

IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A.No. 101 of 2021

National Insurance Company Limited, (Insurer of Truck No. JH-11F-9616, Axis Bank Building, 1st Floor, P.O. & P.S. Giridih (T), District-Giridih, through its Jharkhand Legal Cell, Kutchery Road, P.O. Ranchi University, P.S. Kotwali, District-Ranchi. Appellant

Versus

1. Asmin Parveen @ Nagmi, Aged about 22 years, Daughter of Md. Israfil, Resident of Village-Bucha-Nawadih, P.O. Chapuwadih, P.S. Bengabad, District-Giridih, A/P R/O Village & P.O. Amritnagar, P.S. Raniganj, District-Burdwan (West Bengal).
2. Sudhir Kumar Saw (Owner of Truck No. JH-11F-9616), Son of Bhagwan Saw, Resident of Mangalam Tower, Near Zila Parishad, P.O. & P.S. Giridih (T), District-Giridih-815301.
3. Dilip Sonar (Insured Owner of Truck No. JH-11F-9616), Resident of Village-Baddiha, P.O. Mirzaganj, P.S. Jamua, District-Giridih-815315.
4. Ghanshyam Yadav (Driver of Truck No. JH-11F-9616), Son of Amir Mahto, Resident of Village-Karmatand, P.O. & P.S. Gandey, District-Giridih-815312.
5. Surendra Kumar, (Owner of Bolero Vehicle No. JH-02U-5280), Son of Basudeo Hazam, Resident of Kalali Road, P.O. & P.S. Barhi, District-Hazaribagh.
6. Md. Arif (Driver of Bolero Vehicle No. JH-02U-5280), Son of Noor Mian, Resident of Village-Mandardih, P.O. Chakardaha, P.S. Bengabad, District-Giridih-815312. ... Respondents

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Manish Kumar, Advocate

For the Res. No.3 : Mr. Rohit Ranjan Sinha, Advocate

Order No. 06/ dated 19.11.2024

On behalf of appellant, learned Counsel Mr. Manish Kumar and on behalf of respondent No.3, learned Counsel Mr. Rohit Ranjan Sinha are present.

2. No one appears on behalf of rest of the respondents.

3. This Appeal has been preferred on behalf of appellant-National Insurance Company dissatisfied with the Judgment/Award dated 31.08.2019 passed in Motor Accident Claim Case No. 31 of 2018 by the learned District Judge-II cum M.A.C.T., Giridih whereby the learned Tribunal has directed to pay a sum of Rs. 2,85,275/-.

4. The brief facts leading to this Misc. Appeal are that the Claim Petition was filed on behalf of claimant Asmin Parveen @ Nagmi with these averments that on 21.04.2017 she along with her family members was going to her house by the Bolero Vehicle No. JH-02U-5280 after having attended the marriage ceremony from Deoghar and at 12:30 when she reached near the village Jhalakdiha, the driver of the Truck No. JH-11F-9616 driving the Truck rashly and negligently dashed to the Bolero Vehicle whereby Md. Adil Ansari died at the spot and the claimant along with other passengers sustained injuries. They were brought to the Sadar Hospital for treatment. Bengabad P.S. Case No. 128 of 2017 was registered under Sections 279, 337, 338 and 304(A) of I.P.C. against the driver of offending Truck No. JH-11F-9616. The claimant was a private tutor cum B.Sc. student and was earning Rs. 10,000/- per month by giving tuition. She was 22 years old at the time of accident. Hence the compensation amount was claimed.

5. Notice were issued to O.P.No.1 the owner of the offending Truck, O.P.No.2 insured owner of the offending Truck, O.P.No.3 driver of the offending Truck, owner of the Bolero Vehicle No. JH-02U-5280 and O.P.No.6 driver of the Bolero but none of them appeared. Hence the proceeding of the Claim Petition was proceeded against them ex parte.

