(2011) 03 JH CK 0105

In the Jharkhand High Court

Case No : M.A. No. 45 of 2009

The Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Sumitra Devi and Others RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Citation : (2011) 2 JCR 405 : (2011) 3 TAC 576

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard learned Counsel for the respective parties.

2. The instant appeal is preferred against the judgment and Award dated 12th September 2008 passed by the Motor Vehicle Accident Claims Tribunal-cum-1st Additional District Judge, Deoghar in Motor Vehicle Accident Claim Case No. 5 of 1995 (Smt. Sumitra Devi and Ors. v. Sri Anand Prakash and Anr.), whereby the Insurance Company Appellant was directed to pay compensation to a tune of Rs. 1,54,800/- to the claimants plus interest @ 6% from the date of institution of the claim case till the date of payment.

3. The fact of the case is that Bhola Prasad Yadav aged 35 years, was working as a home guard H.G. No. 1326 in Rikhiya Armed guard, Mohanpur. On 8.11.1994 at 9.30 hours in the morning he was going on cycle when driver of a bus bearing registration No. B.R.J. 7065 hit him behind back of the cycle on Baijnathpur Deoghar Dumka Road, as a result of which he died at the spot. The Bus was being driven rashly and negligently, a first information report was registered relating to the accident at Deoghar police station (Deoghar P.S. Case No. 219 of 1994). The wife and three minor children, namely, Smt. Sumitra Devi (wife), Vijaya Kumari and Pramila Kumari (both minor daughters) and Ranjit Prasad Yadav (minor son) preferred a claim petition stating therein that bus was insured with the Oriental Insurance Company Limited, Bhagalpur for the period from

18th April 1994 to 17th April 1995 vide Policy No. 137566. That Bhola Prasad Yadav used to earn Rs. 1350/- per month as salary while working as a home guard.

4. The opposite party/owner of the bus Anand Prakash did not appear before the Tribunal. However, Oriental Insurance Company Limited contested the claim petition and filed its written statement.

5. A number of issues were framed and the Claim Tribunal arrived at a conclusion that the bus which had hit the deceased from back while going on cycle was insured at the relevant time. When the accident took place the insurance of the bus was operative,, since the policy was effective within the period commencing from 18.4.1994 to 17.4.1995 and accident had taken place on 8.11.1994 i.e. when the Insurance Policy was subsisting and, therefore, the amount of compensation awarded was payable by the Insurance Company. The instant miscellaneous appeal is filed by the Oriental Insurance Company Limited.

6. Learned Counsel appearing on behalf of the Insurance Company has pointed out that an order passed by this Court on 7.7.2010, whereby the owner of the vehicle Respondent No. 5 had appeared through his counsel. Two weeks'' time was allowed to file counter affidavit along with the driving license. The submission made by the learned Counsel on behalf of the owner regarding the driving license of the driver of the bus. The owner has filed a detailed counter affidavit on 25.3.2011, wherein it has been stated that the driver of the vehicle Baidnath Singh @ Baiju Goor died on 10.03.1998 and a death certificate has been annexed in support of this contention. The owner of the vehicle met the family members of the driver and asked for driving license to which the family members of the deceased driver Baidnath Singh @ Baiju Goor expressed inability that after death all the documents and materials of driver (deceased) have been submerged in Ganges.

7. However, it is for the first time the Insurance Company has raised this objection regarding driving license in the appeal before this Court. Copy of the written statement was produced by counsel appearing on behalf of the owner of the bus to substantiate that this was never taken as a ground and no issue was framed on the question of driving license.

8. In the instant appeal the question that is to be examined as to whether the amount awarded to the claimants has been rightly awarded or whether the claimants are entitled for the compensation awarded by the Tribunal?

9. It is not under challenge that the death of the deceased occurred on account of accident by the bus and also that the bus was insured at the time when the accident took place, therefore, it is clear that the accident was covered by the Insurance policy at the relevant time when the accident took place, the Insurance policy of the bus was subsisting and Insurance company is liable to satisfy the award and pay the amount of compensation to the family of the deceased.

10. I am not inclined to give my opinion on the question of driving license as the Insurance Company had not raised any such objection against the present claim before the Court below. Therefore, the claimants are rightly held to be entitled for the compensation on account of death of the earning family member as the widow, two minor daughters and 1 minor son are solely dependents of the deceased and, therefore, they have rightly been held entitled for compensation.

11. In view of the discussion made above, the instant appeal is liable to be dismissed. No order towards cost is made.

12. Learned Counsel for the Insurance Company in the end made a request that since the vehicle was driven without proper and valid driving license, therefore, the Insurance Company is not liable to pay, but the owner of the bus is liable for payment of said amount. However, this question was never raised before the Court below, therefore, I am not inclined to pass any order on this question as well.

13. The Insurance Company shall make payment of compensation along with interest as awarded by the Court below within a period of two months from today and the amount already deposited shall be adjusted towards final payment.

