(2007) 07 PAT CK 0022

Patna High Court

Case No: None

Binod Choudhary		APPELLANT
	Vs	
Manti Devi and Others		RESPONDENT

Date of Decision: July 3, 2007

Acts Referred:

- Motor Vehicles Act, 1988 - Section 151, 160, 168

Citation: (2009) ACJ 539 : (2007) PLJR 181 Supp

Hon'ble Judges: S.N. Hussain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.N. Hussain, J.

Both the aforesaid appeals were heard together and are being disposed of by this common judgment as both of them arise out of the same Claim Case No. 71 of 1995 and in both of them the appellant and the respondents are also the same.

So far defect in M.A. No. 272 of 2003 as per stamp report dated 7.8.2003 is concerned, it is with respect to impleadment of the insurance company as respondent No. 3 in the appeal, although it was not party in the court below. Considering the facts and circumstances and the issues involved in this case, let the said defect be ignored.

2. I.A. No. 485 of 2002 has been filed by the appellant for condoning the delay in the filing of M.A. No. 272 of 2003. From the averments made by the learned Counsel for the appellant and statements made in the interlocutory application, it appears that valid and genuine grounds have been mentioned which prevented the appellant from filing the said miscellaneous appeal earlier. Hence, there appears to be no laches or negligence on the part of the appellant and accordingly this interlocutory application is allowed and the delay in the filing of M.A. No. 272 of 2003 is condoned.

3. M.A. No. 272 of 2003 has been filed by the owner of vehicle against judgment and award dated 26.6.2000 by which the learned District Judge-cum-Motor Accidents Claims Tribunal, Begusarai (''the Tribunal'') allowed Claim Case No. 71 of 1995 filed by the respondent No. 1 (claimant) Manti Devi and directed the appellant (opposite party) Binod Choudhary to pay Rs. 2,00,000 with interest at the rate of 12 per cent per annum to claimant-respondent No. 1 as compensation due to the death of her husband Chhotelal Sah in an accident dated 27.4.1995 by bus bearing registration No. BR 11-0875 which belonged to the appellant.

4. M.A. No. 197 of 2005 has also been filed by the same person, namely, owner of the vehicle Binod Choudhary against order dated 21.5.2003 by which the learned Tribunal rejected Miscellaneous Case No. 81 of 2001 filed by appellant for reviewing and setting aside the above-mentioned judgment and award dated 26.6.2000 of the said Tribunal passed in Claim Case No. 71 of 1995.

5. From the aforesaid facts and circumstances, it is apparent that the aforesaid ex pane judgment and award of the Tribunal dated 26.6.2000 had been challenged after about one year by the appellant before the same Tribunal vide Miscellaneous Case No. 81 of 2001 and only when the said miscellaneous case was dismissed by the Tribunal on 21.5.2003 the appellant filed M.A. No. 272 of 2003 on 4.8.2003 challenging the aforesaid judgment and award dated 26.6.2000. It further transpires that the order of the Tribunal dated 21.5.2003 passed in Miscellaneous Case No. 81 of 2001 had also been challenged earlier by a separate miscellaneous appeal filed on 31.7.2003 and subsequently the said miscellaneous appeal was numbered as M.A. No. 197 of 2005. Hence, the subject-matter of both the said miscellaneous appeals is the same.

6. Learned Counsel for the appellant, who is the owner of the vehicle, has submitted that the aforesaid claim case was decided ex parte as no notice of the claim case was served upon him because his address given in the case was incomplete. Learned Counsel for the appellant further stated that the appellant had no reason to avoid appearance in the claim case as the vehicle was fully insured and the owner was indemnified by the insurance policy with respect to the vehicle in question which was operative on the date of accident. Learned Counsel for the appellant also averred that the impugned judgment and award is also bad due to absence of any notice to the insurance company as per the provision of Section 168 of the Motor Vehicles Act (hereinafter referred to as ''the Act'' for the sake of brevity) and that the Tribunal failed in its duty to find out the name of the insurer and to issue notice to it and hence the entire proceeding of the claim case was absolutely illegal. Learned Counsel for the petitioner further contended that according to Section 151 and Section 160 of the Act it was the duty of the claimant to get information about the name of the insurer and implead it in the claim petition, but even the claimant did not comply the legal requirements due to which his claim should have been rejected by the Tribunal. Learned Counsel for the appellant relied upon a decision of the

Hon''ble Apex Court in case of Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, .

