
(2007) 08 PAT CK 0145
In the Patna High Court
Case No : Misc. Appeal No. 239 of 2005

The Oriental Insurance Co. Ltd. and Another	APPELLANT
Vs	
Most. Rajabala Devi and Others	RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(3), 170

Citation : (2007) 4 PLJR 686

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Advocate : Hitendra Nath, for the Appellant; N.K. Agrawal and Mrs. Sarita Kumari, for the Respondent

Judgement

Rekha Kumari, J.—This appeal by the insurer Oriental Insurance Company Ltd. is directed against the judgment dated 15.3.2005 passed by the 2nd Addl. District Judge cum M.A.C.T., Naugachia, Bhagalpur in Claim Case No. 32/2000 by which the Tribunal has ordered the appellant to pay Rs. 4,36,167/- as compensation to the claimants respondents no. 1 to 4 (wife and minor children of the deceased) on account of the death of late Shankar Lal Agrawal in the motor vehicle accident involving Truck No. BR-1B/5445. It appears that on 19.3.1997 at about 2 P.M. there was an accident in Ganga bridge near Gaighat, P.S. Alamganj, Patna by one unknown vehicle as a result of which a man was seriously injured. Hawildar 321 Rajdeo on hulla went to the spot and took the injured to the hospital where he was declared dead. On his written statement F.I.R. was drawn and Alamganj P.S. Case No. 57/97 was registered. During investigation it was found that the deceased was Shankar Lal Agrawal. The police ultimately submitted final report as case true as against the driver of an unknown vehicle.

2. The case of the claimant (respondent no.1) is that she was not aware of the vehicle involved in the accident. She published a notice (Ext. 5) in daily newspaper Aryabarta dated 29.2.2000 that if anybody had any knowledge about the vehicle, he should inform her. In response to that notice she received an

Enland letter (Ext. 1) from Sanjay Kumar Khandelia (P.W. 1) that the accident was caused by Truck No. BR-1 B/5445. Then the claimants filed an application u/s 166 of the M.V. Act on 23.3.2000. In the application it was claimed that the deceased was earning Rs. 3500/- per month and was aged 35 years.

3. The owner (respondent no. 5) of the vehicle contested the claim and in his written statement admitted that he was owner of the vehicle and that on the alleged date the truck had come to Patna but he denied any knowledge of the alleged accident. The owner also took other defences in his written statement.

4. The appellant also contested the claim and took various defences in its written statement.

5. The learned Tribunal after considering the oral and documentary evidence adduced by the claimants passed the impugned order. No evidence was adduced on behalf of the owner or the appellant. The appellant, however, had obtained permission u/s 170 of the M.V Act.

6. Learned counsel for the appellant submitted that the oral evidence adduced by the claimants is not reliable and the evidence recorded is not sufficient to hold that the above truck was involved in the accident. He also submitted that the Tribunal at Naugachia has no jurisdiction to entertain the claim application. The claim case is also barred by limitation and the amount awarded is excessive as there is no proof of income.

7. The learned counsel for the claimants defended the judgment.

8. It is not denied that respondent no. 5 was the owner of the above truck and the appellant was the insurer of the truck on the date of accident. It is also not denied that Shankar Lal Agrawal (husband of respondent no. 1) died in motor vehicle accident on the alleged date on the Ganga bridge in Patna District.

9. The F.I.R. (Ext. 3) of course shows that the same was registered against the driver of an unknown vehicle. It was also not mentioned therein which type of vehicle had caused the accident. The final report also shows that though the name of the deceased could not be ascertained and the final form was also submitted as case true against the driver of unknown vehicle. However, the evidence of A.W. 2 Rajwala Devi, the wife of the deceased, is that she had published a notice (Ext. 5) in daily newspaper Aryabarta and the evidence of A.W. 1 Sanjay Kumar Khandelia is that in response to that notice he had sent letter (Ext. 1) to the respondent. The letter shows that the vehicle involved in that accident was Tata truck being Registration No. BR-1B/5445. The witness in his evidence has also stated that he was on the bridge at the time accident had taken place and had seen the accident and had chased the truck and had noted the number of the truck as BR-1B/5445. He has further stated that thereafter he went to Hajipur and that one man had died in the accident.

