

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No.223 of 2012

Ugni Bibi **Appellant**

Versus

1. Gobind Ram Hathampuria
2. Shital Mahto
3. Oriental Insurance Company Limited
4. Fatema Bibi
5. Salema Bibi
6. Halima Bibi
7. Hafija Bibi
8. Bulu Khatoon
9. Katki @ Fatki Khatoon
10. Hajrat Mian

.... **Respondents**

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

CAV ON : 22.02.2022

PRONOUNCED ON 13 .04.2022

For the Appellant : Mr. Rajeeva Sharma, Sr. Advocate
For the Respondents : Mr. Abhay Kumar Mishra, Advocate

1. Claimant has preferred the appeal against the judgment of dismissal of claim application filed under section 92(A) of the MV Act (old) and under Section 142(2) of the M.V. Act of 1988 in Title Claim Suit No.37/92.
2. Claimant the widow of the deceased filed the claim case with regard to the death of Jalal Mian in a motor vehicle accident involving No. B.E.Y-5051 at village Takipur under Dumka district. It is averred the deceased was 55 years of age and had a monthly income of Rs 2000/- from cattle trade at the time of the accident. The owner, driver and insurer of the offending vehicle were impleaded as opposite parties.
3. Both the owner and insurer of the vehicle appeared and contested the claim inter alia on the ground of non-joinder of necessary parties. It was pleaded by the owner of the vehicle that it was under the insurance cover of O.P. No.3 Oriental Insurance Company at the relevant time of accident.
4. On the basis of the pleading of the parties following issues were framed:
 - i. Is the suit maintainable as frame?
 - ii. Has applicant got cause of action for the suit?

- iii. Is the suit barred by law of limitation, principle of waiver, estoppel and acquiescence as bad for non-joinder of necessary parties to the suit?
- iv. Have all legal heirs not joined as parties as to the suit?
- v. Had Jalal Mian S/o Kolha Mian of Village Kolkata, P.S. Raneshwar, Distt. Dumka died in an accident or use of motor vehicle Truck No. B.E.Y. 5051.
- vi. Is O.P. No.1-Gobind Ram Hetampuria owner of truck no.B.E.Y.5051 which being driven by O.P. No.2 Sital Mahto, who was authorized to drive the vehicle?
- vii. Is O.P. No.3 Oriental Insurance Company Ltd., Dumka authorized insurer of the vehicle and accordingly entitled to disclose the liability of the owner of Truck No.B.E.Y.5051?
- viii. Is petitioner entitled to get compensation under M.V. Act. If yes, what should be the adequate amount of compensation will be joint for end of justice?
- ix. Is the petitioner entitled to any other relief or relief?

5. On Issue No. V the Tribunal recorded a finding that Jalal Mian died in the motor vehicle accident arising out of use of the Truck bearing registration no. BEY 5051. It was further held that since the licence of the driver of the truck was not brought on record by either of the side, therefore it was not proved that the driver was having a valid driving licence. It was also held that the vehicle was under the insurance cover O.P. No.3. Learned Tribunal computed a compensation of Rs.1,85,500 with admissible compensation of Rs.1,60,500 after deducting Rs.25,000 which was the ad-interim payment to the claimant.

6. The claim application was however dismissed on the ground that as per heirship certificate Ext 2 the other six daughters and one son of the deceased were not impleaded in the suit. It held that all the heirs were entitled to compensation in equal proportion except that the claimant was also entitled to consortium for the death of her husband.

7. The Judgment of the learned Court below reflects a sad state of affair where the Tribunal completely misdirected itself and lost sight of the fact that adjudication in a claim tribunal is in the nature of inquiry and not a trial where the principles of C.P.C. are not strictly applied. The purpose is to award just and fair compensation at the earliest to the dependants of the

deceased. Even a civil suit cannot be dismissed for non-joinder, unless the party is a necessary to the suit. Under Order 1 Rule 9 **no suit shall be defeated by reason of the mis-joinder or non-joinder of parties**, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Provided that nothing in this rule shall apply to non-joinder of necessary party.

No suit is to be defeated by reason of mis-joinder or non-joinder of parties.

The prescription extends to appeal as well, and **Section 99** provides that no decree shall be reversed in appeal on account of mis-joinder or non-joinder of parties or cause of action, unless it is a case of non-joinder of necessary party.

Despite the above position the Court to dismiss suit where a necessary party has not been joined. Non-joinder of necessary party is fatal when in a suit for share all the co-sharers are not made parties.

8. Matter for consideration is whether all the heirs are a necessary party in a claim case. Compensation is assessed on the basis of dependency and not on heirship. Only those who are the dependents shall be entitled to compensation. The entire concept of computation of compensation arising out of the death is based on calculation of the amount on dependency. In *Sarla Verma v. DTC, (2009) 6 SCC 12* it is held that if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant. The learned Tribunal thus committed a gross error to dismiss the claim application merely on the ground that the all the children of the deceased had not been impleaded. In any case any of the party or parties could have been impleaded as dependants and ordered accordingly.

9. Delay in awarding compensation frustrates the very object of the Act. It is thirty years down the line when the accident took place and there cannot be realistic assessment of dependency at this belated stage. Life does not wait for Court decrees and orders. Daughters would have been married by now and found their new home and moorings. Exercise into determining the dependency at this stage would be an exercise in futility. Under the circumstance, it will be just and fair to award the compensation in favour of the appellant/claimant only, who will receive the amount for herself and on behalf of others.

The claimant shall be entitled to compensation as assessed by the Tribunal in para 12 and 13 of the judgment with interest at the rate of 7.5% from the date of filing of the claim application.

10. It has been noted by the Tribunal that none of the parties had brought on record the driving licence, in this view of matter the owner of the offending vehicle shall be primarily liable and not the Insurance Company to pay compensation amount since no document has been produced by owner regarding driving licence. It has been held in *Pappu v. Vinod Kumar Lamba, (2018) 3 SCC 208* that the insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

11. However, since the matter involves breach of terms and condition of the insurance policy, therefore the Insurance Company shall pay the compensation amount as assessed by the Tribunal with interest at the rate of 7.5% to the Tribunal within a month of this order. The Insurance Company shall be at liberty to recover the amount so paid from the owner of the vehicle O.P.1.

The Tribunal shall disburse the amount to the claimant after proper identification of the claimant on the basis of relevant documents filed in support of her identity after due verification.

The appeal is allowed as at above. Consequently, I.A. No. 396 of 2014 stands disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 13th April, 2022

AFR / AKT