

(2012) 08 JH CK 0071

Jharkhand High Court

Case No: M.A. No. 85 of 2010

National Insurance Company
Ltd.

APPELLANT

Vs

Usha Rani Mandal and Others

RESPONDENT

Date of Decision: Aug. 24, 2012

Citation: (2013) 2 ACC 553 : (2012) 4 LJLR 172

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: G.C. Jha, for the Appellant; D.K. Chakravorty, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

The appellant-National Insurance Company Ltd. (Insurance Company for short) has preferred this appeal against the judgment and award dated 27.8.2009 passed by Sri Dinesh Chandra Ray, Vth Additional District Judge-cum-Motor Vehicle Accident Claims Tribunal in Compensation Case No. 50 of 2008. By the said Award, learned Tribunal has awarded Rs. 14,52,000/- as compensation to the claimants-respondents holding that the claimants are entitled to get the said amount from the appellant-Insurance Company.

2. The impugned judgment/award has been challenged by the appellant mainly on the ground that there was collision between truck and motorcycle but the owner of the motorcycle was not made a party. That was serious defect in the case and the same was not maintainable. Another ground of challenge to the Award is that learned Tribunal has not apportioned the amount of compensation, though it is a case of contributory negligence by two vehicles, which would be evident from the facts of the case.

3. The claimants-respondents contested the appeal and submitted that no ground as contended by the Insurance Company-appellant is made out on the facts of the case and the appeal is liable to be dismissed in limine.
4. Heard the parties.
5. The fact giving rise to this appeal in short is that on 31.3.2008 at about 6 A.M., the deceased-Ashok Kumar Mandal left his house for Tata Railway Station on a motorcycle as a pillion rider. The motorcycle was being driven by his son-Partho Sarthi Mandal. When they reached on pitch road near Village-Pichali at about 7.20 A.M., a Truck bearing Registration No. WB-33-4560 dashed the motorcycle from behind due to which accident took place and the deceased and his son fell down on the road and the Truck crushed the deceased. He died on the spot. The deceased was the Government School Teacher and he was getting salary of Rs. 17,500/- per month. At the time of accident, the deceased was aged about 52 years. The family of the deceased was dependant upon the salary of the deceased and due to his premature death, the applicants sustained severe loss. The offending Truck bearing no. WB-33-4560 was registered in the name of Sri Tarun Kumar Patra, which was insured with the National Insurance Company Ltd., Bistupur, Jamshedpur. The applicants claimed compensation of Rs. 15,50,000/- for accidental death of Ashok Kumar Mandal.
6. The Insurance Company contested the claim stating, inter alia, that the claim is baseless and the Insurance Company is not liable to pay any compensation. The amount of compensation claimed by the applicants are excessive, exorbitant and devoid of any ground. The Insurance Company was not aware of the accident as alleged by the applicants. The deceased was the pillion rider of the motorcycle, but the registration number of the motorcycle has not been disclosed by the applicants.
7. The parties adduced their evidence both oral and documentary.
8. Learned Tribunal after due consideration of the facts and materials and evidences on record, rendered the impugned award holding that the applicants are entitled to get compensation amount of Rs. 14,52,000/- from the appellant-Insurance Company.
9. I find no substance in the contention of the appellant that the claim petition was not maintainable as the owner of the motorcycle was not made a party in the case when the compensation was claimed against the offending Truck, which dashed the motorcycle and caused the accident.
10. Learned Tribunal has clearly held that the accident took place due to rash and negligent driving of the Truck. There was no question of contributory negligence of the motorcycle owner and there was no occasion for apportionment of the liability.
11. Learned Tribunal has considered almost all the aspects in detail on proper appreciation of the facts, materials and evidences on record and has recorded well

reasoned findings.

12. I find no error or illegality in the impugned award and any ground made out to interfere with the same. This appeal is, accordingly, dismissed.