

National Insurance Comp. Ltd. Vs. Smt. Sumitra Devi and ors.

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Court : Patna

Decided On : Feb-23-2007

Judge : Syed Md. Mahfooz Alam, J.

Acts : Motor Vehicle Act, 1988 - Sections 149(2)

Appeal No. : Miscellaneous Appeal No. 98 of 1998

Appellant : National Insurance Comp. Ltd.

Respondent : Smt. Sumitra Devi and ors.

Advocate for Def. : Randhir Kumar Singh, Adv.

Advocate for Pet/Ap. : Ajoy Kumar and Renu Jha, Adv.

Disposition : Appeal dismissed

Judgement :

Syed Md. Mahfooz Alam, J.

1. This Miscellaneous Appeal has been preferred by National Insurance Company Limited against the judgment and award dated 14th August, 1997 passed by 4th Additional District & Sessions Judge - cum Addl. Motor Vehicle Accident Claim Tribunal, Bhagalpur in Claim Case No. 1 of 1997 whereby the Tribunal has been pleased to award Rs. 2,00,000/- as compensation with interest at the rate 12% per

annum from the date of filing of the claim petition to the applicants said to be dependents of deceased Shiv Shankar Mistri, who died in motor vehicle accident.

2. The brief facts of the case are as follows:

Shiv Shankar Mistri, the husband of respondent No. 1 and the father of respondent Nos. 2 to 9, was travelling in a Mahindra Maxi bearing registration No. B.H.J. 8979 on 8.6.1990. He was going to Bhagalpur from his village Jamin Phulbaria and when the said vehicle reached near village Tinpulia it turned turtle as a result of which the said Shiv Shankar Mistri sustained multiple injuries and he was taken to Jawahar Lal Nehru Medical College Hospital, Bhagalpur but he could not survive and breathed his last in course of his treatment. It is said that at the time of death the deceased Shiv Shankar Mistri was aged about 41 years and he was working as Skilled Motor Vehicle Body Builder, It is stated that the claimants are the heirs and dependents of deceased Shiv Shankar Mistri and due to untimely death the claimants have suffered mentally and monetarily and so on account of his death, the claimants have claimed a total compensation of Rs. 2,00,000/-.

3. The owner and the insurer of the vehicle (appellant National Insurance Company) appeared before the Tribunal and filed separate written statements in the case. As per the written statement of the owner, the accident in which the deceased Shiv Shankar Mistri had lost his life is not denied but it is stated that due to mechanical defect which was beyond the control of the driver, the accident had taken place. It has further been stated by the owner of the vehicle that the vehicle in question was insured under the National Insurance Company and as such, the Insurance Company is liable to indemnify the entire compensation, if any.

4. The National Insurance Company in its written statement has raised the plea that although the vehicle in question was insured under the Company but the Company is not liable to indemnify the compensation amount as the owner of the vehicle has violated the terms and conditions of the policy by not producing the owner book, road permit, fitness certificate, driving licence etc. before the Tribunal. The appellant has also raised objection that the amount claimed as compensation is also excessive.

5. From perusal of the judgment of the Tribunal it appears that on the basis of the pleadings of both the parties the Tribunal framed altogether seven issues in the case and after making full discussion on the abovementioned issues, the Tribunal held that the accident which took place on 8.6.1990 at village Tinpulia in which the deceased Shiv Shankar Mistri died, was caused due to rash and negligent driving of the driver of Mahindra Maxi bearing registration No. B.H.J. 8979. It further transpires that the Tribunal held that at the time of death, the deceased was a skilled Motor Vehicle Body Builder and his monthly income was Rs. 2000/- and at that time he was aged about 41 years old and as such, the Tribunal assessed a total compensation of Rs. 2,24,000/- besides Rs. 2000/- towards funeral expenses, Rs. 5000/- towards loss of consortium, Rs. 2500/- towards loss of estate and Rs. 2500/- towards medical expenses, (total Rs. 2,33,500/-), However, the Tribunal awarded a total compensation of Rs. 2,00,000/- only with interest at the rate of 12% per annum from the date of filing of the claim application on the ground that the claimants have claimed maximum compensation of Rs. 2,00,000/- only. The Tribunal has further directed that the Insurance Company has to pay the entire compensation to the claimants.

