

(2014) 05 PAT CK 0021

Patna High Court

Case No: Miscellaneous Appeal No. 588 of 2007

Zafar Alam

APPELLANT

Vs

Divisional Manager, N.I.C. Ltd.

RESPONDENT

Date of Decision: May 7, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 166, 173
- Penal Code, 1860 (IPC) - Section 414

Citation: (2014) 4 ACC 362 : (2015) ACJ 1725 : (2014) 3 PLJR 466

Hon'ble Judges: A.K. Lal, J

Bench: Single Bench

Advocate: Ashok Kumar Sinha and Shyam Sunder Pandey, Advocate for the Appellant;
Ashok Priyadarshi, Advocate for the Respondent

Judgement

A.K. Lal, J.

This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 by the claimants against the judgment and order dated 22.9.2007 passed by the learned Additional District Judge, F.T.C.-II, Nawada-cum-Motor Accident Claims Tribunal in M.V. Claim Case Nos. 97/2004/20/2007 by which the claim application filed by the appellants has been dismissed. The case of the appellants, in brief, is that on 25.11.1996, the driver Shamim Khan, Khalasi Sajid Khan and owner Manjar Alam were going to Samastipur after loading coal from Jharia on Truck bearing registration No. WB-03-0312. On 26.11.1996 at about 4.00 P.M., the Truck crossed Nawada and Biharsharif. In the meantime, the unknown criminals kidnapped the truck with the aforesaid persons and killed them. After search, the truck was located at Biharsharif on 2.1.1997. Laheri P.S. Case No. 2/97 was instituted for the offence punishable under Section 414 of the Indian Penal Code. After investigation, it came to light that the aforesaid driver, Khalasi and owner of the vehicle were killed and their dead bodies were thrown in the river Ganga. The truck was insured by the National Insurance Company (respondents) for the period from 13.11.1996 to

17.8.1997 (Ext.-9), as such, the insurance company is liable to pay the amount of compensation. Manjar Alam, owner of the vehicle (deceased) died issueless and his wife married to Pravin Alim Ahmad, as such, the parents of the deceased Manjar Alam, aged about 28 years and earning Rs. 5,000/- per month filed the claim case under Section 166 of the Act for grant of compensation to the tune of Rs. 7,50,000/-. It has been further stated that the Driver and Khalasi got the compensation under the Workmen's Compensation Act.

2. The National Insurance Company, the insurer of the vehicle filed written statement that the claim petition is not maintainable against it. It was not an accident, but a criminal act. The occurrence does not come under the purview of motor accident.

3. On the basis of pleadings of the parties, issues were framed. The oral as well as documentary evidence were adduced on behalf of the claimants.

4. Considering the material on the record, the learned Tribunal held that the owner of the vehicle does not come under the purview of third party. From perusal of the insurance policy, it appears that the vehicle was insured, but it does not appear that the vehicle was insured for other purpose than the accident and not for the death of the insured.

5. The learned counsel for the appellants submits that the vehicle was insured at the time of occurrence. The deceased (owner of the vehicle) was travelling on the vehicle also as the owner of the coal laden on the truck from Jharia, as such; the claimants should be entitled to get the amount of compensation. This aspect has not been considered by the Tribunal. The Tribunal has only gone into the facts that the deceased Manjar Alam was the owner of the vehicle, which does not come under the purview of a third party, as such, the amount of compensation has been denied to the claimants, parents of the deceased.

6. The learned counsel for the insurer has submitted that it is admitted fact that the vehicle, in question, was insured under the insurance policy (Ext.-9). From perusal of the insurance policy, it appears that the vehicle was insured comprehensive third party. The owner of the vehicle was not insured and no extra premium has been paid by the owner of the vehicle. The employees on the truck, who comes under the purview of Workmen's Compensation Act were also covered by the insurance policy. The owner of the goods was also not insured. Admittedly, the deceased Manjar Alam was the owner of the vehicle, as such, no compensation was payable for his death. In support of his contention, he has relied upon the following decisions:--

(i) Civil Revision No. 920/2004 (The Branch Manager, National Insurance Company Ltd. v. Samdeya Devi and Ors.).

(ii) [Dhanraj Vs. New India Assurance Co. Ltd. and Another, .](#)

(iii) [New India Assurance Company Limited Vs. Prabha Devi and Others, .](#)

7. After hearing the learned counsel for both the parties and on perusal of the records, it appears that the vehicle, in question, was insured by the National Insurance Company Limited (respondents) at the time of occurrence. On perusal of the insurance policy (Ext.-9), it appears that the vehicle was insured comprehensive third party, fire and/or theft. There was no special insurance for the owner of the vehicle or goods. The deceased was travelling on the vehicle alongwith driver and khalasi of the vehicle.

8. In case of New India Assurance Company Limited v. Prabha Devi and Others (supra), it has been considered regarding the extension of statutory benefit of insurance of third party to the owner of the vehicle when he is injured/dies in accident involving insured vehicle. In this context, several decision of the Hon"ble Supreme Court including Dhanraj case (supra) have been considered. In paragraph-8, it has been held as follows [Dhanraj Vs. New India Assurance Co. Ltd. and Another, :-](#)

"Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows:--

8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In Oriental Insurance Co. Ltd. v. Sunita Rathi, it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

9. In view of the facts and circumstances of this case and the decisions of the Hon"ble Supreme Court, I do not find any ground to interfere with the impugned judgment.

10. In the result, this appeal is dismissed. The parties will bear their own costs.