
(2008) 12 PAT CK 0059

Patna High Court

Case No: M.A. No. 562 of 2008

United India Insurance Co. Ltd.

APPELLANT

Vs

Bibi Nurfan Nisha and Another

RESPONDENT

Date of Decision: Dec. 4, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 141(1), 149, 149(2), 149(2)(a)(i)(ii)(iii), 170

Citation: (2009) 1 PLJR 325

Hon'ble Judges: C.M. Prasad, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

C.M. Prasad, J.

This appeal is against the award of Motor Accident Tribunal which awarded an award of Rs. 1,34,500/- with interest @ 6% per annum to the Respondent No. 1/ claimant. The accident which gave rise to the claim case was stated to be an accident involving the death of deceased who was employed as laborer on the tractor and who died in an accident of being crushed under the wheels of the tractor. The appellant who is Insurance Company has been directed to pay the compensation amount has filed the instant appeal. The Stamp Reporter vide his report dated 25th September, 2008 has raised objection to the maintainability of this appeal saying that the appeal is not maintainable due to the reason that the appellant had not taken leave u/s 170 of the Motor Vehicles Act (hereinafter, referred to as the "Act") for contesting the claim.

2. An appeal under the Act is filed u/s 173 which mentions about the filing of statutory amount of money only and, as such, the appellant has right to file appeal.

3. The appellant has filed this appeal challenging his liability to pay compensation on the ground that the Insurance Policy executed by the appellant did not cover risk of

laborers employed on the tractor. Learned counsel for the appellant submits that the appellant does not challenge the quantum of compensation in this appeal and its sole ground is denial of liability as a whole.

4. Section 149(2)(a)(i)(ii)(iii) and (d) of the Act mention that the grounds on which the Insurance Company can contest the claim are breach of condition of policy, vehicles being driven by unlicensed driver and damages incurred due to war and such situation as well as non-disclosure of material fact in obtaining policy of Insurance. Further Section 141(1) of the Act provides that the insurer can take defence other than those as under Clause (2) of the Section i.e. the ground available to the owner of the vehicle but on obtaining leave of the Tribunal for the purpose.

5. Thus, the Insurance Company can defend by denial of its liability only in the manner as provided u/s 149(2) of the Act as discussed above and it appears that for this purpose any leave of the Tribunal is not required. But for taking a defence otherwise than those as provided under Clause 2 to Section 149 of the Act, i.e. the grounds like challenging the quantum of compensation or taking defence of contributory negligence, leave of the Tribunal would be necessary. Since leave of the Tribunal for such ground as falling beyond the grounds provided u/s 149(2) of the Act is necessary and, therefore, such leave would also become necessary requirement for the purpose of filing an appeal u/s 173 of the Act.

6. In the instant case, the appellant-Insurance Company admits that it had not taken leave of the Tribunal u/s 170 of the Act. But it is the case of the appellant-Insurance Company before the appellate court that the Insurance Company has not filled this appeal for the purpose or on any ground challenging the quantum of compensation or taking the defence of contributory negligence.

7. Learned counsel for the appellant submits that this appeal is only for the purpose and on the ground of total denial of the appellant's liability in the payment of compensation as claimed. Since a defence on this ground i.e. the total denial of liability could be taken before the Claims Tribunal without any leave u/s 170 of the Act, there does not appear to be any impediment in maintenance of this appeal on this ground before the appellate court. In such view of the matters, this appeal is held maintainable. The Stamp Reporter's report is overruled.