

(1966) 10 PAT CK 0016
In the Patna High Court
Case No : A.F.O.D. No. 554 of 1963

The Vanguard Insurance Co. Ltd.

APPELLANT

Vs

Foolchand Mandal and Others

RESPONDENT

Date of Decision : 12-10-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 96(1), 96(2)

Citation : AIR 1967 Patna 342

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : Shambhu Barmeshwar Prasad, for the Appellant; S.B. Sanyal, for Nos. 1 to 3 and S.R. Ghosal, for No. 4, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This appeal has been filed by the insurer and it arises out of an application filed before the Claims Tribunal under the Motor Vehicles Act, 1939 (Act 4 of 1939), u/s 110-A of the said Act. It appears that there was an accident on the 19th July, 1959, in which one Kokai Mandal, son of Ganesh Mandal and grandson of Foolchand Mandal, was run over by a truck numbered BRL 1323 at about 4.30 p. M. in village Dewalban, police station Jamtara, in the district of Santal Parganas. Kokai Mandal was aged 8 or 9 years and he was taken to the Jamtara Charitable Dispensary after the accident and he died there. The owner of the truck was Sri Radha Krishna Agarwal (respondent No. 4) and the vehicle was insured with the Insurance Company, which is the appellant in this court. An application dated the 27th October, 1959, made by Foolchand Mandal, grandfather of the deceased, was sent by post to the Claims Tribunal.

This was, received by the Claims Tribunal on the 29th October. It appears that in due course, another application was filed by Foolchand on the 17th August, 1961, which was a formal one, claiming compensation amounting to Ra. 6,000. Thereafter, another application was filed on the 17th June, 1963, in which it was prayed that Ganesh Mandal father of Kokai Mandal, and Dulari Devi, wife of

Ganesh Mandal may be made claimants nos. 2 and 3 in this case, by condoning the delay in filing the application. This matter was considered by the Tribunal on the 10th August, 1963, and it was ordered that the names of Ganesh Mandal and Dulari Devi would be as added as applicants nos. 2 and 3, subject to question of limitation, if any to be heard during argument. This matter was considered by the judgment under appeal, in which an issue as to limitation was framed. The delay was condoned by the Tribunal. The substantial point argued under that issue was with respect to the petition which was sent on the 27th October, 1959. Apparently, the question which was left open in the order dated the 10th August, 1963 was not re-argued during the hearing of the case itself, although a reference was made under issue Nos. 1 and 3 to the addition of Ganesh Mandal and Dulari Devi to the category of claimants.

It was held that Foolchand Mandal along with his son and the son's wife were legal representatives of the deceased. The substantial point dealt with under issue Nos. 1, 4 and 5 was the liability of the appellant as the insurer. It was held that a compensation of Rs. 2,000 should be paid and each of the applicants will be entitled to get one-third of that amount. The liability to pay was put on the Insurance Company.

2. The main contention raised on behalf of the appellant is based on the findings under issue Nos. 1, 4 and 5 and the lines in the order of the Claims Tribunal which have been made subject-matter of argument in this court on behalf of the appellant run thus:--

"The owner Shri Radha Krishna Agarwal is, therefore, not liable to pay any compensation and the opposite party No. 2 the Vanguard Life Insurance Company Ltd. Madras is liable to pay a sum of Rs. 2,000/- as compensation to the applicants.

The claim against the owner Radha Krishna Agarwal is disallowed without costs."

Learned counsel for the appellant has also urged that the claim made before the Tribunal was barred by limitation u/s 110 A(3) of the Motor Vehicles Act. It is argued that the first application sent by the grand-father was dated the 27th October, 1959 and it was made beyond sixty days of the date of occurrence of the accident But, it is difficult to accept this contention as under the proviso to Section 110A (S), it is open to the Tribunal to entertain an application after the expiry of the period of sixty days and the Tribunal has considered this matter, as indicated above, and has condoned the delay so far as the first application by the grandfather was concerned. The grandfather was examined on oath and his case of illness has been considered and accepted by the Tribunal in condoning the delay and I do not think any case has been made out for interference.

