(2014) 05 PAT CK 0018

In the Patna High Court

Case No : Miscellaneous Appeal No. 583 of 2009

The Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Saraswati Devi and Others RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Citation : (2014) 4 ACC 346 : (2015) ACJ 2051

Hon'ble Judges : A.K. Lal, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, Advocate for the Appellant; Radha Mohan Singh, Mr. Sanjay Kumar Singh, Advocates for the Respondent Nos. 1, 2, 3, 4, Mr. Sanjay Singh and Mr. Ramesh Kumar Singh, Advocates for the owner of the vehicle, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Amaresh Kumar Lal, J.—The insurer of the offending vehicle (tractor and trailer) has preferred this appeal against the judgment and award dated 7.7.2009 passed by the learned Motor Vehicles Claim Tribunal cum Additional District Judge, Kishanganj, in Claim Case No. 8 of 2000/A.C. 5 of 2000 by which the appellant has been directed to pay the amount of compensation with interest.

2. The brief fact of the case is that the deceased Deep Narain Singh, aged about 26 years and a permanent employee of the State Bank of India drawing Rs. 7402.28 paise per month, along with his son Pradeep Singh was returning to his house on 24.12.1999 at about 7-15 P.M. In the meantime, the tractor bearing registration No. BEK-2128 and trailer No. BR-37-0602 driven rashly and negligently dashed the deceased causing him multiple injuries which resulted into his death. The accident was reported to Kishanganj Police Station and Kishanganj P.S. case No. 0154 of 1999 was instituted against the driver of the tractor. During investigation the name of the driver and the owner of the tractor came to light. The tractor and trailer were insured with the Oriental Insurance Company Ltd. (appellant). The deceased died leaving behind his wife and children (respondent

Nos. 1 to 4).

3. The owner (respondent No. 5) of the offending vehicle appeared and filed written statement. The accident was admitted and it was stated that the vehicles were insured with the appellant and the photocopy of the cover note issued by Sri Mahendra Agrawal, Development Officer of the Oriental Insurance Company Ltd., was filed showing that the offending vehicles were insured.

4. It has been pleaded that after repairing of the vehicle it was handed over to the owner (respondent No. 5) by the garrage owner on 24.12.1999 in the morning. The husband of the owner before sending the tractor on hire contacted Mr. Mahendra Agrawal, Development Officer of the Oriental Insurance Company Ltd., for getting the tractor and trailer insured which was inspected at about 2:40 P.M. on the same day and after full satisfaction accepted the premium amount of Rs. 881/- for the said tractor and trailer and issued cover note to this effect. Later on, after the accident the said Mahendra Agrawal, Development Officer, an authorized representative of the insurance company, came to her and requested to give the original cover note to him after completing the necessary formalities for insurance he would return. In good faith after getting xerox copy of the cover note, the original cover note was handed over to Sri Mahendra Agrawal. After some time she received a telephone call of Sri Mahendra Agrawal, who demanded Rs. 5,000/- for office expenses which was refused by her. Sri Agrawal also manhandled her husband and she came to know that some manipulations in the cover note has been done by Sri Agrawal. A legal notice was issued to The Oriental Insurance Company Ltd. and a criminal case bearing No. C.23 of 2000 was filed against Sri Agrawal in which after enquiry cognizance has been taken and the case is pending for disposal. Sri Agrawal and the insurance company disowned the liability of the insurance company and informed to the owner that the Development Officer (Sri Agrawal) has issued cover note on 24.12.1999 at 21.40 P.M. which is incorrect.

