(2007) 03 PAT CK 0007

In the Patna High Court

Case No : M.A. No. 533 of 2002

The New India Assurance Company Ltd. — APPELLANT

Vs

Mintu @ Dhirendra Singh and Another — RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2007) 3 PLJR 494

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This miscellaneous appeal is directed against the order dated 6.9.2002 passed by the 6th Addl. District Judge-cum-Motor Accident Claims Tribunal, Chapra in M.A.C.T. Case No. 13/1983 by which he has awarded a sum of Rs. 1,35,000/- with interest at the rate of 9% per annum with effect from 1.6.1983 to the claimant-respondent No. 1 Mintu @ Dhirendra Singh as compensation for permanent disablement on account of an accident caused by rash and negligent driving of the bus bearing registration No. BRD-9351 and has directed the appellant New India Assurance Company Ltd., the insurer of the offending motor vehicle to pay the same. The case of the claimant-respondent No. 1, in brief, is that on 6.10.1982 the above bus dashed him in a public place on his way to school, as a result of which he received serious injuries and his injuries in the leg could not be cured and became permanently handicapped.

2. It appears that the claimant-respondent on 21.5.1983 filed the application under the Motor Vehicles Act, 1939 (hereinafter referred to as ''the Act1) for compensation. An ex-parte order was passed on 28.6.1993 directing the insurer of the vehicle to pay the compensation awarded. The owner then filed petition for setting aside the ex-parte order. The order was set aside on 7.11.1998 and as the original owner had died, his son (respondent No. 2) was substituted and the appellant (insurer) was made a party.

3. Respondent No. 2 then contested the claim of the claimant by filing a written statement. The appellant also filed a written statement.

4. The claimant thereafter examined his witnesses, Respondent No. 1 also filed documents including the insurance policy. The learned Tribunal after considering the evidence on record and hearing the Learned Counsel for the parties passed the impugned order.

5. The appellant has challenged the impugned order in this appeal, inter alia, on the following grounds:

(i) Quantum of compensation was not properly determined.

(ii) The driving licence of the driver was not produced in the Tribunal.

(iii) The liability of the appellant was limited to Rs. 50,000/- only.

6. Both the sides were heard.

7. As regards quantum of compensation, the record does not show that the appellant had taken permission u/s 110C (2A) of the Act to contest the claim on all or any of the grounds that are available to the owner of the vehicle. Learned Counsel for the appellant has also admitted that no permission as envisaged u/s 110C(2A) was taken by the appellant.

8. Section 110C(2A) of the Act reads as follows:

Where, in the course of any enquiry, the Claims Tribunal is satisfied that--

(i) There is collusion between the person making the claim and the person against whom the claim is made, or

(ii) The person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct the insurer who may be liable in respect of such claim, shall be impleased as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

9. In the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, while dealing with Section 173 of the M.V Act, 1988 corresponding to Section 110C(2A) and 110D (Appeals) of the Act the Supreme Court has held that where the conditions precedent embodied in Section 170 are satisfied and the Accidents Claims Tribunal passes an order permitting the insurer to avail of the grounds available to the person against whom the claim is made, then only the Insurance can file an appeal challenging the quantum of compensation or findings regarding negligence of the offending vehicle.

10. So, when admittedly the appellant did not take permission u/s 110C(2A) of the Act from the Tribunal to contest the claim on all or any of the grounds available to respondent No. 2, the appellant cannot challenge the quantum of

compensation in this appeal.

11. So far the question of driving license, an insurer, of course, has statutory right u/s 96(b) of the Act to plead a breach of condition of policy by showing that the person driving the vehicle was not duly licensed, but though the impugned order shows that the owner of the vehicle has proved the photo copy of the driving licence (Ext. ''B''), the order nowhere shows that the appellant had challenged in the Tribunal that the driver of the vehicle was not duly licensed. So, the appellant cannot at this stage be allowed to challenge that the driver was not duly licensed and the owner violated a condition of the policy and so the insurer was not liable to pay the amount.

12. Regarding limit of liability of the appellant to pay compensation amount, Learned Counsel for the appellant submitted that in view of Section 95(2)(b), the liability of the insurer in respect of third party risk in limited to Rs. 50,000/- only and as such, the appellant in this case is not liable to pay more than Rs. 50,000/- as compensation. In support of his submissions he relied on the decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, and the Division Bench decisions of this Court in the case of Divisional Manager, Oriental Insurance Company, Ltd. Vs. Most. Jaishree Verma and Others, and Chandra Madhav Mishra and Another Vs. Braj Kishore Mishra and Others .

13. On perusal of the decision of the Supreme Court relied on by the Learned Counsel, it is, however, clear that the liability of the insurer is limited as indicated in Section 95 of the Act, but it is open to the insured to make a payment of additional high premium and to get the higher risk covered in respect of third party also. The impugned order also shows that as per policy (Ext. ''A'') the vehicle was insured with special premium and the limit of liability in respect of any accident was raised to Rs. 3 lacs. Hence, though the statutory liability of an insurer in respect of third party risk is Rs. 50,000/-, as additional higher premium was paid by the insured, the appellant in this case is liable to pay whole less than Rs. 3 lacs.

14. In view of the discussions made above, I find no merit in this appeal. It is, accordingly, dismissed. There would be no order as to costs.

