

(2011) 10 PAT CK 0050

Patna High Court

Case No: Miscellaneous Appeal No. 21 of 2010

National Insurance Company
Ltd.

APPELLANT

Vs

Bechu Goshwami @ Ajay
Goswami and Shri Jaglal
Choudhary

RESPONDENT

Date of Decision: Oct. 21, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 161, 166, 173
- Penal Code, 1860 (IPC) - Section 279, 304(A), 337, 338

Citation: (2012) 2 PLJR 8 : (2012) 2 TAC 86

Hon'ble Judges: Rakesh Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar, J.

The present appeal u/s 173 of the Motor Vehicle Act (hereinafter referred to as the "M.V. Act") has been preferred against the judgment dated 11.08.2009 and award dated 05.12.2009 in M.V. Claim Case No. 12 of 2008 passed by the District Judge-cum-Claim Tribunal, Buxar (hereinafter referred to as the "Claim Tribunal"). By the impugned judgment and award the learned Claim Tribunal has directed the appellant / insurer of the offending tempo to pay total compensation amount of Rs. 1,79,500/- to the claimant / respondent no. 1 along with interest at the rate of 6% per annum from 11.04.2008 i.e. the date of filing of the claim application till the date of recovery.

2. Short fact of the case is that on 02.08.2003 the claimant / Respondent No. 1 along with his wife and children had come from Punjab and got down at Dumraon Railway Station, and thereafter, on a tempo having registration no. B.R.44-4449 was moving

towards his village and when the tempo reached near Maharaja Hatta on Ara-Buxar main road a truck, number of same could not be noticed, being rashly and negligently driven by the driver dashed the tempo. The accident had taken place at about 11.00 p.m. on 02.08.2003. In the said accident wife of the claimant namely Sushila Devi died. After the accident an F.I.R. vide Dumraon P.S. Case No. 105 of 2003 was registered for the offence under Sections 279, 337, 338 and 304(A) of the Indian Penal Code on the basis of fardbeyan of the claimant. After the death post mortem examination was done on the dead body of the deceased. Subsequently, a claim petition vide M.V. Claim Case No. 12 of 2008 was filed before the learned Claim Tribunal. To prove the case claimant examined altogether three witnesses and number of documents were got exhibited. Certified copy of the F.I.R. was got marked as Exhibit 1, certificate of registration of the offending vehicle Exhibit 2, photo copy of post mortem report Exhibit 3, photo copy of policy of the offending tempo as Exhibit 4, certificate of family members issued by Circle Officer, Dumraon as Exhibit 5 and photo copy of driving licence of the driver of the offending tempo who was arrayed as opposite party no. 2 was marked as Exhibit 6. After hearing the parties and considering the evidence on record, the learned Claim Tribunal has passed the impugned judgment and award.

3. Aggrieved with the impugned judgment and award, the appellant / insurer of the offending vehicle has filed the present appeal.

4. Sri Shailendra Kumar, learned counsel for the appellant has mainly assailed the judgment on three grounds. It was firstly argued that it was a case of hit and run, and as such, it was covered u/s 161 of the M.V. Act for which the insurer i.e. the appellant was not liable to make payment of compensation amount in view of section 166 of the M.V. Act. Second ground was that neither the insurer nor the owner of the truck which had collided with the tempo were arrayed as opposite parties by the claimant before the court below. And lastly, it has been argued that the driver of the tempo on the date of occurrence was having licence for driving private vehicle not as a professional driver. Alternatively, it was argued by Sri Shailendra Kumar, that it was a case of contributory negligence since two vehicles were involved in the accident. It was a collusion between a truck and a tempo, and as such, alternatively it has been argued that hardly the appellant can be liable to pay proportionate compensation amount and not entire compensation amount as directed by the Claim Tribunal.

