

Naraln Sah Vs. Oriental Fire and Genl. Ins. Co. Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/131375

Court : Patna

Decided On : Aug-03-2005

Judge : Shiva Kirti Singh, J.

Appellant : Naraln Sah

Respondent : Oriental Fire and Genl. Ins. Co. Ltd. and anr.

Disposition : Appeal allowed

Judgement :

Shiva Kirti Singh, J.

1. Heard the parties.
2. The appellant was the claimant in Claim Case No. 4 of 1995 under provisions of the Motor Vehicles Act. His claim has been rejected by the judgment and decree under appeal dated 23.11.2000 passed by First Additional District Judge, East Champaran.
3. On behalf of the appellant it has been submitted that the learned Tribunal below lost sight of the legal position that he was discharging duty of the Claims Tribunal under Motor Vehicles Act and not as Additional District Judge while disposing of the petition. It was shown that finding on issue Nos. I, II and IV have been given only on basis of technical rules of pleading and evidence which are not strictly

applicable in a proceeding before the Claims Tribunal in view of clear provision in Section 169 of the Motor Vehicles Act. A judgment of this Court in National Insurance Co. Ltd. v. Mahendra Prasad 1997 (1) PLJR 907, was cited in support of the aforesaid proposition.

4. The proposition of law is well founded. Section 169 of the Motor Vehicles Act itself provides that in holding any inquiry under Section 168, the Claims Tribunal, subject to any rules made in this behalf, shall follow such summary procedure as it thinks fit. Bihar Motor Vehicles Accidents Claims Tribunals Rules, 1961 prescribe the procedure of recording evidence, etc. and the same also indicates that procedure for summary inquiry have been adopted under the Rules.

5. The Code of Civil Procedure has also been made applicable under Rule 20 only for very limited purposes such as for issue and service of summons under Order 5, appearance of parties and consequence of non-appearance under Order 9, production, impounding and return of document under Order 13, summoning and attendance of witnesses under Order 16, adjournments under Order 17 and withdrawal and adjustment of claim under Order 23. Even the aforesaid orders are applicable only to a limited extent.

6. The learned Tribunal has decided the issue No. I and held the claim petition not maintainable on the ground that driver of the bus and the truck owner were necessary party but they have not been made party and hence the claim petition is not maintainable. The finding is vitiated by a factual error inasmuch as the truck owner has been made a party as appears from the records. He is respondent No. 2 in this appeal. The format of claim petition under the Bihar Rules does not require particulars of driver or owner of any other vehicle except the vehicle against whom the claim is being made. The finding of the learned Tribunal on issue No. I is thus of highly technical nature and bad in law. The same is, therefore, set aside.

7. In respect of issue No. II it was rightly submitted on behalf of the appellant that the claim petition has been held to be time-barred without any factual or legal basis for such a finding. The learned Counsel for the respondent No. 1 also did not contest this submission seriously. The date of the alleged occurrence has been

brought on record through an amendment petition which was allowed by the Tribunal, much before the judgment. Such error of record is also responsible for finding on issue No. II. The said finding is also, therefore, set aside.

8. The issue No. IV is not of much significance because it is largely on account of the important issue No. III that Tribunal has answered issue No. IV holding that the claimant is not entitled to any compensation. But in deciding this issue also the Tribunal has committed an error of law in holding that the insurance company cannot be made liable to pay the compensation although it was admitted that the truck was insured with the insurance company at the relevant time because the claimant has filed a photocopy of the insurance policy, Exh. A, which does not disclose the name and number of vehicle for which the policy was issued. In a summary inquiry, once the insurance company did not dispute that it has stood as insurer of the truck, the Tribunal was unjustified in holding the claimant liable to prove the particulars of insurance policy.