10. A.W. 5 Mukhtar Ahmad has also stated that he had seen the accident with his eyes. The truck was going from Hajipur side towards Patna and it was being

driven rashly and negligently and the truck caused accident resulting in the death of a person. He also stated that he had noted the number of the truck and the number was BR-1 B/5445. He has stated that he had talked with the brother of the deceased when he had come to make enquiry.

11. Thus, from the oral evidence of these two witnesses clearly show that the truck in question was involved in the above accident and the accident was caused due to negligence of the driver. There is nothing in their evidence that they are either interested in the claimant or inimical against the owner. Therefore, there appears no valid reason to disbelieve them. A.W. 5 of course has stated that the driver was subsequently arrested after chase which is not the case in the F.I.R, but only for this discrepancy his evidence cannot be disbelieved. The evidence of A.W. 1 also finds support from his letter. The police also indeed could not ascertain the number of the vehicle during investigation but only on that account, the evidence of the witnesses cannot be disbelieved. The owner has also not examined the driver to contradict the above evidence.

12. So, the learned Tribunal was justified to hold that the above accident was caused due to rash and negligent act of the driver of the above vehicle.

13. As regards the jurisdiction, the impugned judgment shows that the claimant wife has filed residential certificate to show that she was residing at Naugachia, District Bhagalpur. Therefore, the Tribunal at Naugachia has jurisdiction to entertain the claim case though the cause of action arose in the district of Patna.

14. So far limitation is concerned, the accident had taken place on 19.3.1997 and the claim petition was filed on 23.3.2000 i.e. after three years four days of the occurrence. Though prior to Motor Vehicles Amendment Act, 1994, as per section 166(3) of the Motor Vehicles Act, 1988, an application for claim was to be filed within six months of the accident, by the amended Act which came into force with effect from 14.11.1994 sub-section (3) has been deleted. So with effect from 14.11.1994 there is no limitation of period within which such application is to be filed. The Supreme Court in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, has observed that the effect of the Amendment Act is that with effect from 14.11.1994, there is no limitation for filing claim before the Tribunal in respect of the accident. So, the application for claim in this case is not barred by limitation. The application was also filed within a reasonable time. So, there is no merit in the contention of the learned counsel for the appellant in this regard.

15. As regards the quantum of compensation, the evidence of A.W. 2, A.W. 4 Raushan Lal Agrawal, brother of the deceased is that the deceased was aged 35 years. In the postmortem report also the age has been assessed as 35 years. So, there is no doubt that the deceased was aged 35 years at the time of accident. The evidence of A.W. 2, 4 is that the deceased was a Salesman in the cloth shop of Prem Kumar Agrawal and was getting Rs. 3500/- per month. Prem Kumar Agrawal has been examined as A.W. 3 and he has corroborated this fact. Hence,

though there is no documentary evidence in this regard, the oral evidence of these witnesses cannot be discarded, specially when the amount does not appear to be excessive and unreasonable.

16. The impugned judgment shows that the learned Tribunal on the basis of age and income of the deceased as per Schedule II of the Motor Vehicles Act has applied multiply-17 and assessed the amount of compensation. So, the amount assessed is just and proper.

17. In view of the above discussions, the learned Tribunal has rightly held that the applicant is liable to pay award amount and I do not find any reason to interfere with the judgment. It is, accordingly, dismissed.

18. Learned counsel appearing for the claimants submitted that the statutory amount deposited by the Insurance Company in this Court at the time of filing of this appeal may be directed to be disbursed in favour of the claimants. Learned counsel also submitted that no part of the claim compensation amount except ad interim compensation amount, has been received by the claimants. Under the circumstances, the claimants are allowed to withdraw the money deposited in this Court by the Insurance Company as per practice and procedure followed in the Registry.