

Sunil Kumar Giri and ors. Vs. Ram Dulari Devi and ors.

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Court : Jharkhand

Decided On : Feb-15-2008

Reported in : [2008(2)JCR68(Jhr)]

Judge : M.Y. Eqbal and; D.K. Sinha, JJ.

Appellant : Sunil Kumar Giri and ors.

Respondent : Ram Dulari Devi and ors.

Disposition : Appeal dismissed

Judgement :

M.Y. Eqbal, J.

1. This appeal is directed against the judgment and award dated 24.5.2006 passed by Additional Motor Vehicles Accident Claims Tribunal, Giridih in M.V. Claim Case No. 08 of 2003 whereby he has dismissed the claim petition holding that the compensation amount has been received by the claimants-appellants in full and final settlement of the claim.

2. The facts of the case lie in a narrow compass:

The deceased Sweta Giri, wife of Sunil Kumar Giri and Sunita Bharti, wife of Subhash Bharti were dashed by the offending vehicle and died. The deceased Sunita Bharti was the sister of Sunil Kumar Giri. Two claim petitions were filed, one by the

present appellants, Sunil Kumar Giri along with his two sons and daughter being; Claim Case No. 08 of 2003 claiming compensation for the death of his wife. Another case being Claim Case No. 51 of 2003 was filed by Subhash Bharti claiming compensation for the death of his wife-Sunita Bharti. Sunita Bharti was the sister of Sunil Kumar Giri. In both claim cases, written statements were filed by the owner of the offending vehicle stating, inter alia, that these claim cases are not maintainable as because claim has been finally settled at Rs. 2,25,000/- and Sunil Kumar Giri received the compensation amount and granted discharge receipt on non-judicial stamp paper. It was stated In the written statement that the vehicle was duly insured with the Insurance Company and therefore, the owner of the vehicle has no liability for payment of compensation.

3. The tribunal framed several issues, but the only issue which needs consideration by this Court is issue No. 6 as to whether the claimants are entitled for compensation after receipt of compensation from the owner of the vehicle in full and final settlement of claim. In deciding issue No. 6, the tribunal recorded the following findings:

11. On perusal of Exts. A and B it appears that Sunil Giri the claimant of Claim Case No. 8/03 and husband of the deceased Sweta Giri has compromised the case with O.P. M/s. R.K. Transport Pvt. Ltd. and on 6.8.2002 received a sum of Rs. 2,25,000/- by way of compensation from M/s. R.K. Transport Pvt. Ltd. Sunil Giri is the CW 1. In this case, who has admitted his signature on Ext. B and his signature has been marked as Ext. A but at the same time he has stated that he put his signature on the plain paper. I further find that Sunil Giri has not stated the reason as to why he put his signature on the plain paper. I find that the contents of compromise has been typed on stamp paper on which Sunil Giri has put his signature. It has been argued on behalf of the O.Ps. that Sunil Giri compromised the entire case on behalf of all the claimants of all the claim cases and received the amount of Rs. 2,25,000/- from O.P. No. 1. Therefore, no claimant is entitled for any claim further because the entire matter was set at rest after compromise and after receipt of compensation amount by Sunil Giri on 6.8.2002, I find that Sunil Giri has received the amount of Rs. 2,25,000/- from M/s. R.K. Transport Pvt. Ltd. and it cannot be accepted that being literate than he put his signature on the plain

paper and no fact relating to this circumstance was explained by the claimant Sunil Giri. I further find that Sunil Giri is not the legal heir of the deceased Sunita Bharti as the deceased Sunita Bharti is his married sister, who died in the same accident and a separate claim case in respect of the compensation regarding the death of Sunita Bharti was filed by her husband Subhash Bharti and her minor daughters and sons on this fact also finds support from the evidence of Sub-hash bharti. the husband of the deceased Sunita Bharti. Therefore, it would be deemed that Sunil Giri has compromised only in claim case No. 8/03 on his behalf and on behalf of his minor children. Therefore, I come to the conclusion that the claimants of claim case No. 8/03 are not entitled to any claim further. I further find that the claimants of claim case No. 51/03 are entitled for claim as no compensation has been paid to them by the O.P. No. 1. On the basis of discussions made above, I find that the O.P. No. 1 the owner of the said offending vehicle is liable to pay the compensation amount to the claimants of claim case No. 51/03 but as the said offending vehicle was insured, so O.I. Insurance Company Ltd. is liable to satisfy the award and at the same time the O.P. Insurance Company is entitled to recover the amount from O.P. No. 1 of compensation payable to the claimants of claim case No. 51/03.

The tribunal recorded specific finding which is supported by conclusive evidence that a sum of Rs. 2,25,000/- was received by the claimant Sunil Kumar Giri in full & final settlement of the claim for the death of his wife and also the sister. In our view, the tribunal has come to a right conclusion that Sunil Kumar Giri was not entitled to receive the amount in full and final settlement of claim for the death of his sister and therefore, the tribunal held that it would be deemed that Sunil Kumar Giri compromised only claim Case No. 08 of 2003 in which he was the claimant along with his minor children. The tribunal therefore. proceeded to decide the claim for payment of compensation in respect of Claim Case No. 51 of 2003.

4. Even assuming that receipt of Rs. 2,25,000/- by the claimant in Claim Case No. 08 of 2003 was not in full and final settlement of the claim, we are of the view that in view of the evidence led by the claimants with regard to earning of the deceased, the amount of compensation, if assessed, cannot and shall not be more than Rs. 2,25,000/- in that view of the matter also, no further compensation is

payable in Claim Case No. 08 of 2003.

5. For the reasons aforesaid, we do not find any merit in this appeal which is, accordingly, dismissed.

D.K. Sinha, J.

6. I agree.

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