7. On the other hand, learned Counsel for the respondents including the insurance company has submitted that it is apparent from the records of the claim case that in spite of valid service of notice to the owner of vehicle in question, namely, the appellant, he did not appear in the claim case, nor informed the court that the vehicle was insured with the insurer. It is also stated that the claimant-respondent No. 1 who is an illiterate lady and has been rendered absolutely helpless due to the death of her husband in the accident, had no knowledge or information regarding any insurance of the vehicle in question and hence there was no occasion for her to implead the insurance company for issuance of notice to it. Learned Counsel for respondents further stated that in the aforesaid circumstances, notice could not be sent to the insurer only due to non-appearance of the appellant in the claim case even after receiving the notice. Learned Counsel for the respondents also averred that admittedly the accident had happened by the bus of the appellant and a criminal case was also lodged with respect thereto regarding which the appellant has not claimed any absence of information, but he did not inform the insurer about the said accident, which was his duty as per the terms of insurance and hence he failed to discharge his duties. Thus, they claimed that the impugned judgment and award was legal and proper and the appellant had no face to challenge the same.

8. Considering the respective claims of the parties, the materials on record and the impugned judgment and award of the learned court below, it is quite apparent that there are some admitted facts, namely, that accident had taken place on 27.4.1995 by the bus in question owned by the appellant in which the husband of the claimant-respondent No. 1 was killed and regarding which a criminal case was also initiated and that the appellant had full knowledge of the aforesaid accident and the criminal case. However, the appellant denies that he had any knowledge or information about the claim case and that any notice of the claim case was received by him.

9. From the records of Miscellaneous Case No. 81 of 2001 it is quite apparent that even the documents of the appellant, e.g., certificates of insurance and ownership, etc. show that his address was Binod Choudhary, Sanskrit Bhavan, Purnea and whereas from the record of the claim case it transpires that notices were issued to the appellant in the claim case on the very same address mentioned above and when he did not appear, notices by registered cover were also sent to him on the same address and when even then he did not appear, gazette publication with respect to the claim case against the appellant was made giving the same address. Due to this repeated step for notice upon the appellant (owner of the vehicle) the claim case remained pending for five years. Even according to appellant''s claim he had full knowledge and information of the accident and the criminal case.

10. On the other hand, appellant could not produce any documentary evidence in that regard and only a witness Amulya Ratan Chakarvarty was adduced as AW 1 who merely stated that the appellant, who has a transport agency, was ill and did not receive any notice, but the said witness is admittedly an employee of the appellant. However, he admitted that a relative of the appellant, namely, Naresh Choudhary went to the house of the deceased one month after the accident and met with the wife, respondent No. 1 and other relatives of the deceased.

11. On assessment of the aforesaid facts and materials, it is quite clear that appellant had full knowledge, notice and information about the claim case but he knowingly and intentionally did not appear in the said case, nor he even informed the Tribunal that the vehicle was insured for reasons best known to him. This aspect of the matter has also been fully considered by the Tribunal in its impugned order dated 21.5.2003 passed in Miscellaneous Case No. 81 of 2001 in which this Court does not find any illegality or irregularity.

12. Under the provision of Section 151 of the Act, it is duty of the person against whom a claim is made in respect of any liability, which may be incurred by him in respect of the death of any person, to state whether or not he was insured in respect of that liability by any policy issued under the provisions of Chapter XI of the Act. But in the instant case in spite of having full knowledge, notice and information about the claim case, as held above, the appellant, who is the owner of the vehicle and against whom the claim was made, failed to discharge his duty to give specific information required to the court. It has also come on record that although he had full knowledge and information about the accident and criminal case lodged in that regard but he failed to give any information about the accident to even the insurance company. Hence, it is quite apparent that he failed to discharge his duties, which were specifically provided under the law.

13. Appellant has relied upon the provisions of Sections 160 and 168 of the Act. Section 160 of the Act provides that a registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish details to that person or to the insurer. Hence, the said provision of the Act provides a duty upon the authority and police officer concerned to give information with respect to an accident by a motor vehicle if required to the claimant or the insurer, hence there is no applicability of the said provisions in the instant case. There was no occasion for the claimant in the instant case to require any such information as he had full knowledge with respect to the accident of the motor vehicle and he had already filed the claim case. So far insurer is concerned, no information with regard to the accident was given to insurer by the owner of the vehicle, namely, appellant and hence there was no occasion for applicability of the said section even on the insurer.

