

(2012) 01 PAT CK 0141
In the Patna High Court
Case No : Misc. Appeal No. 250 of 2001

United India Insurance Company Ltd., Alam Market, Katihar APPELLANT
and Another

Vs

Rita Devi Mandal and Others RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 3 PLJR 258

Hon'ble Judges : Shallesh Kumar Sinha, J

Bench : Single Bench

Advocate : Prakash Kumar, for the Appellant; Bhola Prasad and Mukesh Kumar Jha . for the Respondent No. 3, for the Respondent

Judgement

Shallesh Kumar Sinha

1. Heard learned counsel for the appellant and learned counsel for respondent no. 3. This appeal is directed against the judgment and award dated 3rd January, 2001 passed by 3rd Additional District Judge-cum-Motor Accident Claims Tribunal, Bhagalpur (hereinafter referred to be as the Tribunal) in Claim Case No. 114 of 1999, an application u/s 166 of the Motor Vehicles Act, claiming compensation for the death of the husband of respondent no. 1 and son of respondent no. 2.
2. The Tribunal upon considering the oral as well as documentary evidence, on record allowed the claim for a sum of Rs. 3,60,000/- with the interest at the rate of 11% per annum with effect from the date of presenting the application till the date of payment of the awarded amount after further deducting the amount of Rs. 50,000/-being an interim compensation amount allowed earlier.
3. Learned counsel for the appellants assailing the order under appeal, submitted that since the tractor in question was insured for agriculture purpose and the tractor having been used for the purpose other than agriculture, the insurance

cover is not available and no compensation could have been allowed against the Insurance Company, as such, the order under appeal deserves to be set aside.

4. Since the factum of accident, the details of the tractor in question, the fact of death of the husband of respondent no. 1 and son of respondent no. 2 is not in dispute and as such the detail facts are not reiterated as the same has been taken in detail in the order appeal. However, for the disposal of the present appeal the short relevant facts are that on 1st of April, 1999 the deceased while traveling on the tractor bearing Registration No. BR-11A-6286 met with an accident near Village-Mehar Miyan Tola within Kursela Police Station in the district of Katihar due to rash and negligent driving on account of which the tractor overturned causing death of the deceased, namely, Anirudh Mandal aged about 25 years of age. A post mortem of the dead body was held vide Ext.-2. The claimants thereupon have filed the claim application claiming compensation as aforesaid.

5. The claimants in support of the claim have adduced altogether four witnesses out of which A.W. 1 and A.W. 4 claimed to be eye witnesses to the accident. P.W. 2 is the father of the deceased on whose fardbeyan Kursela P.S. Case No. 21 of 1999 was registered for the alleged offence of driving the vehicle in high speed rash and negligently. A.W. 3 is the wife of the deceased. The case of the claimants is that the deceased was doing the job of a labour and while he was coming back after the job, he died in accident in question whereas the case of the appellants Insurance Company is to the effect that the deceased had gone to visit a Drama show and, as such, while he was coming back he met with the accident. Therefore for such use of vehicle the insurance shall not be covered and no compensation is payable under the law. In support of the pleadings Insurance Company adduced D.W. 1, namely, Ramesh Kumar Verma who has only proved the report of the investigator appointed by the Insurance Company who investigated the matter with respect to the factum of accident and the details of the tractor in question as also all the relevant insurance policy.

6. Learned counsel Mr. Prakash Kumar appearing for the appellants submits that the real controversy is with respect to the use of the vehicle. According to the appellants the vehicle was not being used at the material time for the purpose for which it was insured which would appear from the fardbeyan of the father of the deceased that his son had gone to visit a Drama show, although the father of the deceased before the court who appeared as A.W. 2 deposed that his son had gone to do the job of the labour on the said vehicle. As such the Tribunal ought to have accepted the version given by the father of the deceased in his fardbeyan and not the evidence which he had given subsequently in court. Learned counsel however is not in a position to explain the evidence of the widow of the deceased who appeared as A.W. 3 and in her evidence it has been categorically stated that her husband had gone to perform the job of labour and he was earning income of Rs. 2,500/- per month. Further the statement of the widow was recorded by the investigator appointed by the Insurance Company in

which she has stated that income of her husband was Rs. 1,500/-per month. However, the investigator was not examined as witness on behalf of the Insurance Company.

7. Learned counsel appearing on behalf of respondent no. 3 submits that since the vehicle was insured with the appellants Insurance Company the Company was liable to be indemnified and as such the compensation was rightly directed to be paid by the Insurance Company.

8. Upon considering the submissions of the parties as noticed above it would appear that except the controversy as to whether the vehicle was being used at the material time for the purpose other than the insurance or not, rest of the relevant facts are not in dispute or have not been disputed nor any counter evidence has been brought on record before the court. In this connection it would further appear that the appellants Insurance Company did not adduce any evidence on the point with respect to the use of the vehicle. However, the claimants have adduced evidence of the widow as also the father of the deceased to the effect that the deceased died due to accident of the said tractor in question while he was doing the job of the labour. As noticed above, there is no counter evidence on the record. However, it was contended on behalf of the appellants Insurance Company that A.W. 2, the father of the deceased in his fardbeyan has said that his son had gone on the said vehicle to visit of Drama show whereas in court he has turned round and stated that his son had gone to do labour job on the said vehicle.

9. This Court finds that even if the evidence of A.W. 2 is taken out from consideration since an objection is raised by the appellants; the evidence of A.W. 3 the widow of the deceased, is not under challenge. She had specifically stated that her husband had gone to perform the job of labour on the said vehicle and died due to the accident of the tractor in question. As such, the case of the claimants claiming the compensation cannot be thrown out. On the question of income of the deceased also there is no evidence except the evidence of the claimant that the deceased was earning monthly wage of Rs. 2,500/- which comes near to about Rs. 80/- per day near about the material time i.e. April, 1999 and the same could not have been said to be an excessive and as such the Tribunal rightly accepted the income of the deceased as claimed by the claimant cannot be said to be faulted. The Tribunal taking into consideration the age of the deceased applied the multiplier of 18. The age claimed by the claimants to be between 25 to 26 years. It would appear that in the post mortem report (Ext.-2) the doctor has mentioned the age of the deceased to be 24 years. In the aforesaid circumstances the multiplier of 18 is correct. In this connection reference may be made to a decision of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . After calculating the compensation as aforesaid the tribunal allowed the compensation for payment of the compensation made after deducting Rs. 50,000/- as interim compensation with interest of 11% per annum.

10. As regard the interest learned counsel for the appellants Insurance Company submits that allowing the interest at the rate of 11% is much in excess in absence of any supporting material as much as in the year 1999 even the bank's rate of interest was not to the extent of 11%. The submission has got substance.

11. In the result in the light of the discussions made above, I am not inclined to interfere with the judgment and award except modifying the rate of interest allowed by the Tribunal. Accordingly, I direct that the compensation amount as allowed by the Tribunal be paid with interest at the rate of 7% per annum. The award is accordingly modified. The appeal stands disposed of as indicated above by modifying the order with respect to interest. In the circumstances of the case, there will be no order as to cost.