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Court : Patna

Decided On : Sep-30-1997

Judge : Guru Sharan Sharma, J.

Appeal No. : A.F.O. Nos. 42 and 339 of 1992

Appellant : Ramashish Rao and ors.

Respondent : Rambha Devi and ors.

Advocate for Def. : Ram Chandra Lal Das, Adv.

Advocate for Pet/Ap. : Shashi Shekhar Dwivedi, Adv.

Disposition : Appeal dismissed

Judgement :

Guru Sharan Sharma, J.

1. These two appeals, one by the owner and driver of the truck, bearing registration No. BHF 6581 and another by its insurer have been filed against the impugned judgment and award passed under the provisions of the Motor Vehicles Act, 1988 (for short 'the Act') in favour of the claimants on account of the death of one Chandrika Prasad on 10.1.1990 in a road accident.

2. It is not in dispute that on 10.1.1990 Chandrika Prasad, who was husband of respondent No. 1 and father of respondent Nos. 2 to 6 was run over and crushed, resulting in his death by the truck, bearing registration No. BHF 6581.

3. On the basis of evidence on record the Tribunal found that Chandrika Prasad was killed in the accident in question and the claimants being his dependants were entitled to a sum of Rs. 1,75,000 by way of compensation with interest at the rate of 12 per cent per annum from the date of the claim application till payment.

4. On 10.7.1990, the claim application was filed. Notices were issued to the opposite parties. Opposite party Nos. 1 and 2 appeared on 14.2.1991 and filed the written statement on 24.9.1991. The insurance company, the opposite party No. 3 neither appeared nor filed any written statement nor contested the claim.

5. According to the owner of the truck (BHF 6581) and its driver, the vehicle at the relevant time was insured with the United India Insurance Co. Ltd., Muzaffarpur under the provisions of the Motor Vehicles Act, 1988, covering third party risk with other additional risks. A photocopy of the cover note and the insurance certificate were attached with the claim application as Annexures A and B. The opposite party Nos. 1 and 2 were not liable for any claim due to the alleged accident. The entire liability for payment of compensation, if any, in respect of the accident in question was of the insurer.

6. The order-sheet of Claim Case No. 6 of 1990 reveals that the opposite party Nos. 1 and 2 after filing written statement on 24.9.1991 left taking steps in the case and in their absence order for payment of ad interim compensation of Rs. 25,000 under Section 140 of the Act was passed on 5.10.1991. The opposite party Nos. 1 and 2, thereafter, till conclusion of the arguments on behalf of the claimants on 25.2.1992 did not take any step. Only after conclusion of arguments, when the date of judgment was fixed on the next date 26.2.1992, they filed a petition to provide opportunity to them for hearing but the said petition was also not moved and on 26.2.1992 the claim case was disposed of by the impugned judgment. However, in the whole of the order-sheet nowhere the service of notice on the insurance company, the opposite party No. 3 was accepted as valid, although notice by registered post was issued to the company.

7. In the aforesaid circumstances, in Miscellaneous Appeal No. 339 of 1992 a petition under Order XLI, Rule 27 of the Code of Civil Procedure has been filed by the appellant annexing the carbon copy of the insurance policy for admitting the same in additional evidence. In my view, in the facts and circumstances of the case, the insurance policy was necessary to be produced to enable this Court to examine the question of statutory liability raised by the insurance company in this appeal. The counsel for the owner of the truck and the claimants did not object to the prayer.

8. In connection with the insurance policy in question, the counsel for the appellant insurance company submitted that the amount of premium was paid by cheque dated 10.1.90 which was received in the branch office of the insurance company on 16.1.1990 and so the insurance company was liable to cover risk only from 16.1.1990 and not from 10.1.1990 when the cover note was issued.

9. I have accordingly perused the carbon copy of the insurance policy brought on record of this appeal by the appellant insurance company in the Miscellaneous Appeal No. 339 of 1992 to ascertain both questions whether risk for any amount higher than the statutory limit, if any, was covered and the entire amount of compensation was payable by the insurance company and as to whether the company was liable to cover risk only from 16.1.1990 and not from 10.1.1990.

10. I find that there is no substance in both the contentions made on behalf of the insurance company and as such they are not tenable. According to the terms of the policy the insurance company was liable to cover risk from 10.1.1990 itself and to pay the entire amount of compensation. There is no question of any statutory liability in the present case.

11. In view of the finding given in para 10 above that the insurance company was liable to pay the whole amount of compensation, the appellants in Miscellaneous Appeal No. 42 of 1992, i.e., the owner and driver of the vehicle are not required to pay the compensation amount.

12. Mr. Dwivedi, senior counsel for the appellant owner of the vehicle in Miscellaneous Appeal No. 42 of 1992 submitted that the provisions of Order IX,

Rule 6 of the Code of Civil Procedure were not complied with and the Tribunal erred in law in deciding the claim case ex parte without giving an opportunity to the owner of the vehicle for hearing. I have already given details of the order-sheet of the case. It was clearly a deliberate fault on the part of the owner and driver of the vehicle, the opposite party Nos. 1 and 2 of the claim case that after appearance and filing written statement they have not made any pairvi and/or appeared on any of the dates fixed in the case except on two dates (i) at the stage of passing orders on the petition under Section 140 of the Act, and (ii) after close of ex parte evidence and arguments by the claimants.

In such circumstances, in my view, the contention of Mr. Dwivedi cannot be accepted. The Tribunal rightly proceeded in the matter ex parte against the opposite party Nos. 1 and 2 and decided the case in their absence on merits in accordance with law. I do not find any infirmity in the amount of compensation calculated by the Tribunal.

13. The impugned common judgment and the award in these two appeals are confirmed and appeals are dismissed with a direction to the insurance company to pay the entire amount of compensation after deducting the amount, if any, already paid earlier to the claimants.

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