

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.431 of 2005

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New India Assurance Company Ltd., through the Regional Manager, Regional Office, B.S.F.C., Building, Fraser Road, Patna.... (O.P. No.2)/ Appellant.

.... Appellant/s

Versus

1. Rampravesh Prasad, son of late Ramanand Prasad (deceased)
 2. Sugita Devi, wife of late Ramanand Prasad (deceased)
both are resident of village – Mathurapur, P.O.- Pakawalia, P.s.- Barharia, Distt-Siwan.
(Serial No. 1 and 2 are applicants No.1 and 2 respectively)
 3. S. Ali, son of Munna Matafa, resident of Rajpur, Howrah Road Lines, Deluxe Road Lines, Transport Nagar, Kanpur (Owner of Truck No. UGR-1129)
.... (O.P. No.1) / Respondent
- =====

Appearance :

For the Appellant/s : Mr. Mukteshwar Prasad Singh, Advocate

For Opp. Parties No. 1 and 2 : Mr. Pankaj Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 11-03-2015

Heard.

2. This is an Appeal preferred against judgment dated 06.07.2005 passed by Additional District Judge (Fast Track Court No.2) Siwan in Claim Case No. 1 of 1990 awarding a sum of Rs.1,64,380/- with interest @ 9 % from the date of filing of the application as compensation against death of one Rama Nand Prasad, who died on 30.11.89 at about 10:00 AM due to rash and negligent driving of a truck bearing registration no. UGR 1129.

3. The appellant has preferred this Appeal only on the ground that it is neither the Insurer of the vehicle in question nor any particulars of insurance policy was ever furnished by the

claimant, who preferred the claim in collusion with owner of the vehicle in question, who too avoided appearance. Learned counsel placed reliance upon a decision rendered in the case of ***M/s National Insurance Company Ltd. v. Ram Khelawan Paswan and another*** reported in ***1997 AIR Patna 236***.

4. Since the Appeal is on very limited question there appears no need to go in much details except relevant one's for the purpose.

5. Record of the Claim Tribunal below indicates claim application was filed on 5th January 1970 without impleading the insurer or any reference of insurance of the vehicle. Notices were issued to owner etc., who avoided appearance. Consequently, enquiry proceeded ex parte. Meanwhile, record of Hussainganj P.S. Case No. 199 of 1989, instituted after the accident, was ordered to be called for, and also during ongoing enquiry, one application was filed by the claimant appellant praying therein to implead the appellant herein as insurer of the vehicle. On summons, the appellant appeared, filed written statement on 14th August 1992, wherein in relevant paragraphs 10 and 14 read as :-

"10. That if the truck no. U.G.R. 1129 insured with this opposite party was not involved in the alleged accident and so this O.P. has been unnecessarily dragged and impleaded as party to the claim case and thereby the

claimants are put to stricest proof with documentary evidence about the involvement of the vehicle as alleged.

14. That, without accepting the liabilities this O.P. submits that if at all the O.P. will be liable only up to limit of the liability as provided under the provision of MV. Act after proper verification of policy particulars and other concerning documents by this Hon'ble court."

6. On such filing of written statement, the appellant insurer by making prayer got the witnesses examined earlier recalled and cross-examined participated in the enquiry though at subsequent stage it appears in written argument etc. It is asserted that there is no insurance and also in absence of any details nothing could be done but the Claim Tribunal below finding admission of the appellant about insurance of the vehicle in question and absence of any other evidence to support / indicate the assertions made in paragraph 15 of the written statement which reads as :-

"15. That, real fact is that there is story of two trucks coming behind the deceased who was alleged to be a sitting on by-cycle and going towards pachrukhi and the other truck hit the deceased and fled away but unfortunately the truck which was back to the first truck as alleged, caught by the villagers, which contradicts the version of the claimants as the whereabouts of the another truck has not been given actually from which the accident took place."

and allowed the claim application and directed the

appellant to pay compensation as awarded giving rise to present appeal.

7. As stated earlier the Appeal is confined only on the point that no detail of insurance was furnished but with all due respect to the decision in the case of *M/s National Insurance Company Ltd. (supra)* relied upon by learned counsel for the appellant, it is of no help in face of clear cut admission in the pleading about coverage of insurance of offending truck bearing registration no. UGR-1129, there appears no reason to interfere with the finding of the Claim Tribunal below. Hence finding no merit this Appeal it is hereby dismissed.

8. The appellant is directed to satisfy the Award as awarded by the Claim Tribunal below within a month from today.

9. Let statutory amount be remitted back to the Claim Tribunal below for further needful.

(Akhilesh Chandra, J)

Ashwini/-

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