6. The O.P.No.4 the Insurance Company of the offending Truck filed the written statement in which it was stated that the Claim Petition was not maintainable indeed the **said accident was the result of head on collision between Bolero vehicle and the Truck.** The Insurance Company of the Bolero vehicle has not been impleaded party to this Claim Petition. The driver of Bolero was not having the valid and effective driving licence who was also negligent in causing the accident. It is further stated that **injured Asmin Parveen @ Nagmi is herself guilty of wilful contributory negligence and the case was of contributory negligence between the driver of the Bolero and the driver of the offending Truck.**

7. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues:

- i. Is the suit maintainable in its present form ?
- ii. Is there any cause of action for the suit ?
- iii. Whether the accident took place on 21.04.2017 at about 00:30 A.M. due to rash and negligent driving of the driver of offending vehicle i.e. Truck No. JH-11F-9616 causing injuries of the claimant Asmin Parveen ?

- iv. Was the driver of the alleged vehicle had valid and effective driving licence and the offending vehicle was insured with O.P.No.4 National Insurance Company Limited on the date and time of accident ?
- v. Is the Claimant entitled for compensation and if so, for what amount and from whom ?
- vi. To what relief or reliefs, if any, the Claimant is entitled ?

8. On behalf of claimant in oral evidence examined P.W.1 Md. Naushad, P.W.2 Md. Israfil and P.W.3 Asmin Parween @ Nagmi claimant herself and in documentary evidence filed exhibits Ext.-1 the C.C. of F.I.R. of Bengabad P.S. Case No. 128 of 2017, Ext.2- C.C. of Release Petition of Truck No. JH-11F-9616, Xerox copy of Money Receipt No. 307 dt. 23.4.17 of Jain Hospital is marked 'X' for identification, Original Discharge Slip of Jain Hospital is marked 'X/1' for identification, Original Medicine Final Bill of the Mission Hospital is marked 'X/2' for identification, Xerox copy of Insurance Policy of Truck No. JH-11F-9616 is marked 'X/3' for identification, Xerox copy of Authorization Certificate of Truck No. JH-11F-9616 is marked 'X/4' for identification, Xerox copy of Driving Licence of Ghanshyam Yadav is marked 'X/5' for identification, Xerox copy of Registration Certificate of Truck No. JH-11F-9616 is marked 'X/6' for identification.

9. On **behalf of O.P.No.5 National Insurance Company** **neither oral nor documentary evidence was adduced.**

10. The learned Tribunal allowed the Claim Petition and passed the impugned Award directing the Insurance Company to pay the amount of Rs. 2,85,275/- along with simple interest thereon @ 6% p.a. from the date of filing application till the date of realization of the compensation amount. Further the 9% interest was also directed to be paid if the said compensation amount was not paid by the Insurance Company within 60 days from the date of the passing of the Award.

11. The appellant has assailed the impugned Award on **two grounds firstly** the penal interest is illegal; **secondly** the claimant injured had not sustained any injury in the accident alleged to be caused by the offending Truck.

11.1 So far as the first plea is concerned, from the perusal of the impugned Award, it is found that the Appellant-Insurance Company was directed to pay the amount of compensation along with interest thereon within 60 days from the date of passing the Award and in failure of the same the Insurance Company was directed to pay the 9% interest on the amount of compensation till the date of realization of the compensation amount. **Up to this extent the impugned Award by which the penal interest has been directed to be paid is found bad in the eye of law and same requires interference as the penal interest should not have been awarded by the**

learned Tribunal because the claimant had to get the impugned Award executed under Section 174 of the M.V. Act. As such in the impugned Award penal interest is hereby struck off.

11.2 So far as the second plea raised by the Appellant assailing the impugned Award on **the ground that the claimant injured had sustained no injury by causing the accident by the offending Truck. This plea of the fact has been raised on behalf of the Appellant for the first time at the stage of appeal;** While before the learned Tribunal on behalf of the **Appellant Insurance Company in its written statement has admitted that the claimant Ashim Parveen @ Nagmi injured had sustained injury in the accident caused by the contributory negligence of the driver of Bolero as well as offending Truck.** This admission made by the Appellant-Insurance Company in the pleading of the written statement is binding upon the Appellant Insurance Company under Section 21 of Indian Evidence Act and cannot deviate from the same at the stage of appeal for the first time.

