

Oriental Insurance Company Ltd. Vs Most. Sita Devi and Others

Court: Patna High Court

Date of Decision: Sept. 30, 2008

Acts Referred: Penal Code, 1860 (IPC) â€” Section 279, 304A, 337, 338, 427

Citation: (2009) 1 PLJR 443

Hon'ble Judges: S.C. Jha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.C. Jha, J.

Heard learned counsel for the parties. This appeal has been filed for setting aside judgment dated 16.2.2005 and award

signed on 26.2.2005 passed in M.V. Claim Case No. 31/2002 by Additional District Judge-cum-Motor Vehicle Claims Tribunal, Begusarai,

whereby and whereunder the learned Tribunal has ordered Opposite Party No. 2, Regional Manager, Uttar Pradesh Transport Corporation,

Dehradun and O.P. No. 4, Oriental Insurance Company which is insurer of DCM Kainter of vehicle bearing Registration No. DL-1L0696, to pay

jointly compensation of Rs. 2,31,500/- (Two lacs thirty-one thousand five hundred) with interest @ 6% per annum from the date of filing of the

claim petition i.e.19.4.2002 till date of payment with a direction to both the Opposite Parties should bear half and half i.e. 50% of the claim

amount.

2. The appellant happens to be Insurer of DCM Kainter vehicle bearing Registration No. DL-1L-0696 and appellant No. 2 is the local office

bearer of the same Insurance Company, Begusarai.

3. Legal heirs and dependent of Late Triveni Das has filed the aforesaid claim case with the facts that on 11.9.2000, the deceased Triveni Das was

driving the vehicle bearing Registration No. DL-1 L-0696 and was proceeding towards Chhutmalpur and when he was crossing Pandev Dhaba

situated at Rudhki Mudgaam Madkala, the driver of vehicle No. UP-07-2768 was coming from the opposite direction by driving the vehicle rashly

and negligently and dashed the vehicle No. DL-1 L-0696 from the front side which resulted in spot death of deceased Triveni Das, who was

brought to Sadar Hospital, Saharanpur, where his Post Mortem was done and on the statement of the Dhaba owner, F.I.R. was instituted vide

Fatehpur P.S. Case No. 139 of 2000, Saharanpur, under Sections 279, 337, 338, 427, 304A of Indian Penal Code.

4. Xerox copy of F.I.R. (Exts. 3 and 1) respectively has been filed.

5. It is also case of the petitioner-claimants who is Respondent No. 1 here in this appeal who is owner of the vehicle D.C.M. Kainter bearing

Registration No. DL-1 L-0696 and O.P. No. 2 was the registered owner of the vehicle Bus UP-S.R.T.C. Dehradun, bearing registration No. UP-

07G-2768.

6. O.P. No. 3 is the driver of the vehicle Bus of UP-S.R.T.C. mentioned above whereas O.P. 4 was the Insurer of the vehicle of D.C.M. bearing

Registration No. DL-1L-0696 and O.P. 5 was the local office Insurer of the same vehicle. O.P. 6 is the Insurance Company (not known) of the

UP S.R.T.C. Bus.

7. The learned Tribunal has considered the written statement filed on behalf of O.Ps. 2 and 3. It was the case that the offending vehicle of UP

S.R.T.C. bearing Registration No. UP-07G-2768 dashed against the vehicle bearing Registration No. DL-1L-0696 as a result driver of this

D.C.M. vehicle died on the spot because of rash and negligent driving of the UPS.R.T.C. Bus.

8. The learned Tribunal framed issues amongst which Issue numbers 2 and 3 are quoted below:-

Issue No. 2.-Whether the deceased Triveni Das died in a vehicular accident collision due to rash and negligent driving of the vehicle bearing

Registration No. UP/07G-2768 on the alleged day of the occurrence.

Issue No. 3.-Whether the claimants are entitled to get the compensation with respect to the death of late Triveni Das as claimed by them and if so,

from whom?

9. Issue Nos. 2 and 3 have been decided jointly being taken up together and after considering the evidence of the applicants and taking into

consideration the age factor etc. of the victim driver of the vehicle DCM registration No. DL-1L-0696, the Tribunal concluded in last few lines in

paragraph 12 of the judgment that ""on the basis of Post Mortem report it can be very well summed up the death of the deceased was caused by rash

and negligent driving by the driver of the Bus bearing No. UP-07G-2768 while the deceased was on the driver seat of the vehicle No. DL-1L-

0696"".

10. It has been submitted on behalf of the appellants that it was singular act of rash and negligent driving by the driver of UP-S.R.T.C. Bus which

caused a frontal head on collision with the smaller DCM Kaintar Vehicle as a result of which the driver of the smaller vehicle died at the spot, so

the driver of the said smaller vehicle who ultimately met his tragic end should not be held responsible for accident, when no such claim or any such

circumstance have been brought on the record of learned Tribunal.

11. In the circumstances, the liability to meet remaining 50% of the compensation amount on the shoulder of owner or insurer of the heavy vehicle

of UP-S.R.T.C. cannot be fastened on the appellant, for which the judgment and order of the learned Tribunal to pay compensation half and half

to both the opposite parties is not at all justified.

12. Having considered the facts and circumstances of the case as also materials available on the record and the reasons assigned by the learned

Tribunal, I do not find any reason as to why the learned Tribunal has fastened such liability of paying 50% amount in respect of payment of

compensation by the insurer of the lighter vehicle, the driver of which was ultimately killed by head on collision with the heavy vehicle of UP-

S.R.T.C.

13. Thus, I find force in the contention of the learned counsel for the Insurance Company that the entire burden for payment of compensation

amount should be on the shoulder of O.P. No. 2 i.e. Regional Manager, Uttar Pradesh Transport Corporation, Dehradun.

14. The learned counsel for the U.P. Road Transport Corporation has no doubt made serious efforts to justify the impugned order passed by the

learned Tribunal. But he could not meet all those points raised on behalf of the appellants so far rash and negligent driving of the heavy vehicle

causing death of the driver of the smaller vehicle is concerned. Nothing has been brought on the record to show that the driver of the smaller

vehicle was at all responsible for contributing the accident.

15. In the facts and circumstances, the impugned order is not sustainable on facts as also in the eye of law and so that portion of the order so far

sharing 50% liability of payment of compensation to the claimants by the appellants is hereby set aside. Rather, the entire amount of compensation

is directed to be paid by the Respondent No. 5, Regional Manager, Uttar Pradesh Transport Corporation (O.P. No. 2). Other conditions will

remain the same. With the aforesaid modification, this appeal is allowed.