(2002) 02 PAT CK 0134

In the Patna High Court

Case No : Miscellaneous Appeal No. 64 of 1998

The New India Assurance Company Ltd. — APPELLANT

Vs

Most. Lahaso Devi and Others — RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0134

Final Decision : Allowed

Judgement

S.N. Pathak, J.—Both these appeals have been heard together and are being disposed of by this common judgment. These appeals are directed against the judgment passed by the 1st Additional District Judge-cum-Motor Vehicles Claims Tribunal, Bhagalpur, in claim case Nos. 11/91 and 10/91.

2. The aforesaid cases were filed by the heirs of one Ajay Kumar of claim case No. 10/91 and Tulsi Yadav of claim case No. 11/91 praying compensation on account of? death of the aforenamed persons caused in a motor accident that occurred on 18.12.90. The Tribunal granted an amount'' of Rs. 1,88,500/- and an amount of Rs. 87,460/- to the claimants of case No. 10/91 and 11/91 respectively along with interest at the rate of 12% per annum from the date'' of application till realisation. The Insurance Company was represented by opposite party Nos. 3 and 4 of the claim case and these appeals have been filed by this Company challenging the aforesaid compensation awarded to the Respondent-claimants on the main ground that the driver of the concerned dumper which caused the accident was not having licence while driving the same. So, there was breach of condition of the insurance policy by the owner of the dumper. Hence, the Insurance Company is not liable to pay compensation as ordered by the Tribunal. The rate of interest was also challenged by the Insurance Company and it was contended that now the Bank rate of interest has been reduced from 12% to 9% and, hence, the interest awarded by the Tribunal may also be reduced.

3. The claimant-Respondents vehemently challenged the contention of the Appellant and submitted that it was the gnus of the Appellant to prove that the

vehicle, in question, was not being driven of licensed driver. In this connection, Respondents lawyer referred to certain decisions as reported in Md. Jober Ali Vs. National Insurance Co. Ltd. and Another, , Sohan Lal Passi Vs. P. Sesh Reddy and others, , Divisional Manager, New India Assurance Company Ltd., Ongole Vs. Tumu Gurava Reddy and others, , Oriental Insurance Co. Ltd. Vs. Bodhu Singh alias Babula Singh and Another, The Appellant''s lawyer submitted that all these reported cases the onus was (sic)ed upon the Insurance Company to prove (sic)et the driver of the concerned vehicle (sic)d no valid driving licence. But I find that all these cases owner or driver had appeared and led evidence that the concerned driver was having licence at the (sic)me of driving the vehicle. The Insurance company had taken the plea that the driver (sic)s having fake licence of driving or he (sic)d entrusted the vehicle to be driven by (sic)other person having no licence. So, the High Court held that it was the onus of the Insurance Company to prove that the driver (sic)d no licence at all or if at all he had a (sic)nce it was not genuine. But the distinguishing feature of this case from the aforesaid reported cases is that neither the (sic)er nor the owner of the concerned (sic)per appeared in the trial Court inspite notice nor they have appeared in this (sic)al also in order to take a plea that the (sic)per at the relevant time was entrusted (sic)he driver having licence. In such a (sic)tion, whether the onus would shift to Insurance Company to prove that the (sic) had no licence is the moot question to be considered. In many of the cases, where owner or driver appears and contend that he had driving licence, the onus, of course, shifts to the Insurance Company to prove that the driver had no, licence at all or if he had licence that was not genuine, rather fake. But, when neither the owner or the driver appears in answer to the notice issued to them, it would be difficult for the Insurance Company to trace as to who was the person who was driving the vehicle, in question, and whether he had a valid licence. The Insurance Company is not an individual and it runs by its officials and it is very difficult, if not impossible, for the Insurance Company to enquire as to the genuineness of the driving licence of all the vehicles ensured by it throughout the territories in which the Insurance Company has its branches. So, I do not think that the onus would automatically lie upon the Insurance Company to prove that an offending vehicle was driven by a licensed driver. The Tribunal had referred to the W.S. of the Insurance Company where, perhaps, it stated that dumper was being driven by Dular Chand Mitra (Respondent No. 4 here). From this averment, the Tribunal assumed that the Insurance Company had admitted that the offending vehicle was being driven by a licensed driver. I am unable to understand the rationale of the tribunal behind this finding. It is the case of the Appellant here also that the name of the driver was changed by the claimants earlier. Name of the driver was different and subsequently it was amended to incorporate the name of Dular Chand Mitra. In such a situation, further, the W.S. of the Insurance Company was not sufficient to prove that Dular Chand Mitra or any other driver who was driving the vehicle at the relevant time had a valid licence. Moreover, when the owner and driver both failed to appear in the Court below in spite of notice, I do not think that the Insurance Company was under any legal obligation to prove that the concerned dumper was entrusted by its owner into the hands of a driver having licence. Such an onus would have been shifted to the Insurance Company if the owner or the driver would have appeared in the trial Court and adduced evidence, oral or documentary, that the dumper was being driven by the driver having licence at the relevant time or that the owner entrusted the dumper to a driver having licence. So, there was an apparent breach of the term of the policy by the owner or the driver. There was apparent breach of the condition of insurance policy and in such a situation the owner of the dumper shall be liable for paying compensation money to the claimant-Respondents. The law laid down by the M.V. Act is clear that the owner, driver and the Insurance Company are jointly or severally liable for paying compensation to the heirs of the deceased who dies in an accident. The owner or the driver is not absolutely exonerated from their liability prima facie and originally it is they who are liable for paying compensation, Insurance Company becomes liable in view of its policy and if there be any breach of terms and conditions of the policy, the former would not be absolved from the liability which originally and fundamentally fixed upon them. It has become customary for the offending vehicles'' owner to avoid attending Court in claim cases under the impression that the entire liability falls upon the shoulder of the insurance company and, thus, they escape from the liability which is fundamentally placed upon them. In the instant case, I find the same is the situation and, so, there was no evidence on the part of the owner of the concerned dumper to show that he had left his vehicle into the hands of a driver who had a licence. In that situation, the Insurance Company-Appellant had no onus to prove that the driver or the person who was driving the dumper at the relevant time had no licence. Under the Evidence Act no party can be asked to lead negative evidence.

4. As a result of the aforesaid discussions, I think that in the peculiar situation in the case, the Appellant-Insurance Company was not liable to pay compensation to the claimant-Respondents. It was the liability of the owner of the dumper to pay the compensation amount.

5. In the result, these appeals are allowed with modification to the effect that the owner of the concerned vehicle, Respondent No. 3 of this appeal, shall pay the entire compensation money to the claimants of both the claim cases as mentioned in the judgment of the Tribunal. So far the rate of interest is concerned, I think that there is no necessity to reduce the same because grant of interest is the discretion of the Court and since the compensation amounts are not so exorbitant as to call for any reduction in the interest.