
(2006) 12 PAT CK 0017

In the Patna High Court

Case No : Miscellaneous Appeal No. 32 of 1999

The Oriental Insurance Company

APPELLANT

Vs

Raja Ram Dhobi and Others

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Citation : (2006) 12 PAT CK 0017

Judgement

Syed Md. Mahfooz Alam, J.—This miscellaneous appeal has been filed by the appellant for setting aside/ modifying the judgment dated 11.8.1998 and award dated 31.8.1998 passed by Sri Subhash Kumar Singh, 10th Additional District Judge cum - Motor Vehicle Accident Claims Tribunal (in short, "the Tribunal") in M.V. Claim Case No. 52 of 1993 whereby and whereunder the Tribunal has awarded compensation of Rs. 1,45,636/- to the respondents - first set (applicants) for the death of one Ram Ekbal Ram @ Ram Ekbal Dhobi caused in a motor vehicle accident on 20.7.1993.

2. The brief facts of the case are as follows:

On 20.7.1993 at 2.00 P.M. one Chowkidar Shyam Lal Ram, son of late Chander Ram of village Lalganj, P.S. Sasaram Muffasil, District Rohtas gave fardbeyan before Jamadar of Sasaram Muffasil Police Station to the effect that on the same day he was coming to Sasaram Police Station from his village and when he reached near Arya Vidyalaya, he saw a bus bearing registration No. BR 3 / 4343 coming from Sasaram and going towards Bikramganj. The bus was being driven in rash and negligent manner by its driver, who was identified as Ram Lal Singh of village Batuara P.S. Sandesh, District Bhojpur. In the meantime the informant saw some boys coming from opposite direction and when they reached near the house of Ramdhari Singh the driver of the bus with intention to kill, them dashed the boys as a result of which two boys died instantaneously and three others sustained grievous injuries. After the incident the driver of the bus fled away with the bus towards Bikramganj. On hulla raised by the informant-chowkidar, several persons assembled there. They identified Sanjay Kumar Baitha and Ravindra

Tiwary amongst the dead and Manoj Dubey, Ram Ekbal Dhobi and Balmiki Singh amongst the injured. It is further said that the injured were brought to Sadar Hospital, Sasaram where injured Ram Ekbal Dhobi also died. This application for compensation has been filed for the death of Ram Ekbal Ram caused in motor-vehicle accident.

It is further said in the fardbeyan that the motive of the occurrence was that one day prior to the occurrence some quarrel had taken place between the boys who had sustained injuries and the bus driver who had threatened the boys of dire consequence, hence there was every likelihood that the driver of the bus had intentionally dashed the boys. It appears that on the basis of fardbeyan of the Chowkidar, Sasaram (Muffasil) P.S. Case No. 308/93 dated 20.7.1993 was instituted u/s 302 of the Indian Penal Code. A separate case for grant of compensation bearing M.V. Claim Case No. 52 of 1993 was also filed by the heirs of deceased Ram Ekbal Ram in which the appellant-Oriental Insurance Company Limited as well as the owner of the vehicle appeared and contested the claim. The judgment was pronounced in the said case on 11.8.98 and by the impugned judgment, the Tribunal accepted the claim application of the applicants and awarded a total compensation of Rs. 1,45,636/- and directed the appellant to pay the entire compensation amount after deducting the amount of Rs. 25,000/- already paid under no fault liability as per the provision of Section 140 of the Motor Vehicles Act, 1988.

3. Mr. Ajay Kumar, learned Advocate appearing on behalf of the appellant-Oriental Insurance Company Limited, submitted that although this miscellaneous appeal has been filed on several grounds but he is assailing the judgment of the Tribunal on the sole ground that in view of the fact that the first information report about the incident was instituted u/s 302 of the Indian Penal Code and in view of the statement of the informant that the driver of the vehicle had intentionally dashed the vehicle against the deceased and other persons with intention to cause death the appellant is not liable to indemnify the compensation amount as it was not the case of accidental death occurring due to rash and negligent driving of the driver of the vehicle rather it was a case of causing intentional death. The learned Advocate submitted that this matter has been discussed by the Hon'ble Supreme Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, He referred paragraph 10 of the said decision which runs as follows:

The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for the killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular

person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

4. Relying upon the above decision of the Hon''ble Supreme Court, learned Advocate for the appellant submitted that as per the First Information Report, the intention of the driver was very much clear as just before a day of the alleged incident the driver had some quarrel with the boys and on that very day, the driver had threatened the boys of dire consequences. The learned Advocate further submitted that the first information report further discloses that with intention to take revenge, the driver of the bus dashed against the boys as a result of which Ram Ekbal Ram and two others died and several others sustained injuries. He further submitted that the fardbeyan of the informant establishes beyond doubt that it is not a case of accidental murder but it is a case of intentional murder and in such circumstance, the Insurance Company is not liable to pay compensation as the death of driver had not occurred in any motor-vehicle accident.