11.3 It is also pertinent herein that on behalf claimant to prove the said accident caused by the offending Truck have been examined altogether 03 witnesses **P.W.1 Md. Naushad, P.W.2 Md. Israfil and P.W.3 Asmin Parveen @ Nagmi.**

11.4 **P.W.1 Md. Naushad** is also **the eye-witness of the said accident**. He has also stated that he was coming by the Bolero vehicle after attending the marriage ceremony when the said Bolero reached near village Jhalakdiha, the Truck No. JH-11F-9616 dashed to the Bolero which was being driven by its driver rashly and negligently causing death of Md. Adil Ansari at the spot and other passenger including Asmin Parveen sustained injury. This witness has also stated that Asmin Parveen @ Nagmi had fracture in her left hand and jaw as well. No contrary conclusion could be drawn on behalf of the Insurance Company from this witness in cross-examination. **P.W.2 Md. Israfil** is also **the eye witness**. He was also travelling by the Bolero vehicle to which the offending Truck had dashed has corroborated the claimant's story. **P.W.3 is Asmin Parveen @ Nagmi injured eye witness herself**. She has also categorically stated that the offending Truck No. JH-11F-9616 had dashed to the Bolero vehicle which was being driven by its driver rashly and negligently causing death of Md. Adil Ansari her cousin and she and other family members sustained injuries.

11.5 On behalf of the claimant in documentary evidence also adduced the **F.I.R. of the Bengabad P.S. Case No. 128 of 2017 which was lodged against the driver of the Truck JH-11F-9616**. Moreover the prescription and medical bill were also filed on behalf of the claimant/victim and the case

of claimant is proved from the ocular evidence and documentary evidence as well, same was also corroborated with the admission made by the Appellant-Insurance Company in the pleadings of its written statement who did not adduce any oral or documentary evidence to controvert the pleading and evidence of the claimant. As such for the first time this factual plea cannot be raised on behalf of the Appellant challenging the impugned Award.

11.6 The Hon'ble Apex Court held in **Saroj v. Het Lal (2011)**

1 SCC 388 para 18 reads as under:

18. On considering the rival arguments, it must be said that the petition could not have been dismissed in totality. Presuming it to be a hit-and-run case, the appellants were entitled to at least Rs. 25,000 as per the provisions of Section 161(3)(a) of the Motor Vehicles Act. Therefore, both the courts below have obviously failed to note this provision. But that is not the end of the matter. In our opinion, both the courts below have completely erred in giving the finding that it was a hit-and-run case and that the vehicle concerned belonging to Respondent 2 was not involved in the accident. Insofar as that finding is concerned, it was an admitted position in the pleadings of Respondent 2 that firstly, the Tata 207 vehicle bearing Registration No. HR 38 L 6592 was involved in an accident with the motorcycle bearing Registration No. HR 26 P 9413 which took place on 16-9-2005 at 3.30 p.m. and secondly, the said vehicle was being driven by Respondent 1. This admission in the pleadings which we have quoted in the order was itself sufficient to hold that the vehicle concerned belonging to Respondent 2 was involved in the accident. This admission was never traversed by Respondent 2 and, thus, there was no occasion to hold that the said vehicle was not involved and that it was a hit-and-run case. It is surprising that not only the Tribunal but the High Court also should have ignored the vital admission on the part of Respondent 2. It was nobody's case that this admission of Respondent 2 was in

collusion between Respondent 2 and the appellants. Once this position is clear, there is no occasion for holding that the vehicle was not involved in the accident and on that count exonerating the three respondents.

11.7 The Hon'ble Apex Court held in **RAMA KT BARMAN (DIED) THR. LRS VERSUS MD. MAHIM ALI & ORS.** 2024 LiveLaw SC 637 that it is well settled principle of law that the Court cannot create any new case at the appellate stage for either of parties and Appellate Court is supposed to decide the issue involved in the suit based on pleading of parties.

Para 14 reads as under:

14. Apart from the fact that none of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court, none of parties was given any opportunity of leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties.

12. In view of the above analysis of the evidence on record, this Appeal is partly allowed to the extent that in the impugned Award, the penal interest is struck off and the rest of the part of appeal is dismissed affirming the impugned Award except striking off penal interest.

(Subhash Chand, J.)

P.K.S./A.F.R.