by Yadunath Sao. As a result of the collision the car of respondent No. 1 was badly damaged and further he himself received injuries and remained in hospital for sometime and even thereafter under the treatment of the Civil Surgeon of Araria. On account of this, he filed a claim petition before the Tribunal aforesaid claiming a sum of Rs. 31610/- from the respondents by way of special and general damages. The Tribunal allowed a sum of Rs. 4340/- only as compensation and directed the payment of the amount aforesaid by the appellant Insurance Company. Hence this appeal.

3. The Claims Tribunal came to the conclusion that the accident was as a result of the rash and negligent driving by the driver and the applicant before it was not

at fault. It, therefore, found that the applicant was entitled to claim compensation. In respect of the quantum, however, it disallowed most of the items of claim but allowed the claim in respect of certain other items either in full or by reducing the amount claimed. One of the items which is relevant for the purpose of the present appeal is the claim against shock, anxiety and mental agony, and the claim was for a sum of Rs. 20,000/- in this respect. The amount was found by the Tribunal to be exorbitant, and it was allowed after reducing it to a sum of Rs. 4000/-. It may be mentioned that the applicant has further claimed damages on account of grievous hurt and physical inability assessing the amount at a sum of Rs. 5000/- and further damages on account of permanent scar marks on the body assessed at Rupees 2000/-. Both these claims were disallowed in view of the fact that the claim for shock, anxiety and mental agony had been allowed.

4. Neither respondent No. 1, who was the applicant before the Tribunal, nor respondents 2 and 3, who were opposite parties, filed any appeal against the order of the Tribunal. It is only the Insurance Company which has come up in appeal.

5. Learned counsel for the appellant has raised three points before me, firstly, that the claim should not have been allowed in view of the fact that the applicant before the Tribunal, who was driving the car, had no licence. It is said that the question had been raised in the written statement filed by the Insurance Company, but the Tribunal has failed to give any finding on that point. The second point raised is that the claim for damages for shock, anxiety and agony ought not to have been allowed. Thirdly, the award should have been made against the insured, namely respondent No. 2, and not against the appellant. I must state at the outset that none of these points is tenable or open to the appellant.

6. Firstly, having looked into the written statement filed by this appellant before the Tribunal. I find that there is no specific objection that the victim was driving his car without a licence and, therefore, even if it had been open to the appellant to raise this point, it could not be raised for the first time in appeal. The point not having been raised, the Tribunal gave no finding on the point.

7. I may state that the point is not open at all to the appellant because, in view of Section 96(2) of the Motor Vehicles Act (hereinafter called the Act), the Insurance Company can defend the action only on the grounds mentioned therein which are provided for in Clauses (a) to (c) thereof. It is well-settled that the Insurance Company is not in the same position as the owner of the vehicle to defend the action on all grounds unless the Insurance Company has reserved such a right to itself by the policy issued in favour of the insured. In this connection, reference may be made to the cases of *Hindusthan General Insurance Society Ltd. v. Days Nath Jha* (1970) 40 Com Cas 796 (Pat.). *Ku. Champa Banerjee and Another Vs. Chotanagpur Chemicals and Industries Ltd. and Another*, and *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh*

and Others, . The ground raised in this case is not one which is covered by the provision of Section 96(2) of the Act. In the present case it was not the case of the Insurance Company that such a right had been reserved. Therefore the Company could not have agitated this point in the Court below nor can it do so in appeal.

8. With regard to the second point, firstly, I must mention that nothing has been placed before me to show that the quantum of damages assessed at by the Tribunal is for any reason excessive. It is well settled that an appellate Court would be slow to interfere with a finding in respect of the quantum of damages. In the case of *Flint v. Lovell* : (1935) 1 KB 354 at p. 360], it is laid down that an appellate Court would be slow to interfere with the quantum of damages assessed unless the Tribunal has acted on wrong principles in assessing the damages or that the damages awarded are either so excessively high or so excessively low that they cannot be deemed to be a proper estimate thereof. As will appear from what has been stated earlier that the Tribunal in the instant case did not allow the other two kinds of damages for the permanent scars on the body and for the grievous hurt and physical inability on account of the fact that it had awarded damages in respect of shock, anxiety and mental agony. On the facts of this case, therefore, the objection is worthless.

9. Apart from the merits of the point, it must also be held that it is not open to the appellant-Insurance Company to raise this point in view of this defence not being open to the Company u/s 96(2) of the Act. There being no privity of contract between the Insurance Company and the victim of the accident, the question of the quantum of damages is not one which can be agitated by the Insurance Company unless it is beyond the statutory limit. In the case of *New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi and Others*, it was held that it is not open to the insurer to challenge the quantum of damages, that being not a ground mentioned in Section 96(2) of the Act.

10. The last point raised by learned counsel is also untenable. It is said that the award should have been made in the present case against the insured and not against the insurer-appellant. There is no warrant for this proposition. It is well settled that an action like the present one can be instituted not only against the driver and the owner of the vehicle which has caused the accident resulting in injury but also against the Insurance Company. In the present case it is said that the Tribunal should have passed the order that the insured was bound to pay the amount awarded, but the Insurance Company would pay it on his behalf. Again, this is not a ground acceptable to me. The Tribunal has found the liability of the owner of the truck in question. It has, however, directed the payment of that amount by the appellant-Insurance Company. There does not appear to be anything wrong in such an order. Section 110-B of the Act itself lays down that in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer, or owner, or driver of the vehicle involved in the accident or by all of the persons, as the case may be. In the present case, the Tribunal has

directed the payment of the entire amount awarded by the appellant which it was entitled to do in law.

11. In the result, I find that no good ground has been made for interference with the order under appeal. This appeal is accordingly dismissed with costs.