Shanti Devi Vs. Basmatti Devi and ors.

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Court : Patna

Decided On : Jan-24-2006

Judge : M.L. Visa, J.

Appellant : Shanti Devi

Respondent : Basmatti Devi and ors.

Disposition : Appeal allowed

Judgement :

M.L. Visa, J.

1. This appeal was listed for hearing under Order 41, Rule 11 of the Code of Civil Procedure, 1908 when it was heard for final disposal of the appeal at that stage because on 28.10.2002, when learned Counsel for appellant relying on judgment of a Division Bench of this Court submitted that the impugned order is bad in law, notices to respondents were ordered to be issued but none of the respondents appeared in spite of valid service of notices on them and the appeal is finally disposed of by this order.

Appellant has challenged the order dated 24.4.2001 passed by the First Additional Motor Accidents Claims Tribunal, Purnea in Claim Case No. 52 of 1997 allowing the petition filed by respondent Nos. 1 and 2 under Section 140 of the Motor Vehicles Act and directing the appellant to pay a sum of Rs. 50,000 as interim compensation to the claimants.

2. The brief facts of the case are that deceased Bablu Chauhan, son of respondent Nos. 1 and 2 was a khalasi on appellant's truck bearing registration No. BR 11-2388 and on 1.12.1996 this truck met with an accident resulting in his death. Respondent Nos. 1 and 2 who are parents of Bablu Chauhan filed Claim Case No. 52 of 1997 for compensation. During the pendency of the case, they filed petition under Section 140 of Motor Vehicles Act claiming interim compensation. The prayer was allowed.

3. It was contended on behalf of the appellant that the vehicle was insured by National Insurance Co. Ltd., respondent No. 3 and relying upon the decisions in 2000(1) BUR 1; 1999 (1) PLJR 747 and 1999 (1) PLJR 752; it was submitted that insurance company is liable to pay interim compensation to claimants. The impugned order shows that learned Counsel for National Insurance Co. Ltd. admitted that vehicle in question was insured at the time of alleged accident but he submitted that according to law it is the owner only who is liable to pay interim compensation to the claimants and in support of this argument decision of this Court in M.A. No. 242 of 1999 was relied upon.

4. Para 5 of the impugned order shows that the factum of accident as well as the factum of death of Bablu Chauhan in that accident are admitted, this order further shows that the fact that at the time of the accident vehicle was insured is also not in dispute. Tribunal following the decision of this Court in M.A. No. 242 of 1999 has fastened the appellant who is admittedly the owner of the vehicle involved in the accident with the liability of paying interim compensation to claimants under Section 140 of the Motor Vehicles Act.

5. The learned Counsel of the appellant has submitted that since the vehicle was insured, therefore, it is insurance company who is to pay interim compensation to the claimants.

6. Now the question arises who amongst the owner and insurance company is liable to pay the interim compensation under Section 140 of the Motor Vehicles Act. Exactly the same question came for consideration before a Division Bench of

this Court in Kanhai Rai v. Dharampal : AIR2001 Pat205 , which was filed against the order dated 22.8.2000 passed by a learned single Judge in M.A. No. 494 of 1999 which was itself filed against the order of the Tribunal directing insurance company to pay the interim compensation where owner of vehicle was directed to pay interim compensation on no fault basis after holding that the insurance company is not liable to pay interim compensation under Section 140 of Motor Vehicles Act and it is owner alone who is liable to pay the same. The L.P.A. was allowed and the order passed by the learned single Judge was set aside and order passed by the Tribunal was restored. I am quoting below the para of the judgment which is relevant for the purpose of the present case:

(12) No doubt, Section 140 provides that the interim compensation is to be paid by the owner but once an insurance policy in terms of Chapter XI is in force with regard to the motor vehicle covering liability against the third party risk then by virtue of definition of liability under Section 145(c), the interim compensation is also included or covered by the said policy and the insurance company also becomes liable to pay interim compensation. If this view is not taken, the social purpose for which the provision of Section 140 was enacted will be frustrated. In many cases, there will be difficulty in passing the order of compensation against the driver or owner of the vehicle because they may not be in a position to pay the interim compensation. To obviate such situation and to provide speedy help to the needy claimants, the legislature appears to have also included 'liability' under Section 140 of the Act within the definition of a liability under Section 145(c) of the Act. Thus, there is no difficulty in coming to the conclusion that once an insurance policy is in force with regard to use of motor vehicle at a public place covering liability against the third party risk then the insurer is also liable to pay the interim compensation even though he is not classified as one of the persons against whom an order can be passed under Section 140 of the Act.

7. The Division Bench thereafter referred to a catena of decisions rendered by Hon'ble Judges of the majority of the High Courts in the country in support of the aforesaid view and it also considered the judgments of Apex Court in the case of K. Nandakumar v. Managing Director, Thanthai Periyar Trans. Corporation. Ltd. : [1996]2SCR633 and National Insurance Co. Ltd. v. Jethu Ram : (1999)9SCC62 .

The Division Bench did not agree with the views taken by the learned single Judges in the case of New India Assurance Co. Ltd. v. Turki Hi : 1995(43)BLJR373 and National Insurance Co. Ltd. v. Neela Singh 1999 (3) PLJR 489 and it distinguished the decisions of Division Bench of this Court in the case of National Insurance Co. Ltd. v. Lachimiya Devi 1987 BLT 274. Finally, the Division Bench observed as follows:

(21) Thus, after considering the question involved in this appeal from different angles, I am of the considered view that the order under Section 140 of the Act can be passed against the insurer also in view of the discussions made above. If ultimately it is found at the time of final determination of the question of compensation that the insurer is not liable to pay compensation, then the insurer is not loser or remediless as an order can be passed for reimbursement of the amount from the owner as held in the case of Jethu Ram (supra).

8. By order dated 28.10.2002 operation of the impugned order had been stayed but the claim application has been ordered to proceed unabated in spite of the pendency of the present appeal. As stated above, when it was submitted on behalf of the appellant that question involved in this appeal is fully covered by the judgments of Division Bench of this Court reported in 2001 (3) PLJR 103 and 2001 (3) PLJR 592, notices were ordered to be issued to respondents who in spite of service of notice on them have not appeared and I do not want to keep this matter pending any more.

9. In the result, this appeal is allowed and the impugned order dated 24.4.2001 is set aside. The matter is again remanded to the Tribunal for deciding the question of grant of interim compensation under Section 140 of the Motor Vehicles Act afresh in the light of decision of this Court in Kanhai Rai v. Dharampal 2002 ACJ 260 (Patna), copy of which, as stated by appellant has already been filed before the Tribunal, after giving opportunity to all the parties of hearing on this point. Let the amount as envisaged under Section 173, Motor Vehicles Act deposited by appellant be returned to appellant on his proper identification before the Registrar General of this Court.