

(2007) 03 PAT CK 0118
In the Patna High Court
Case No : M.A. No. 673 of 1999

The Oriental Fire and General Insurance Company	APPELLANT
Vs	
Bishwanath Pd. Singh and Another	RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Citation : (2007) 03 PAT CK 0118

Final Decision : Allowed

Judgement

Rekha Kumari, J.—This miscellaneous appeal is directed against the order and award passed by the 1st Addl. District Judge cum Motor Accidents Claims Tribunal, Muzaffarpur, under which he has held the owner (respondent No. 3) and the insurer (appellant) of the offending vehicle No. BHF-1343 liable to pay jointly and severally Rs. 86, 800/- to the claimants as compensation and has directed them to pay the amount after deduction of adinterim compensation already paid, with interest at the rate of 10% per annum within 60 days of the order and has further directed that in case of their failure to pay the amount they shall be further liable to pay penal interest at the rate of 15% per annum on the amount of compensation.

2. Learned Counsel for all the parties were heard.

Learned Counsel for the appellant submitted that in this case the motor vehicle Act of 1939 is applicable as the accident had occurred on 19.9.1984 before coming into force of the motor vehicle Act of 1988, and Section 95(2)(b)(ii) of the Act of 1939 would show that in respect of any one accident, the liability of an insurer in respect of passengers is limited to only Rs. 15,000/- for each passenger and the deceased in this case was a passenger and so the appellant, was liable, to pay Rs. 15,000/- and in its written statement it has mentions this fact but the Tribunal without apportioning the liability of the appellant has directed it to pay the entire amount and as such, the order of the Tribunal is bad in law. In support of his submission that the liability of the appellant is limited to Rs. 15,000/-, he has relied on the decision of the supreme court in the case of

National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . He has further submitted that as the appellant has already paid Rs. 15,000/- as interim compensation, the appellant is not liable to pay any further amount. He also submitted that the Tribunal has wrongly allowed interest from the date of application i.e. from 12.12.1984 i.e. the date of application.

3. Learned Counsel for the claimant submitted that the appeal is not maintainable in the absence of two necessary parties (i) Arun Kumar Singh and (ii) Manju Devi, who were substituted by the Tribunal in place of Sumitra Devi, one of the claimants on her death.

4. Learned Counsel for the owner (respondent No. 3) submitted that the bus in question was comprehensively insured and the order sheet of the Tribunal would show that in spite of several adjournments granted the insurer did not file the original policy and as such, it cannot be said that the liability of an insurer was restricted to Rs. 15,000/-. In support of his submissions he has relied on a decision of this Court reported in 1994 (2) TAC 386 (Oriental Insurance Co. Ltd. v. Most. Dulari Devi and Ors.) and another decision of this Court in the case of New India Assurance Co. Ltd. v. Ramparti Devi and Ors. (L.P.A. No. 891 of 1996).

5. As regards non-joinder of parties the impugned order and award show that Biswanath Prasad Singh and Sumitra Devi are shown as claimants therein. It appears that on account of that, both of them were made respondents. It also appears that when the notices were issued to them, on the basis of service report that Sumitra Devi was dead, her name has been deleted. No heir has been substituted in her place in appeal. But as Bishwanath Prasad Singh, father, is the only Class I heir of the deceased and he is already on record as respondent and the grievance of the appellant is mainly against the owner of the vehicle, the appeal would not suffer for non-joinder of Arun Kumar Singh and Manju Devi, who are not legal representatives of the deceased and are not entitled to any compensation and are not the necessary parties so long Bishwanath Prasad Singh is alive.

6. Then, as regards the liability of insurer, the provisions of Section 95(2)(b)(ii) is clear that where vehicle in which the passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, the liability of the insurer in respect of the passengers is limited to Rs. 15,000/- only for each passenger. The deceased in this case admittedly was passenger of the offending bus, and therefore, the appellant is statutorily liable to pay Rs. 15, 000/- only in this case.

7. In the case of Jugal Kishore (supra) while dealing with the liability of insurer u/s 95(2)(ii)(i) the Supreme Court has held that

Even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case however, it is got comprehensively insured a higher premium, than for an "act only" policy is payable depending on the

estimated Value of the vehicle, such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf.

8. Though the above decision was rendered with regard to third party risk, it is applicable in the case of passengers also u/s 95(2)(b)(ii). Then though the contention of the owner is that the bus was comprehensively insured, in his show cause filed here, he has nowhere even whispered that he had paid higher premium to cover higher liability. It was, however, the duty of the appellant to produce the insurance policy to show the terms of the contract and the order sheet of the Tribunal shows that the appellant had produced a copy of the policy to show that the liability is limited which was marked as Ext."A" on admission by the claimant, but as the policy was not admitted by the owner, the proceeding being ex-parte against him and the policy was a photo copy, the policy was not taken into consideration by the Tribunal in deciding the case. Of course, a photo copy of the policy cannot be taken into evidence but it appears from the photo copy of the policy, kept in "B" file of the record of the Tribunal that it was certified by the Branch Manager to be true copy. So, when the photo copy was certified by a competent authority and it was admitted by the claimant and the owner did not come to deny the genuineness of policy, I think the Tribunal should have considered the policy which was marked exhibit. The owner, who has appeared in this appeal, is also in possession of the policy, but he has not produced it to dispute the defence of the appellant.

9. Under the above circumstances, though the bus was comprehensively insured as no higher premium was paid by the owner to cover higher liability in view of the Supreme Court decision the liability of the appellant in this case would be limited to Rs. 15,000/-. The decisions relied on by the owner do not apply to the facts of this case.

10. As regards interest the Tribunal has not given the date from which it would be payable. But ordinarily, it should be paid w.e.f. the date of application. So, the interest would be payable from the date of application. There is no provision of penalty and hence, no penalty would be payable in this case and the interest only at the rate of 10% per annum would be payable throughout.

11. In the result, the appeal is allowed to this extent that the liability of the appellant is limited to Rs. 15,000/- only and the owner of the vehicle is liable to pay the remaining amount payable to the claimant. However, as such compensation requires prompt payment and the appellant admittedly was the

insurer of the vehicle, the appellant would pay the entire amount which is due to the claimant Bishwanath Prasad Singh within, two months from the date of this order and thereafter it would be at liberty to recover excess amount paid from the owner in accordance with the provisions of law. The interest as already mentioned would be payable at the rate of 10% per annum from the date of application till realisation and no penalty would be paid. The respondent Bishwanath Prasad Singh would deposit the amount received in Bank and utilise it as directed by the Tribunal.