

(2013) 11 JH CK 0084

In the Jharkhand High Court

Case No : Misc. Appeal No. 277 of 2006

The New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Sunaina Devi and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 1 AJR 222

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : Manish Kumar, for the Appellant;

Final Decision : Disposed Off

Judgement

Dhruv Narayan Upadhyay, J.—This appeal has been presented by the appellant, the New India Assurance Company Ltd. against the judgment dated 13th April, 2006, passed by learned 1st Addl. District Judge-cum-M.A.C.T, Dhanbad in connection with Title (M.V.) Suit No. 27 of 2000 whereby the learned Tribunal has pleased to grant compensation in favour of the respondents-claimant Nos. 1 to 4. The brief facts behind filing of this claim case is that on 11.12.1999 deceased Rajendra Prasad Singh was proceeding on his car. When the car reached on G.T. Road near Sheoganj, a truck bearing registration No. HR-38D/1550, being driven rashly and negligently came from opposite direction and dashed the car as a result the deceased sustained injury and died. The claimants who are legal heirs of deceased Rajendra Prasad Singh filed petition for grant of compensation vide Title (M.V.) Suit No. 27 of 2000.

2. The present appellant who was arrayed as defendant appeared before the Tribunal, filed written statement and contested the suit on the ground that the aforesaid truck was though insured with the appellant-insurance company but the owner of the vehicle did not appear before the Tribunal to contest the suit. The driver was not having valid licence and the truck was moving on the road without valid permit.

3. It is submitted that the learned Tribunal has committed error by fastening the liability on the shoulder of appellant-insurance company because the owner of the offending vehicle has violated the terms and conditions of the policy. The compensation amount should have been directed to be paid by the owner to the claimants. The Tribunal has also not given recovery right to the appellant-insurance company. Since the impugned judgment suffers with illegality and based on reasoning without valid evidence, the same is liable to be set aside.

4. It is further pointed out that in compliance of the order of this Court passed on 01.07.2009 the appellant-insurance company has already deposited 50% of the awarded amount before the Tribunal. Since two of the claimants died during the pendency of this appeal, the appellant has also complied with the order dated 31.08.2012.

5. On the other hand, the claimants have appeared but the owner of the vehicle, i.e. respondent No. 5 did not appear even after substituted service of notice. It is also informed that the owner did not appear before the Tribunal to contest the suit.

6. I have gone through the impugned judgment from which it appears that the owner of the vehicle did not appear to contest the suit and no valid driving licence or valid permit were produced before the Tribunal. The finding of the Tribunal to the extent that the claimants shall not suffer due to the misdeed, if committed, on the part of owner of the vehicle is correct. If the owner of the vehicle has violated the terms and conditions of the policy, he is liable to suffer.

7. Considering all these aspects, the appellant-insurance company is given recovery right and he may file petition before the learned Tribunal to recover the compensation amount from the owner of the vehicle in accordance with the law and also in view of the judgments passed by Hon''ble Apex Court in this regard. It is made clear that the balance compensation amount is required to be paid by the appellant-insurance company within two months from today and the amount shall be distributed equally among the four surviving claimants since parents of the deceased are no more in this world.

8. The statutory amount of Rs. 25,000/- deposited by the appellant at the time of presenting the appeal shall be returned after payment of the compensation, payable to the respective claimants. With these modification in the impugned judgment, this appeal stands disposed of.