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Court : Patna

Decided On : Oct-09-2002

Judge : Radha Mohan Prasad, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166

Appeal No. : M.A. No. 347 of 1999

Appellant : Ranju Devi and ors.

Respondent : Pawan Kumar Patwari and ors.

Disposition : Appeal allowed

Prior history : Radha Mohan Prasad, J. 1. This appeal is directed against the order dated 3.4.1999 passed by 4th Additional District Judge-cum-Claims Tribunal, Bhagalpur, whereby on preliminary issue it has been held that the claim case filed by the appellant is not maintainable and the court has got no jurisdiction to entertain. 2. In short, the relevant facts are that the deceased Ashwani Kumar Sauragi was killed by the criminals, who tried to snatch his bag, while he was travelling in the bus bearing regis

Judgement :

Radha Mohan Prasad, J.

1. This appeal is directed against the order dated 3.4.1999 passed by 4th Additional District Judge-cum-Claims Tribunal, Bhagalpur, whereby on preliminary issue it has been held that the claim case filed by the appellant is not maintainable and the court has got no jurisdiction to entertain.

2. In short, the relevant facts are that the deceased Ashwani Kumar Sauragi was killed by the criminals, who tried to snatch his bag, while he was travelling in the bus bearing registration No. BR 12-9891 when the deceased refused to handover the bag to the criminal. The vehicle in question was insured with the respondent United India Insurance Co. Ltd.

3. Learned counsel for the insurance company submitted that the deceased did not lose his life in an accident arising out of use of motor vehicle, and the learned Tribunal on consideration of the fact that the death of the deceased was not caused arising out of the use of the motor vehicle and there is no allegation of any rash and negligent driving on the part of driver to endanger human life and further that it is purely a case of dacoity and murder, held that there was no nexus between the death of the deceased and the use of the vehicle. Thus, the Tribunal held that the claim is not maintainable.

4. Learned counsel for the appellants relying upon the decision of the Supreme Court in the case of Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC), submitted that the view taken by the learned Tribunal is erroneous and contrary to the view taken by the Supreme Court in the said decision. In the said case, the Apex Court held that the stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing of the autorickshaw was only incidental to the act of stealing of the autorickshaw. Therefore, it was held that the death was caused accidentally in the process of committing theft of the autorickshaw and, therefore, the trial court rightly came to the conclusion that the claimants were entitled to compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death was not caused by an accident involving the use of motor vehicle. The Supreme Court while considering as to when murder is covered by the provisions of the Motor Vehicles Act held that the difference between a 'murder' which is not an

accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. According to the Supreme Court, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

5. In view of the principle laid down in the case of Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC), learned counsel for respondent insurance company has not been able to defend the impugned order. The stand of the company before the learned Tribunal was that the deceased did not die in the motor accident rather he was killed by the criminals, who tried to snatch his bag while he was travelling in the bus. The F.I.R. was also lodged under Sections 394/302, Indian Penal Code and Section 27 of the Arms Act. It is nobody's case that the dominant intention of the act of felony in the present case was to kill the deceased. The cause of murder or act of murder was originally not intended and the same was caused in furtherance of commission of dacoity, which, according to the Apex Court, is an accidental murder, and covered by the provisions of the Motor Vehicles Act for award of compensation.

6. Accordingly, this court holds that the claim is maintainable and the impugned order is set aside. The matter is remitted back to the learned Tribunal for consideration of the claim on merits. The appeal is, thus, allowed. Let the lower court record be returned immediately to the court below.

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