6. It has been submitted by the learned Advocate of the appellant-Insurance Company that the findings of the learned Tribunal are erroneous in law as well as on facts and the quantum of compensation awarded by the Tribunal is excessive in view of the fact that in the claim application, the claimants have not disclosed any monthly income of the deceased and as such, the compensation should have been calculated on the basis of the notional income, as mentioned in 2nd Schedule of the Motor Vehicle Act, 1988 (as amended by Act 54 of 1994). He has further argued that the Tribunal has again committed mistake by granting medical expenses amounting Rs. 2,500/- and funeral expenses amounting to Rs. 5000/-. He argued that as per the 2nd Schedule, funeral expenses can be granted upto to Rs. 2000/- and, therefore, the grant of Rs. 5000/- by the Tribunal is illegal. He further submitted that the claim application will show that the claimants have made expenses upto Rs. 700/- towards medical expenses and as such, the award of Rs. 2500/- towards medical expenses is wrong and more than the amount claimed in the claim application. On the basis of above grounds, the learned Advocate of the appellant has prayed to set aside the judgment and award of the Tribunal.

7. On the other hand, the learned Advocate of the claimants-respondents argued that the Insurance company has no right to challenge the quantum of award and at this stage this plea is not available to the Company that the driver of the ill-fated vehicle had no valid licence when the Company has not brought any oral as well as documentary evidence before the Tribunal. He submitted that the grounds on which the Insurance Company can prefer appeal are provided under Section 149(2) of the Motor Vehicles Act 1988 and the quantum of compensation is not a ground available to the insurer for the purpose of filing appeal. The learned Advocate further submitted that unless any of the conditions as contained in Section 149(2) of the Act exists i.e. breach of condition of the policy and such defence is taken in the pleadings, the insurer is legally bound to satisfy the award. In support of the argument, the learned Advocate of the respondents has placed reliance upon the decision of the Apex Court given in the case of Chinnama George and Ors. appellants v. N.K. Raju and Anr. respondents reported in : [2000]2SCR1050 . He has further argued that in this case Insurance Company has not brought any evidence that the driver of the concerned vehicle had fake licence and as such, at this stage, this plea is not available to the lawyer of the Insurance Company that the owner of the concerned vehicle had violated the terms and conditions of the policy.

8. From perusal of the record of the Tribunal it appears that the Insurance Company has not brought any evidence on record that the driver of the vehicle which caused accident had no valid licence and as such I am of the view that at this stage this plea that the driver had no valid licence and due to that the terms and conditions of the policy were violated is not available to the Insurance Company. From the perusal of the judgment it further transpires that the Tribunal has considered all the aspects of the case and has come to the conclusion that the accident was caused due to rash and negligent driving of the driver of the vehicle. I am of the view that this finding of the Tribunal is correct and based on materials available on record and so the Tribunal has rightly held that the claimants are entitled to receive compensation.

9. It is true that while computing the quantum of compensation, the Tribunal has committed some error but only on that ground the award cannot be reduced as the

grant of total compensation amounting to Rs. 2,00,000/- in this case, appears to be just and proper. I am of the view that unless the quantum of compensation is shown to be exorbitant and highly inflated, ordinarily this Court while sitting in appeal should not interfere with the quantum of compensation awarded by the Tribunal. In such view of the matter, the total compensation assessed by the Tribunal amounting to Rs. 2,00,000/- is being confirmed. However, it appears that the award of interest at the rate of 12% per annum is excessive which is reduced to 9% per annum and it is held that the claimants are entitled to receive a sum of Rs. 2,00,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till its realisation.

10. In the result. I find no merit in this appeal and as such, the same is hereby dismissed with modification to the effect that the claimants will be entitled to receive a sum of Rs. 2,00,000/- as compensation with interest at the rate of 9% per annum from the date of filing of the claim petition till its realisation. It is further ordered that the appellant (National Insurance Company Limited) shall indemnify the entire amount after deducting the payment, if any made earlier, within two months from the date of this judgment failing which the amount will be realised through the process of the court.