14. Provision of Section 168 of the Act prescribes that on receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties an opportunity of being heard, hold an inquiry into the claim and subject to the provisions of Section 162 may make an award determining the amount of compensation. Here in the instant case, notices were sent repeatedly to the appellant, who was opposite party in the claim case and hence opportunity of being heard was sufficiently given to him but even then he did not appear and inform the court that the vehicle was insured nor he disclosed the name of the insurer and hence there was no occasion for the court to give any notice of the claim application to any insurer. Hence, due to the appellant himself, who abstained and desisted from appearing in the claim case, the Tribunal was unable to send notice to the insurance company.

15. However, Section 170 of the Act provides that where the Claims Tribunal is satisfied that the person against whom the claim is made has failed to contest the claim, it may direct that the insurer who may be liable in respect of such claim, shall be impleaded as party to the proceeding, whereupon the insurer shall have the right to contest the claim on the grounds that are available to the person against whom the claim has been made, namely, the owner of the vehicle. In the instant case, the appellant (owner of the vehicle), was the person against whom claim was made, but in spite of full knowledge, notice and information of the case he did not contest it, due to which the alleged insurance of the vehicle was not known either to the claimant or to the Tribunal and hence there was no occasion for them to get the insurer impleaded in this claim case.

16. It may be mentioned here that Section 168 (3) of the Act specifically provided that when an award is made under this section the person who is required to pay any amount in terms of such award shall, within 30 days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct. The appellant, who is the owner of the vehicle and is the person who is required to pay the compensation as per the award dated 26.6.2000, did not perform the aforesaid statutory duty and after more than eight months merely filed Misc. Case No. 81 of 2001 for a review of the said judgment and award, for which there is no provision in the Act.

17. Learned Counsel for the appellant cited a decision of the Hon''ble Apex Court in the case of Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, . The said decision is with respect to the provisions of the earlier Motor Vehicles Act, 1939. By the said decision, it was held that exclusion clause under the provisions of Section 96 of the said Act did not exclude the insurer but in the instant case there is no question of any exclusion, rather it is a matter with respect to intentional non-appearance of the appellant before the Tribunal in spite of knowledge, notice and information and not bringing on record any such fact claim or material. Hence, the said case-law is not applicable to the facts and circumstances of the instant case.

18. The learned court below specifically found that the materials on record had proved beyond any doubt that deceased Chhotelal Sah, husband of respondent No. 1 was the man, who was killed in the motor vehicle accident dated 27.4.1995, which had taken place due to rash and negligent driving of the driver of the vehicle owned by the appellant, for which Bachchwara P.S. Case No. 40 of 1995 was lodged and after investigation, the police had submitted charge-sheet in the said case against the driver of the vehicle. In the aforesaid circumstances, the claimant, respondent No. 1 was clearly entitled to get compensation for the death of her husband in the said accident, but she has been deprived of it for about 12 years by the appellant and that too when she has lost her bread-earner.

19. It was fully proved by the evidence of PW 1 and PW 2 that the deceased was the owner of a betel shop, from which his earning was Rs. 3,000 per month and the said evidence stood unrebutted. Hence, the court below deducted 1/3rd of the said income towards the personal expenses of the deceased and found monthly dependency of claimant to be Rs. 2,000 and Rs. 24,000 yearly. The deceased was found to be aged 24 years and hence the learned court below used multiplier of 8 and fixed the amount of Rs. 1,92,000 towards loss of dependency and in addition thereto awarded Rs. 5,000 towards loss of consortium and Rs. 3,000 towards loss to estate and fixed the total amount of compensation at Rs. 2,00,000 to be payable by the appellant, opposite party No. 2, the owner of the bus in question with interest at the rate of 12 per cent per annum from the date of filing of the claim petition to the date of payment.

20. The aforesaid findings of the learned court below are in conformity with the provisions of law and I do not find any illegality or even irregularity in the same and hence the impugned judgments and award require no interference. Accordingly, these two miscellaneous appeals are hereby dismissed, but in the facts and circumstances of these cases, there would be no order as to costs.