

(2010) 05 PAT CK 0001
In the Patna High Court
Case No : M.A. No. 316 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Bimla Devi and Others

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Workmens Compensation Act, 1923 — Section 30

Citation : (2012) ACJ 21

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—Heard the learned counsel Mr. Prakash Kumar on behalf of the appellant and the learned counsel Mr. Chandan Kumar Kashyap for respondent Nos. 1 and 2 and the learned counsel Mr. Rakesh Kumar for respondent No. 3 under Order 41, Rule 11, Civil Procedure Code. This miscellaneous appeal has been filed by United India Insurance Co. Ltd. u/s 30 of Workmen's Compensation Act, 1923 against the order dated 4.6.2005 in W.C. Case No. 12 of 1997 passed by Deputy Labour Commissioner-cum-Commissioner under the Workmen's Compensation Act for Munger Division at Begusarai, whereby the learned Commissioner awarded Rs. 1,11,355 for the death of khalasi of a Trekker and the insurance company, appellant, has been directed to pay the same.

2. According to the claimants who are the legal representatives of the deceased Neeraj Kumar filed the claim case alleging that on 6.8.1993, driver of Trekker bearing registration No. BR 9-8553 and the khalasi Neeraj Kumar alias Babloo were killed by miscreants in the course of their employment. The said claim under the Workmen's Compensation Act was numbered as W.C. No. 12 of 1997.

3. After notice, the owner of Trekker bearing registration No. BR 9-8553 appeared and filed written statement stating that said Trekker was insured with

United India Insurance Co. Ltd. and, therefore, the insurance company is liable to pay the compensation.

4. The opposite party No. 2, the insurance company which is appellant in this appeal, filed written statement contending that the insurance company is not liable to pay the compensation for the khalasi. Besides this plea, other pleas were taken by the appellant. The main defence was that the insurance company's liability was limited strictly to the policy.

5. After hearing the parties, the learned Commissioner directed the appellant to pay the compensation on the ground that on the date of the incident, the said Trekker was insured with the appellant and the appellant insurance company has paid the compensation regarding death of the driver.

6. The learned counsel for the appellant raised the substantial question of law that whether the insurance company without there being specific agreement and payment of separate premium can be directed to pay the compensation regarding the death of khalasi who is not covered by the policy.

7. The learned counsel for the appellant submitted that the insurance policy clearly shows that the premium paid was only for 10+1 persons that is, 10 passengers and one driver and not for khalasi.

8. On the other hand, the learned counsel for the respondent submitted that since Trekker was insured on the date of accident, the insurance company is liable to pay.

9. In view of the above contentions of the parties, it appears that there is no dispute regarding the occurrence and the quantum of compensation awarded by the learned Commissioner. The only question raised is as to whether in the facts and circumstances of the case, the appellant is liable to pay or not?

10. From perusal of the insurance policy, it appears that premium was paid only for 10+1 passengers, that is, only for 10 passengers and the driver. Khalasi is not included in the said premium. It is admitted fact that there is no special contract between the appellant and the owner of Trekker so as to cover unlimited liability in respect of khalasi also. In my opinion, therefore, in absence of such an express agreement, the policy will cover only the statutory liability. The mere fact that the insurance policy is a comprehensive policy, the liability of the appellant will not be unlimited. It does not mean that the risk becomes unlimited or higher than the statutory liability.

11. This court in similarly situated case in *New India Assurance Co. Ltd. Vs. Sheo Pujan Singh and Others*, has held that the comprehensive policy only entitled the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle and it does not mean that the limit of third party risk becomes unlimited or higher than the statutory liability. For this purpose, specific agreement is necessary. It appears that in that case, the khalasi of a Trekker died and this court held that the insurance company is

not liable to pay the compensation and further held that the liability is of the owner.

12. So far as the reasoning of learned Commissioner that the insurance company has paid compensation regarding the driver is concerned, it is clear from policy itself that the policy covers the driver (10+1).

13. In view of the above discussion, I find that insurance company is not liable to pay compensation under the Workmen's Compensation Act. In the present case, for the khalasi in absence of any such agreement and in absence of payment of extra premium for khalasi, it is the owner who is liable to pay the same. The substantial question is thus answered in favour of the appellant. The impugned order is modified to the said extent.

14. Amount deposited by the appellant be returned to the appellant. The claimants are at liberty to recover the amount from the owner. In the result, this appeal is allowed and the impugned order is modified to the extent indicated above. Appeal allowed.