

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.364 of 2013

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Oriental Insurance Company, Bhagalpur through Sri V.K. Jha Deputy Manager cum and duly constituted Attorney the Oriental Insurance Company Ltd., Regional Office Pir Mohani Kadam Kuan, Patna.
(Opp. Party No.2) Appellant/s

Versus

1. Shankar Mandal S/O Late Rameshwar Mandalclaimant no.1
2. Sulochana Devi D/O Shankar Mandal. claimant no.2
3. Luxmi Devi D/O Shankar Mandal. claimant no.3
4. Bilaxni Kumari D/O Shankar Mandal. claimant no.4
5. Jaldhar Kumar Mandal S/O Shankar Mandal claimant no.5
6. Priyanka Kumari D/O Shankar Mandal claimant no.6
- All resident Of Village- Choti Alalpur, P.S- Parbatta, District- Bhagalpur
7. Md. Siddiki S/O Md. Nizamuddin Opposite party no.1
Resident of Village and P.O- Khiriban, P.S- Jagdishpur, District- Bhagalpur.
8. Manoj Kumar Singh S/O Late Rajendra Prasad Singh Resident Of Village- Orchakha Dharampur Rathi, P.S- Bihpur, District- Bhagalpur. (opposite party no.2)
9. Bajaj Allianz General Insurance Company Ltd., GE Plaza Airport Road Yerwada Pune Maharastra. opposite party no.4

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate

For respondent no. 1 to 6 : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Madan Mohan, Advocate
Mr. Sanjay Kumar Pandey, Advocate

For respondent no.8 : Mr. Sunil Kumar Singh, Advocate

For respondent no.9 : Mr. Durgesh Kumar Singh with
Mr. R. C. Narayan, Advocates

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 23-02-2015

Heard.

2. This is an appeal preferred by the appellant against



judgment and Award dated 11th October 2012 and 9th January 2013 respectively passed by the 4th Motor Vehicles Claims Tribunal-cum-Additional District Judge, Naugachia in Claim Case No.222 of 2010 awarding a sum of Rs.6,49,500/- against death of wife of the claimant respondent which took place on 19.05.2009 due to head on collision between the tractor bearing registration no. BR 10 J0370 wherein she was traveling and truck bearing registration no. WB 23A 1615.

3. The appeal has been preferred mainly on the ground that in view of head on collision between two vehicles, it is a case of contributory negligence and insurer of both the vehicles are required to share the liability, if at all saddled against the insurer and the quantum of award is to be also enhanced.

4. On going through the record, it appears that the appellant insurer of offending truck though has entered into appearance filed written statement but for the reasons unexplained and best known to it left attending court / participating in enquiry before the claim tribunal below. The evidence adduced on behalf of claimant respondent remained uncontroverted so far the appellant is concerned.

5. The claimant respondent has examined two witnessed and produced some documentary evidence which have

been marked as exhibit-1, certified copy of the FIR, exhibit -2, photo copy of post-mortem report and exhibit -3, photo copy of insurance policy.

6. The witnesses were cross-examined by owner of the tractor and the insurer of tractor i.e. Bajaj Allianz General Insurance company Ltd, respondent no.9. There appears nothing in their evidence to interfere with the findings of the claim tribunal below.

7. That apart the appellant by its own unexplained conduct has lost the right to challenge the award. Accordingly, finding no merit, this Appeal is hereby dismissed.

8. The appellant is directed to satisfy the judgment and Award dated 11th October 2012 and 9th January 2013 respectively passed by the 4th Motor Vehicles Claims Tribunal-cum-Additional District Judge, Naugachia in Claim Case No.222 of 2010 within a month from the date of production/receipt of a copy of this order.

9. Let statutory deposit, if any, be remitted back to the claim tribunal below for further needful.

(Akhilesh Chandra, J)

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