(2011) 09 PAT CK 0086

In the Patna High Court

Case No : Miscellaneous Appeal No. 190 of 2009

United India Insurance Company Ltd. APPELLANT

Vs

Shobha Devi and Others RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 226
Motor Vehicles Act, 1988 — Section 140, 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2011) 4 PLJR 758 : (2012) 1 TAC 310

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The present appeal has been preferred u/s 173 of the Moter Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act") against the Judgment dated 27.11.2008 and Award dated 10.12.2008 passed by the learned 1st Addl.District Judge-cum- Motor Vehicle Accident Claim Tribunal Gaya (hereinafter referred to as the "Claim Tribunal") in M.A.C. Case No. 133 of 2008/47 of 2001 dated 27th November, 2008. By the impugned judgment and Award, the learned Claim Tribunal has allowed the claim petition filed by the claimants and directed the Appellant to pay the total compensation amount of Rs. 5,84,280/-. The Claim Tribunal directed to deduct Rs. 50,000/- from the compensation amount, which was paid to the claimants as interim compensation u/s 140 of the M.V. Act.

2. Short fact of the case is that on 02.04.2001, while the husband of Respondent No. 1 and father of other claimants was returning along with other co-villagers after offering Puja (worship) from Kaleshwari temple under the district of Chatra on a mini bus having Registration No. BR-2B/0369 and when the said mini bus reached near village- Akbarpur under Dobhi Police Station, due to rash and negligent driving of the driver the mini bus turned turtle by the side of the road

and in the said accident Ramshila Paswan and other passengers received severe injuries. While Ramshila Paswan was being treated at Anugrah Narayan Magadh Medical College and Hospital, Gaya, he succumbed to the injuries. In connection with the said accident, an F.I.R. vide Sherghati (Dobhi) P.S. Case No. 67 of 2001 for the offences under Sections 279, 337, 338, 304(A) of the Indian Penal Code was lodged against the driver of the said bus on the fardbeyan of one co-villager. Subsequently, under the provisions of Motor Vehicles Act, a Claim Case vide M.A.C. Case No. 133 of 2008/ 47/2001 was filed claiming compensation. In support of Claim Case, four witnesses were examined and the claimant produced number of documentary evidences, which were got exhibited. In the claim case, salary certificate of the deceased was got exhibited as Ext.1, F.I.R. of Sherghati (Dobhi) P.S. Case No. 67 of 2001 was exhibited as Ext.2, Postmortem report of the deceased Ramshila Paswan was exhibited as Ext.3 and photo copy of Insurance Policy cover issued by the Appellant/ United India Insurance Company Ltd. was exhibited as Ext.4. During the evidence, the witnesses fully supported the claimants case. Even during the cross-examination, nothing could be extracted from the witnesses to create any doubt on the claim case. It is evident from the record that the Appellant/ United Indian Insurance Company Ltd., though appeared before the court below, did not adduce either any documentary or oral evidence to controvert the claimants case. The Claim Tribunal during the trial framed number of issues, which are as follows:

(i) Is the claim case as framed maintainable?

(ii) Have the applicants got valid cause of action for this claim case?

(iii) Whether Ramshila Paswan died in a motor vehicle accident caused due to rash and negligent driving of the driver of the said offending mini bus bearing registration No. BR-2B/0369?

(iv) Whether the owner of the said offending mini bus has violated the terms and condition of insurance policy cover by getting his vehicle driven by a person having No. valid driving licence at the relevant time of accident ?

(v) Are the applicants entitled to get compensation and if so to what amount and from whom?

(vi) Are the applicants entitled to any other relief?

3. After examining the evidences and materials available on record, the issues framed were decided in favour of the claimants. The deceased was a peon in Civil Courts, Gaya and as per Ext.1, salary certificate, net salary of the deceased was Rs. 4236/- per month.

