

(1999) 12 PAT CK 0111
In the Patna High Court
Case No : M.A. No. 476 of 1997

United India Insurance Company Ltd.	APPELLANT
Vs	
Most. Nirmala Devi and Others	RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2000) 4 PLJR 45

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, for the Appellant; Awadhesh Kumar Singh, for the Respondent

Judgement

P.K. Deb, J.—This appeal has been preferred against the judgment and award dated 29.9.97 passed by the 3rd Additional District Judge-cum-Motor Vehicle Claims Tribunal, Aurangabad in M.V. Claim Case No. 29/92 (33/92). On 6.4.1992 at about 5.12 p.m. deceased Bijay Bahadur Singh was travelling through Kanhaiya Bus bearing no. BR-26-H 0119 towards Deo and when the bus reached west of Kanbeh at G.T. Road about 8 kilometers east of Aurangabad, due to rash and negligent driving the deceased Bijay Bahadur Singh who was on the roof of the bus fell down and was crushed to death. The deceased was about 30 years and was doing business of contract and was having monthly income of Rs. 1500/- per month. The tribunal after considering income of the deceased and his contribution towards the family came to the conclusion that Rs. 1000/- per month was his income out of which Rs. 400/- was deducted towards his own expenses and Rs. 600/- was found to be contribution to the family and, as such, Rs. 7,200/- was his contribution yearly to the family and by using multiplier by 16 as per judgment of the Apex Court ordered equitable compensation as Rs. 1,15, 200/- out of which Rs. 25,000 -which was paid earlier towards interim compensation the balance amount of Rs. 90,000/- was (sic-illegible) and added with Rs. 5,000/- for the loss of consortium and Rs. 1000/- towards cost of the litigation. The whole amount was ordered to be paid by the appellant Insurance

Company as the bus was at the relevant time admittedly insured with the appellant.

2. The only ground on which the appeal has been preferred is that the learned tribunal has failed to consider the contributory negligence on the part of the deceased in the incident. It was an admitted position that as the bus was crowded the deceased Bijay Bahadur Singh was travelling for a long distance by accommodating himself on the top of the bus. In that way it is submitted that when it could not be found that due to rash and negligence other passengers in the bus had sustained injuries and the deceased died due to fall from the roof of the bus due to rashness of the driving of the vehicle, then there is contribution on the part of the deceased also when negligently he had taken the risk of travelling sitting on the roof of the bus. In that way even if the bus was comprehensively insured and premium was being paid per passengers then when the deceased was travelling on the top of the bus then he himself took the risk and, as such, he has definitely contributed to negligence. In that way the compensation awarded should be apportioned towards contribution for the negligence. In this respect learned Advocate appearing for and on behalf of the appellant has referred to the judgment of the Apex Court as reported in (1995) 2 BUR 729. (New India Assurance Company Ltd. vs. Smt. Shanti Bai & ors.) wherein the contribution of the deceased while travelling on the top of the bus was held to be 40%. The same view has been expressed by the Apex Court in the later judgment also as reported in Indrani Raja Durai and Others Vs. Madras Motor and General Insurance Company and Others, . Regarding the calculations as regards the compensation there is no grievance from either side. But the learned counsel appearing for and on behalf of the claimants/respondent has submitted that even if contributory negligence is imposed on the deceased then also his contribution should not be to the extent of 40% when considering the position and circumstances of the transport in the State of Bihar. A person having urgent necessity cannot have the alternative but to take risk of life by travelling in a over crowded bus on the roof of the bus. It has also been stated that it is the common scene in the road at Bihar and also in the Railway line of the State of Bihar that the passengers are travelling by sitting on the roof of the bus or on the roof of the train. When there is no proper transportation system being provided by the State then the passengers remain in the peril and, as such, they are to take risk on everyday while travelling from one place to another. But it appears from the impugned judgment that no. such compelling circumstances on the part of the passenger i.e. deceased could be ascertained from the side of the claimants. In that way I feel taking judicial notice of the facts as stated from the side of the claimants/respondents. In the present case 30% of contributory negligence should be imposed on the deceased and in that way the compensation assessed must be curtailed to the extent of 30% towards contributory negligence.

3. Rupees 1,15,000/- was assessed as compensation and out of the same if 30% is deducted towards contributory negligence the amount comes up to Rs.

80,500/- out of which 25,000/- towards in trims compensation should be deducted which comes upto Rs. 55,500/- then adding consortium of Rs. 5,000/- the amount comes up to Rs. 60,500/- and making it a round figure the amount of compensator to Rs. 61,000/-. Thus the miscellaneous appeal is partly allowed by reducing the amount of compensation from Rs 95,000/- to Rs. 61,000/-. The cost and the interest as awarded by the Tribunal shall remain intact.

4. The appeal is thus disposed of No cost to either of the parties in this appeal. It has been prayed for on behalf of the claimants that the amount which has been deposited in the appeal towards statutory obligation u/s 173 of the M.V. Act may be disbursed in favor of the claimants which would be adjusted towards the award being granted by the appellate Court.