5. The driver of the vehicles also filed separate written statement supporting the case of the owner of the vehicles.

6. The insurance company filed a separate written statement denying the claim and stating that the vehicle was not insured at the relevant time, i.e., at the time of accident. It was stated that on 24.12.1999 at about 21.40 hours (9-40 P.M.) Masood Alam, husband of the owner, approached the Development Officer, Sri M. Agrawal, at Kishanganj to get the tractor insured and believing the version of Masood Alam to be true gave a proposal form to be duly filled inserting the date and time as 24.12.1999 at 21:40 P.M. and effective time is also shown from 21.40 P.M. and the cover note number 231473 (Ext. 6) was issued to the husband of the owner of the vehicle on payment of Rs. 881/- only. The said premium could not be deposited in the bank of the insurer and it was deposited in the bank on 27.12.1999. When the insurance company came to know about the involvement of the vehicle in the accident on 24.12.1999 at 7-15 P.M. and the cover note was procured by the owner after suppressing the material fact of

the accident, thereafter, the aforesaid cover note was cancelled and communicated to the owner of the vehicle under registered post with the premium amount through cheque which was returned to the insurer as it was refused. The original cover note has been retained by the owner with ulterior motive for wrongful gain. The husband of the owner has filed a criminal case against Sri M. Agrawal on false and baseless allegation.

7. On the basis of the pleadings of the parties, issues were framed and evidence was adduced on behalf of both the parties. After considering the case, the impugned order has been passed directing the appellant to pay the amount of compensation.

8. The grievance of the appellant is that at the time of occurrence the offending vehicle (tractor) bearing registration No. BEK 2128 and trailer bearing registration No. BR-37-0602 were not insured by the appellant-company. There is manipulation in the cover note. The accident had taken place on 24.12.1999 at about 7-15 P.M. whereas the cover note was prepared on 24.12.1999 at 21-40 P.M. As such, at the time of occurrence the vehicle was not insured and the appellant is not liable to pay the amount of compensation. He has also submitted that when the insurance company came to know about the accident by the offending vehicle, the cover note was cancelled and the amount of premium was returned.

9. Learned counsel for the respondents has opposed the contention of the learned counsel for the appellants and has submitted that after paying the amount of premium to the Development Officer of the insurance company, the cover note was issued on 24.12.1999 at 2-40 P.M. A photo copy of the cover note was also retained by the owner of the vehicle which has been marked as Ext. G/1.

10. The case of the insurance company is that four photocopies of the cover note were prepared. One copy is given to the owner of the vehicle and others were retained by the insurance company. The third and fourth copies have not been produced for comparison.

11. It appears that the insurance company has manipulated the cover note by writing 21.40 P. M., whereas, originally the time was marked on the cover note as 2:40. P.M. When the time is mentioned in hours, there was no necessity to write P.M.

12. After hearing learned counsel for both the parties and on perusal of the records, it appears that Ext. G/1 shows that the aforesaid tractor and trailer were insured from 2:40 P.M. on 24.12.1999 till the midnight of 23.12.2000 whereas from the carbon copy (Ext. 6) it appears that 2:40 P.M. has been interpolated as 21.40 P.M., the colon has been attached which shows 21.40 P.M. From careful looking at the carbon copy of the cover note it appears that 2:40 P.M. has been manipulated as 21:40 P.M. It is also remarkable to note that if the figure in time is written within 12 hours, it is noted as 12 A.M. or P.M. If it is mentioned in hours, it is written as 1 P.M. or 13.00 hours. There is no justification for writing

21:40 P.M. 2:40 P.M. has been manipulated as 21.40 P.M. Obviously, it has been made to surpass the time of insurance of the offending vehicle as the occurrence had taken place on 24.12.1999 at 7-15 P.M.

13. Learned Tribunal has also considered this aspect in para-15 of the impugned judgment that what was the necessity of Sri M. Agrawal when he came to know about the accident and why he issued cover note on 24.12.1999 at 21:40 P.M. The expenditure and earning of the deceased has not been challenged.

14. Considering the facts and circumstances stated above, I do not find any ground to interfere with the impugned order.

15. In the result, this appeal is dismissed.

16. Let the statutory amount deposited in this Court be sent to the Tribunal for adjustment/payment in the amount of compensation, as prayed for on behalf of the appellant.

17. Let the lower court records be returned to the court concerned.