

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M. A. No. 186 of 2006

.....
The National Insurance Company Limited Appellant
Versus
Shila Devi & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

.....
For the Appellant : Mr. Alok Lal, Advocate
For the Respondent No. 1 : Mr. Bhaiya Vishwajeet Kumar, Advocate
For the Respondent Nos. 2 & 3 : Mr. Ram Lakhan Yadav, Advocate

.....
09/24.06.2020

Heard, learned counsel for the appellant, Mr. Alok Lal and learned counsel for the claimant, Mr. Bhaiya Vishwajeet Kumar and learned counsel for the owner and driver of the vehicle, Mr. Ram Lakhan Yadav from Giridih.

The short question involved in the present appeal preferred by the Insurance Company is whether under the old Act i.e. Motor Vehicles Act, 1939 the Insurance Company is only liable to pay Rs.15,000/- out of the awarded amount of Rs.1,75,800/-, the balance amount of Rs.1,60,800/- is to be paid by the owner and driver of the offending vehicle, for which Insurance Company has wrongly been fasten by the learned Tribunal.

Learned counsel for the appellant has relied on the written statement filed by Shiv Kumar Joshi, Divisional Manager, National Insurance Co. Ltd. on 27.09.1986 mentioning in paragraph-10, which is reproduced here:

“That without prejudice and without in any way admitting any liability whatsoever, it is submitted that the liability of the insurer is very much limited to the extent provided under concerning sub-section of the section 95(2) of the M.V. Act.”

Learned counsel for the appellant is directed to produce the Act of Motor Vehicles Act, 1939 to establish this fact on which he sought an adjournment to produce the same. This Court has further enquired from learned counsel for the appellant that from the same accident three others cases have been instituted before the claim Tribunal vide Claim Case No. 47 of 1985, Claim No. 88 of 1985 and Claim No. 19 of 1985.

Learned counsel for the appellant is directed to produce final out come of those cases so far the liability of the Insurance Company is concerned.

Learned counsel for the appellant has relied upon the various judgment of Hon'ble Apex Court and of Jharkhand High Court i.e. 2000 (2) AIR SC weekly 259 (New India Assurance Co. Ltd. Vs. C.M. Jaya & Others), AIR 1995 SC 1113 (New India Assurance Company Limited Vs. Shanti Bai), AIR 1988 SC 719 (National Insurance Company Limited Vs. Yugal Kishore), 2016 (1) JLJR 91 (National Insurance Company Limited vs. Ishwar Chand Mishra) (paragraph-4 onward), 2006 (3) JCR 97 Jharkhand, Kanhaiya Prasad Singh Vs. Vijay Krishna Sharma.

Learned counsel for the claimant, Mr. Bhaiya Vishwajeet Kumar has relied upon the judgment passed by Hon'ble Apex Court in the case of Maitri Koley & Another Vs. New India Assurance Co. Ltd. reported in 2004 (1) JLJR 41 SC.

Learned counsel for the claimant, Mr. Bhaiya Vishwajeet Kumar, has prayed for some time so as to see the actual amendment made in Section 95 (2) in the year 1982 and other relevant judgment passed by the Hon'ble Apex Court in this regard.

Learned counsel, Mr. Ram Lakhan Yadav is also directed to verify as to whether the owner has to pay the amount or the Insurance Company has to indemnify the award.

Put up this case after three weeks i.e. on 29.07.2020 for compliance of the order till 22.07.2020 and if any reply is to be filed that should be filed by 27.07.2020.

(Kailash Prasad Deo, J.)