(2014) 01 PAT CK 0044

In the Patna High Court

Case No : M.A. No. 2 of 2005

United India Insurance Company Limited APPELLANT

Vs

Raju Kumar Shah RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 173

Citation : (2014) 3 ACC 248 : (2014) 1 AnWR 600

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

Bench : Single Bench

Advocate : Durgesh Kumar Singh, Advocate for the Appellant

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—This appeal has been filed u/s 173 of the Motor Vehicle Act, 1988 to set aside the order dated 4.10.2004 passed by the learned Additional District Judge, 1st, Khagaria, cum Claim Tribunal in Claim Case No. 17 of 1997 by which the appellant-Insurance Company has been directed to pay Rs. 50,000/- with 9% interest from the date of passing of the order. Heard Mr. Durgesh Kumar Singh, learned counsel for the appellant. No one appears on behalf of the respondents even after service of notice.

2. The case of the claimant in brief is that on 22.6.1997 the informant and his son Aman Kumar Shah aged about 7 years were going on the road. In the meantime, a truck bearing No. NL-01/A-3140 rashly and negligently driven dashed Aman Kumar Shah causing his death on the spot. The father, mother and brother filed Claim Case No. 17 of 1997 for grant of compensation of Rs. 3 lacs and it was stated that the vehicle was insured by the United Insurance Company Limited. In that case, a petition u/s 140 of the Motor Vehicle Act was filed for the award of interim compensation of Rs. 50,000/-. The matter was referred to the Lok Adalat which passed the order on 21.12.2002 directing the appellant to pay a sum of Rs. 50,000/- subject to verification of the policy. Later on, the cover note of the insurance policy was found fake and accordingly a petition was filed

before the learned Tribunal that the United India Insurance Company Limited (appellant) is not liable to pay the amount of compensation as the cover note is fake and the vehicle has not been insured by the Company.

3. The grievance of the appellant is that the learned Tribunal has rejected the petition of the appellant holding that the United India Insurance Company Limited did not file any objection petition even after a lapse of 7 years.

4. It is submitted by the learned counsel for the appellant that since the Insurance Company has not issued the cover note, therefore, it could not be expected that the insurance policy should be filed by the Insurance Company when it has not insured the offending vehicle. It has also been submitted that since the vehicle was not insured, the Company is not liable to pay the amount of interim compensation.

5. He has further submitted that after verification the Insurance Company filed letter dated 8.2.2003 (Annexure-4) addressed to the Chairman, Lok Adalat, Khagaria, regarding MACT Case No. 17 of 1997 that cover note No. 52356 of Claim Case No. 17 of 1997 was searched and found to be not issued, as such, it was fake and thereafter record was referred to the Claim Tribunal. As such, it cannot be said that the Insurance Company was fully liable to pay compensation of Rs. 50,000/-.

6. He has further submitted that since the vehicle was not insured, the owner of the vehicle (respondent No. 4) has not appeared. Other respondents have also not appeared even after service of notice.

7. From perusal of the record it appears that the submission of the learned counsel for the appellant is correct. The award of Rs. 50,000/- was previously passed by the Lok Adalat, Khagaria, subject to verification of the insurance policy. Later on, it was found that since the offending vehicle was not insured, the United India Insurance Company could not have been held liable in view of the fact that the United India Insurance Company had filed petition also before the Claim Tribunal regarding non-insurance of the offending vehicle.

8. In that view of the matter, the impugned order dated 4.10.2004 is not fit to be sustained and is accordingly set aside. The matter is remanded to the learned Claim Tribunal, Khagaria, to pass a fresh order after hearing the learned counsel for the parties including the owner of the offending vehicle. In the result, the appeal is allowed. There will be no order as to costs.

Let the statutory money be returned to the appellant.