5. It is true that the fardbeyan of the Chowkidar (informant) discloses that the driver of bus had dashed the boys with intention to kill them but admittedly, this fardbeyan is not a substantive piece of evidence and in absence of examination of the author of the fardbeyan i.e. Chowkidar Shyam Lal Ram, the contents of the fardbeyan cannot be legally used in evidence. Neither his statement that the driver was driving the vehicle rashly and negligently nor his statement that he intentionally dashed the boys with intention to kill them can be legally used in evidence. At best this fardbeyan can be used for limited purpose that on a particular date of occurrence, some incident had taken place by the use of the motor vehicle in which some persons had sustained injuries and some of them had succumbed to their injuries, except that other contents of the fardbeyan cannot be used in evidence in absence of examination of the author of the fardbeyan. There is nothing on record to show that in support of this fact that the driver had intentionally caused accident with the sole intention to kill the boys with whom he had some altercation one day before the occurrence, neither the applicant nor the appellant-Insurance Company has brought any material on record and, therefore, I am of the view that on the basis of the fardbeyan which is not a substantive piece of evidence, it cannot be held that the accident was a case of intentional murder. In such circumstance I am unable to accept the argument advanced by Mr. Ajay Kumar, learned Advocate appearing on behalf of the appellant-Insurance Company. It has further been argued by Mr. Ajay Kumar that there is absolutely no material on record to establish that the accident was caused due to rash and negligent driving of the driver of the vehicle. He submitted that unless this fact that the accident had occurred due to rash and negligent driving of the driver of the vehicle is proved, no compensation can be awarded and the Insurance Company can not be held liable to pay the compensation. He submitted that since the appellant has not brought any

evidence of the eye-witness of the occurrence on record and the fardbeyan indicates that the accident was intentional, as such, in such cases, the principle of "res ipsa loquitor" will not apply.

6. It is true that the applicants have not brought any evidence of eye-witness on record regarding the alleged occurrence and, therefore, the question will be - whether the principle of "res ipsa loquitor" will apply or not. I am of the view that for arriving at the conclusion that the driver was driving the vehicle very rashly and negligently, the principle of "res ipsa loquitor" will apply in the case because of the fact that sufficient materials have come on record that in the accident altogether three persons had lost their lives and several others had sustained grievous injuries. Thus, the nature of the occurrence speaks itself that the driver was driving the vehicle very rashly and negligently when the alleged occurrence had taken place. I, therefore, find that there is sufficient material on record to hold that the alleged occurrence in which Ram Ekbal Ram alias Ram Ekbal Dhobi and others had sustained fatal injuries and died, had taken place due to rash and negligent driving of the driver of the vehicle. Under such circumstance, I find and hold that the Tribunal has rightly awarded compensation to the applicants for the death of Ram Ekbal Ram.

7. With regard to the quantum of compensation, the learned Advocate of the appellant submitted that for deciding the quantum of compensation the Tribunal has applied multiplier method and has taken figure "16" as best suitable multiplier but as per settled law, it should be figure "13". I am of the view that there will be no significant difference in quantum of compensation in calculating the final compensation after applying multiplier of "13" instead of multiplier of "16" and as such I do not feel any necessity to interfere with the finding of the learned Tribunal regarding the quantum of compensation.

8. In the result, I do not find any merit in this appeal and as such, the same is hereby dismissed and the judgment and award of the Tribunal are confirmed and upheld. However, it is observed that as the appellant-Insurance Company has already deposited Rs. 25,000/- as statutory amount at the time of filing of this appeal under Challan No. 444 dated 24.2.1999 as such, the appellant will be entitled to deduct the said amount from total compensation. The claimants-respondents will take necessary step for withdrawing the deposited amount. It is further ordered that the appellant shall pay the rest compensation amount within a period of eight weeks from the date of receipt/production of a copy of this judgment.