
(2002) 05 JH CK 0050

In the Jharkhand High Court

Case No : Appeal from Original Order No. 157 of 1997 (R)

United India Insurance Co. Ltd.

APPELLANT

Vs

Usha Devi and Others

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2002) 05 JH CK 0050

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Ram Kishore Prasad, for the Appellant; A.K. Lal and B. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Prasad, J.—This miscellaneous appeal u/s 110(D) of the Motor Vehicles Act, 1939 corresponding to Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment dated 21.3.1997 and award dated 4.4.1997 passed by 4th Additional Judicial Commissioner-cum-Motor Vehicle Accident Claims Tribunal, Ranchi in Compensation Case No. 15/84. whereby and whereunder the learned Claims Tribunal awarded compensation of Rs. 64,640/- in favour of the claimants-respondents 1 to 4.

2. The facts of the case lie in a very narrow compass. Hari Kishore Pandey (deceased) was employed as Writer Constable with Ranchi Police posted at Bundu police station at the time of accident. He was travelling in the jeep bearing registration No. BHN-6992 belonging to opposite party No. 1 respondent No. 5 on patrolling duty, which was insured with the appellant-opposite party No. 2, the United India Insurance Company Limited. The said jeep while moving on the National High-way No. 33, met with an accident with another vehicle (Station Wagon No. BUT 839) and the deceased received grievous injury because of rash and negligent driving by the driver of both the vehicles. Hari Kishore Pandey was removed to RMCH Ranchi from the place of accident but on the way he

succumbed to his injury. The incident was reported to Bundu Police Station which registered as Bundu PS Case No. 90/83 under Sections 279/338/304A, IPC.

3. Deceased Hari Kishore Pandey was in service and he used to maintain his family consisting of claimants and he was aged about 30 years only. A claim petition was filed on behalf of the claimant-respondent Nos. 1 to 4 in which opposite party No. 1 respondent No. 5 and opposite party No. 2 appellant appeared but opposite party No. 1 respondent No. 5 did not contest, though he appeared. Both sides led evidence and after contest the learned Claims Tribunal came to the finding that Hari Kishore Pandey died as a result of vehicular accident caused by jeep No. BHN 6992 and another vehicle was not involved in the accident and awarded a sum of Rs. 64,640 with 10% interest from the date of filing of the application. The learned Tribunal, after taking into consideration the yearly dependency and applying multiplier system, assessed the amount of compensation at Rs. 64,640/- together with interest of 10% per annum from the date of filing of the application and on failure to pay the amount within 60 days, a penal interest (c)15% on this amount will have to pay.

4. Mr. Ram Kishore Prasad, learned counsel appearing on behalf of the appellant-opposite party No. 2, submitted that the learned Claims Tribunal has not appreciated the evidence correctly and committed an error of law in assessing the compensation and also holding the Insurance Company jointly and severally liable with opposite party No. 1, respondent No. 5. He further submitted that the appellant is not of all liable for the accident and is not liable to pay the compensation amount as the jeep in question belonging to the opposite party No. 1-respondent No. 5, which was requisitioned by the State Government for election duty and whenever vehicle is requisitioned by the Government then liability of the Insurance Company is ceased and it is the requisitioning authority or the Government, who is only liable. It was further pointed out that the premium, which took cover the passenger risk, was not paid by the insured, hence the passenger risk is not covered. He further pointed out that owner of Station wagon No. BHT 893 has not been made party hence claim case was bad for non-joinder of necessary party. He further pointed out that interest should not have been awarded in the case because the case has been dragged for long 13 years for no fault of the appellant but by the fault of the claimants and as such, claimants are not entitled for interest.

5. On the other hand, learned counsel appearing for the claimant-respondent Nos. 1 to 4, submitted that the Claims Tribunal has not committed any error of law and appellant is liable for payment of compensation amount as vehicle was insured with the appellant-opposite party No. 2 and at the trial stage no such plea that vehicle was requisitioned by the State Government for election duty has been taken and at this stage, the appellant cannot raise a new plea.

6. On perusal of the impugned judgment, it appears that the opposite party No. 1-owner appeared in the case but did not contest. The opposite party No. 2-appellant appeared and contested the case but did not examine any witness.

From perusal of written statement of opposite party No. 2-appellant, it appears that a plea was taken that jeep was on patrolling duty and jeep was requisitioned by the State Government but no such plea that it was requisitioned for election duty has been taken. So far as plea of non-joinder of party such as non-impleading of owner and insurer of BHT No. 893 is concerned, the learned Claims Tribunal has examined this aspect of the matter and answered in negative and did not hold claim bad for non-joinder of parties. We examined the impugned judgment and find that the same does not suffer from any illegality and impugned judgment is just and proper. The vehicle in question is insured with the appellant and, therefore, appellant is entirely liable to satisfy the award. We also do not want to interfere with the interest awarded by the learned Claims Tribunal.

7. In the result, we do not find any merit in this appeal, which is accordingly dismissed.