4. At the time of accident, the deceased was about 35 years old and, as such, multiplier 17 was taken into account as per second schedule of the M.V. Act. The annual income of the deceased was assessed as Rs. 50, 760/-, which came to Rs. 33,840/- per annum after deducting 1/3rd amount as his personal expenditure, which was considered as the dependency of the claimants. After

multiply the said amount, the total compensation amount was considered as Rs. 5,75,280/-. Respondent No. 1 being widow of the deceased was given Rs. 5000/- as loss of consortium, Rs. 2000/- as funeral expenses and Rs. 2000/- as loss of estate. Accordingly, the total compensation was directed to be paid to the tune of Rs. 5, 84,288/-. During the trial, in view of Section 140 of the M.V. Act, Rs. 50,000/- was paid to the claimant as interim compensation and, as such, the Claim Tribunal directed for deducting Rs. 50,000/- from the total compensation amount and, as such, the Appellant/United India Insurance Company Ltd. was directed to pay compensation amount of Rs. 5,84,284/- along with interest @ 8 % per annum on the compensation amount from the date of filing of the claim case till the date of payment.

5. Aggrieved with the judgment and Award, the United India Insurance Company Ltd. had preferred the present appeal.

6. Sri Ram Chandra Lal Das, learned Counsel for the Appellant has argued that it is true that in the case after accident, an F.I.R. was lodged, but the claimants, while filing the claim petition, had not brought on record copy of chargesheet after completion of the investigation. It was argued that in absence of chargesheet, the learned Claim Tribunal was not legally entitled to award compensation against the Insurance Company. It was further pleaded that the driver of the offending vehicle was not impleaded as party in the claim case nor the owner of the vehicle had appeared before the Claim Tribunal and in absence of owner of the vehicle, the claim case was not required to be allowed against the insurer.

7. Sri Arun Kumar Sinha, learned Counsel appearing on behalf of Respondent No. 1/ claimant, while opposing the appeal and controverting the arguments advanced by the learned Counsel for the Appellant, has argued that whatever documents were required to be filed under Rule 226 of the Bihar Motor Vehicles Rules, 1992, the claimants had already brought before the court below. He has specifically submitted that the certified copy of the F.I.R., copy of the Insurance Policy, Postmortem Report and Salary Certificate of the deceased were filed and got exhibited. Besides, documentary evidence, the witnesses, who were travelling along with the deceased, were examined as witnesses in support of the claim case and all the witnesses have consistently supported the claimants'' case. The Insurance Policy of the offending vehicle was sufficient to establish that at the time of accident, the offending vehicle was insured by the Appellant/ United India Insurance Company Ltd. Moreover, No. oral or documentary evidence was brought on record by the Appellant/United India Insurance Company Ltd. to controvert the claimants'' case. It was further submitted that only with a view to delay the payment of compensation amount as per judgment and Award of the Claim Tribunal, the present appeal was preferred by the Appellant/ United Indian Insurance Company Ltd. having No. merit in the appeal and, as such, the appeal is liable to be rejected.

8. Besides hearing the learned Counsel for the parties, I have also perused the

materials available on record. After going through the record, it is evident that sufficient materials were brought on record and the learned Claim Tribunal after examining and appreciating the evidences on record has rightly passed the judgment and Award. So far as submission advanced by Sri Ram Chandra Lal Das, learned Counsel for the Appellant that copy of chargesheet was not brought on record is concerned, the Court is of the opinion that in view of the facts and circumstances of the present case, it was not mandatorily required to bring on record the copy of chargehseet and only in absence of copy of chargesheet, the impugned judgment and Award cannot be questioned, particularly in view of the evidences, which have been brought on record by the claimants. After going through the materials on record, the Court is of the opinion that while allowing the claim petition, the learned Claim Tribunal has committed No. error and judgment and Award requires No. interference.

Accordingly, the appeal stands dismissed. However, in view of the facts and circumstances, No. cost is being imposed.

