(2000) 03 PAT CK 0128

In the Patna High Court

Case No : Appeal from Original Order No. 288 of 1996

The New India Assurance Company Ltd. APPELLANT

Vs

Mostt. Gagar Devi and Others RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 166

Citation : (2000) 3 PLJR 684

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : R.K.P. Singh, for the Appellant; Jitendra Kumar Singh, for Redpondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—One Laxman Das, son of Jugal Das of village Basaitha, District Madhubani, who was aged about 20 years died in a motor accident on 4.5.1992.

2. The deceased along with three persons were travelling on the roof of Tata 407 Maxi (BR-07M-6911). As soon as the said vehicle turned turtle, all the persons sitting on the roof fell down and crushed to death.

3. Claim Case No. 18 of 1992 u/s 166 of the Motor Vehicles Act, 1988 was filed by widow-mother and minor sister of the deceased. The vehicle was owned by Deonarain Yadav, Respondent No. 3 herein and was being driven by Ramanand Mahto, Respondent No. 4. It was insured with Appellant-insurance company.

4. On the basis of materials on record, the tribunal held that the accident took place due to rash and negligent driving of the vehicle in question. The deceased was Goldsmith and was earning a sum of Rs. 2000/ - per month from his business. His mother, who was claimant No. 1 was aged about 60 years. Claimant No. 2 was minor sister of the deceased, whose age was not disclosed.

The said sister can claim to be dependent of the deceased only till her marriage.

5. In the aforesaid circumstance, the tribunal assessed a lump sum amount of Rs. 50,000/ - to be paid to the claimants as compensation. The appeal stood dismissed as against Respondent No. 4, who was driver of the vehicle in question and had neither appeared nor contested claim case before the tribunal. In my opinion, for this reason the appeal cannot be said to have become incompetent as a whole and it can proceed to be decided on merits even in absence of the said driver, Respondent No. 4.

6. After admission of the appeal on 27.3.1997, a cross objection under Order 41 Rule 22 of the CPC at flag ''X'' was filed on behalf of claimants Respondents 1 and 2 for enhancement of the amount of compensation, which was also admitted on 20.11.1998.

7. Counsel for the Appellant submitted that driver of the offending vehicle was not holding valid licence on the date of the alleged accident and hence statutory condition of the insurance policy was violated and the insurer was not liable to indemnify the owner''s liability to pay compensation. The deceased was an unauthorised passenger travelling on the roof of the vehicle and he fell down and died due to contributory negligence.

8. It appears that before the tribunal, the insurer failed to prove that driver of the vehicle was without valid driving licence at the time of accident. As such there is no basis to entertain this submission in the present appeal. There is absolutely no evidence brought on record in this regard.

9. However, I find substance in the second submission of Mr. Singh that to some extent the deceased was also responsible for his death in the accident in question. He was not required to travel on the roof of the vehicle. It was always dangerous and against the rules.

10. In my view in course of determination of compensation under the Act the age of the deceased was not the sole consideration, but age of the claimant, who was dependent on the deceased was a also relevant. Here, the claimant-mother of the deceased was admittedly 60 years old at the time of accident. Further in view of the fact that the deceased of his own was travelling on the roof of the vehicle and fell down, when it turned turtle also for his own fault, in my opinion, a lump sum amount of compensation of Rs. 50,000/ - assessed by the tribunal needs no interference by this Court. In case the said amount is kept in term deposit in a nationalised bank, it would fetch Rs. 500/ - per month by way of interest.

11. However, it appears that though the tribunal observed that the claimants shall be entitled to interest on the amount of compensation from the date of filing of the claim application till payment, but the rate of interest was not mentioned. It is made clear that rate of interest payable shall be 12% per annum.

12. I find no merit either in the a peal or in the cross objection filed Respondents 1 and 2. The appeal as well as cross objection stand dismissed. However, there

will be no order as to costs.