9. The most important issue which requires reappraisal is issue No. III - whether the death of Ranjit Sah occurred due to rash and negligent driving of the truck bearing registration No. UP 12-0228? On this issue the learned Tribunal has referred to evidence of applicant witnesses which showed that at the time of accident or just before that the victim was travelling not in the permissible manner, within the bus, but on the ladder behind the bus. On that basis Tribunal accepted the submission on behalf of the insurance company that since the victim was on the back ladder of the bus hence the claimant would not be entitled to get any compensation. Claimant-appellant has been non-suited on various issues as discussed earlier but those findings have already been found unsustainable. The outcome of this appeal must depend upon the outcome of finding by this Court in respect of issue No. III. On going through the evidence of applicant witnesses on record this Court finds that true picture at the time of the accident was that the bus in question was overloaded. In that situation some persons were travelling on the roof of the bus and three students including the victim got on to the ladder behind the bus. The bus was stopped almost in the middle of the road as disclosed by AW 3 and two of the boys got down from the ladder and while the victim was in the process of getting down, the truck of respondent No. 2 allegedly being driven in

high speed and negligent manner, came and dashed against the bus causing injury to the victim who died soon thereafter as a result of such injuries.

10. The picture of the relevant details and particulars as noticed above leaves no manner of doubt that truck of respondent No. 2 which was insured with insurance company, respondent No. 1, caused death of Ranjit Sah due to rash and negligent driving of the truck in question. The issue No. III is decided accordingly.

11. At this stage, the learned Counsel appearing for the insurance company, respondent No. 1, submitted that in view of findings of this Court in respect of issue No. III it would be relevant to find out whether the bus in question or the victim had also contributed by their negligence to the occurrence which led to death of the victim. According to learned Counsel for the insurance company, the owner and driver of the bus should have been made parties because they permitted travelling on the bus contrary to the manner prescribed by Section 123 of the Motor Vehicles Act and, therefore, they contributed to the accident. It was further submitted that on evidence it has come that the bus was stopped without going to the flank of the road and soon after it was stopped, the truck dashed against the bus coming from the same direction. In such circumstances, it was submitted that liability of the bus owner and of the insurance company needs to be apportioned because there was negligence on the part of owner and driver of the bus as well as of the victim. The judgment in the case of *Indrani Raja Durai v. Madras Motor & Genl. Ins. Co.* : [1996]1SCR564 , was relied upon in support of the proposition of law that in a case of contributory negligence the compensation amount may be apportioned.

12. On a careful consideration of all the relevant facts and circumstances, this Court is of the view that since the owner and driver of the bus were not made parties the appellant-claimant would have to forego at least 40 per cent of the compensation amount and only 60 per cent of the lawfully payable compensation would be payable by insurance company, respondent No. 1, on account of negligence in driving by the driver of the truck belonging to respondent No. 2.

13. The victim was admittedly student of Intermediate and the post-mortem report mentioned his age as 25 years. This Court would like to hold that the deceased

must have been between 20 and 25 years of age at the time of his death. On that account the proper multiplier according to Second Schedule would be 17. Since the deceased was a non-earning person, his notional income for compensation as per Second Schedule would be Rs. 15,000 per annum, out of which one-third must be left out in consideration of the expenses which the victim would have incurred towards himself had he been alive. Hence, on multiplying two-third of Rs. 15,000 with 17, the total compensation amount shall be Rs. 1,70,000. Some general damages such as funeral expenses and loss to estate as well as medical expenses may be clubbed together and valued at Rs. 10,000. Thus, the total compensation amount would be Rs. 1,80,000. Out of this 40 per cent has to be foregone by the claimant as discussed above. The balance amount of Rs. 1,08,000 is held to be the liability of the insurance company, respondent No. 1. Out of that Rs. 50,000 has already been paid to the claimant. Now, the insurance company must pay the balance amount of Rs. 58,000 to the claimant within a period of three months failing which the appellant shall be entitled to interest at the rate of 10 per cent per annum till the date of realisation. The judgment and decree under appeal are modified to that extent.

14. The appeal is allowed accordingly. There shall be no order as to costs.