5. Learned counsel for the appellant with a view to elaborate his argument that in case of no valid driving licence the insurer was not liable to pay any compensation amount has highlighted Exhibit 6 i.e. photo copy of the driving licence of the driver which was for private vehicle. Initially it was argued by learned counsel for the appellant that the tempo was dashed from back by the truck. However, on the basis of evidence on record he was not in a position to establish his argument that in the present case the tempo was dashed by the truck from the back.

6. Sri Rakesh Kumar, learned counsel appearing on behalf of respondent no. 1 (claimant) has vehemently opposed the prayer of the appellant. It was submitted that evidence brought on record categorically establishes the case that the tempo driver was driving rashly and negligently which has come in the evidence of the claimant who at the time of accident was one of the occupant of the tempo. Such fact was noticed by the learned Claim Tribunal, and as such, the plea of hit and run which has been taken on behalf of the appellant is not sustainable and is fit to be rejected.

7. Regarding non-impleading either of the insurer or the owner of the truck which was involved in the collusion, it was argued that from the F.I.R. itself it is evident that the truck driver was driving the truck rashly due to which accident had occurred, and thereafter, the driver of the truck fled away along with the truck which could not be traced, and as such, it was difficult for the claimant to implead the driver or the owner of the said truck. On the point of driving licence of the driver of the offending tempo, it was difficult for learned counsel for the respondent (claimant) to advance any satisfactory argument.

8. In this case, Sri Ashok Kumar Singh, learned counsel has appeared on behalf of opposite party no. 2 & 3 i.e. the owner and the driver of the offending tempo.

9. Perusal of the evidence and material on record makes it clear that in the present case the truck and the tempo had collided, and in the said accident, wife of the claimant had died. From the fardbeyan of the claimant which is the basis of the F.I.R. i.e. Exhibit 1, it is evident that the claimant had made specific assertion that while he along with deceased and children was traveling on the tempo, he noticed that the driver of a truck was driving the truck rashly and negligently, and thereafter, the truck had dashed the tempo. However, in evidence before the learned Claim Tribunal he has clarified that the tempo driver was also driving the tempo rashly and negligently and due to rash and negligent driving accident had taken place. Similarly, since the driver of the truck had fled away after the accident with the truck, neither the driver nor the owner of the truck could be impleaded as opposite party by the claimant, and as such, non-impleading them as opposite party has occurred which was beyond the control of the claimant. Accordingly in view of the fact of the case non-impleading driver or insurer of truck was not sufficient for interference with the impugned judgment and award. So far the plea of non-availability of the valid driving licence of the driver of the tempo is concerned, there was no need for the appellant to raise such plea in view of the fact that the learned Claim Tribunal has already granted liberty to the appellant to recover the compensation amount in accordance with law.

10. In view of the evidence, the court is of the opinion that it was a case of contributory negligence, and as such, the learned Claim Tribunal while directing the appellant to pay entire amount of the compensation has committed an error which requires to be rectified.

11. In the facts and circumstances, the court is of the opinion that directing the appellant to pay 60% of the compensation amount along with interest as directed by the learned Claim Tribunal will serve the purpose.

12. Accordingly, the appeal stands partly allowed directing the appellant to pay 60% of the compensation amount to the claimant along with interest at the rate of 6% as indicated by the court below from the date of filing of the claim petition till the date of payment. The appellant is directed to pay the compensation amount along with interest within a period of two months from the date of receipt / production of a copy of this order.

13. At the time of admission of the appeal a stay was granted in favour of the appellant on a condition that the appellant shall deposit the compensation amount i.e. Rs. 1,79,500/- along with interest at the rate of 6% from 11.04.2008 in the court of Certificate Officer within a period of six weeks. It has been informed by Sri Shailendra Kumar, learned counsel for the appellant that in compliance with the order of this court the appellant has already deposited the said amount in the court of Certificate Officer.

14. In view of aforesaid direction i.e. payment of 60% of the compensation amount with interest within two months to the claimant the appellant shall be entitled to get back the amount deposited before the Certificate Officer.

15. The statutory amount deposited at the time of filing of the present appeal be remitted back to the court below for its payment to the claimant.

16. The appeal stands partly allowed.