Thereafter, when the father and the mother of the deceased Were made claimants, this court must proceed on the assumption that there are three claimants in this case and the delay in filing the application has been condoned. It is argued by learned counsel for the appellant that the grandfather, who had

filed the original application, was not a legal representative of the deceased and under the Hindu Succession Act, only the mother was the legal representative. This point loses force now that the mother is also on record as a claimant; The most substantial point argued by learned counsel for the appellant is to the effect that as the claim was dismissed against the owner of the vehicle, who was the insured, no claim could have been decreed against the appellant as the insurer. Reliance is placed on the portions of the judgment quoted above.

Learned counsel has referred to the case of Ruby General Insurance Co. Ltd. Vs. Misri Devi, , and it is argued that in a claim under the Motor Vehicles Act before the Claims Tribunal, the insured was a necessary party, and when the insured was exonerated from the claim, no judgment could have been passed against the insurer. Learned counsel for the appellant has also relied upon the case of The British India General Insurance Co. Ltd. Vs. Seth Ramnath and Others, . But, I do not think that the interpretation put upon the judgment of the Tribunal in the instant case by the learned counsel can be accepted. In a claim before the Claims Tribunal, before whom both the insured and the insurer were parties, no question could have arisen about judgment being passed against one or the other or against both.

The question which had fallen for consideration arose u/s 96 of the Motor Vehicles Act, under which when a judgment is obtained against any person insured by a policy, the insurer must pay subject to Section 96 (1). That is to say the insurer can take objections enumerated in Section 96(2), where the insurer has notice through court of the proceedings. After the case is concluded, if any award is given in favour of the injured, the award is given subject to Section 110B. The award has to specify the person or persons to whom the compensation shall be paid and in making the award the Tribunal has to specify the amount which shall be paid by the insurer. This is in view of Section 96(1) of the Act. Therefore, it seems to me that what the Claims Tribunal had in view in passing the judgment in this case was Section 110B of the Act, and, therefore, it has been said that compensation to the extent of Rs. 2,000 must be paid by the insurer.

Apparently, in holding that the insurer must pay, whatever objections were raised by the insurer u/s 96(2) were considered and it was held that the liability to pay must fall on the insurer according to Section 96(1). It is difficult to accede to the contention that the claim has been dismissed against the insured. The expressions used by the Claims Tribunal must be held to mean that the actual payment must be made by the insurer, as if it were the judgment-debtor, because the vehicle was insured at the time of the accident and it was running with a valid road permit. The decision reported in The British India General Insurance Co. Ltd. Vs. Seth Ramnath and Others, arose out of a regular suit instituted in a court and in the decision reported in Ruby General Insurance Co. Ltd. Vs. Misri Devi, it appears that the owner of the vehicle had not been impleaded as a party at all. These decisions are, therefore, quite distinguishable.

Thus the last contention raised on behalf of the appellant must fail.

3. During the course of argument an application has been filed on behalf of the appellant on the 10th October, 1966, praying that the appellant may be allowed to urge all the grounds that were urged by respondent No. 4, before the Tribunal in his name. Apparently, this petition has been filed because of a preliminary objection taken on behalf of the respondents u/s 96(2) of the Motor Vehicles Act, on the ground that the appellant cannot urge any ground in this appeal also which is not covered by that subsection. Respondent No. 4 has also appeared through counsel and it has been urged on his behalf that no liability has been thrown on the insured by the judgment of the Tribunal. Be that as it may, I have considered all the grounds urged by the learned counsel for the appellant and I have come to the conclusion that none of the contentions raised can be accepted for reversing the judgment of the Tribunal.

4. Under the circumstances, the appeal fails and it is dismissed with costs payable to respondents Nos. 1, 2 and 3.