

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.640 of 2012

The United India Insurance Company Ltd., Divisional Office, Pratham Digamber Dharamshala, M T Road, Jaipur, Appeal and Appellant through the Manger & Constituted Attorney, Regional Office, United Indian Insurance Company Ltd., 3rd Floor, Chanakya Towers, R' Block, Patna.

.... Appellant/s

Versus

1. Akhilesh Mishra @ Akhilesh Kumar Mishra son of Rampher Mishra
 2. Lilawati Devi wife of Rampher Mishra
- All the above are resident of village-Kalwari, PO-Serawn, PS-Sikrara, District-Jaunpur (UP).
3. Devendra Singh son of Guru Deo Singh, resident of Bharatpur Chowk, PS/District-Bharatpur, Rajasthan.
 4. Raghunath Singh son of Shreeman Singh, resident of village-Hanuman Chowk, PS/District-Raipur, M.P.
 5. Smt. Amrita Devi wife of U.B. Gaunda, resident of C-38, Shiwajee Park, Punjab Bagh, New Delhi-110026.
 6. Siyaram Yadav son of Rakesh Yadav, resident of B-298, Indrapuri, J.J. Colony, New Delhi.
 7. The Oriental Insurance Company Ltd, 00XI, G.T.K. Road, Azadpuri, Delhi-33.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-07-2015

Heard learned counsel for the appellant.

In this case, the appellant is an Insurance Company, is challenging the order dated 24th May 2012 passed in M.V. Claim Case No. 132 of 1996.

The short facts of this case is that on the basis of fardbeyan of Akhilesh Mishra recorded at Sadar Hospital, Sasaram, on 3rd October 1996 at about 00.30 hour, stating that the in truck bearing registration No. D21G/4364 the brother of informant, Kamlesh Mishra as a driver, proceeded from Jhariya

to Haryana and when he reached near Beda on 2nd October 1996 at about 10.30 hour, from western side a truck bearing registration No. RJ05G/0134 was being driven rashly and negligently by its driver, dashed the truck in which his brother was driver, received serious injury and ultimately he died.

Claim application was filed where the Court found on the day of the accident, the age of the mother of the deceased was 39 years so the Tribunal has taken multiplier as 16 accordingly, the calculation was made.

The present appellant Company has been directed to indemnify 75% of the amount stating as being offending vehicle, rest 25% amount to be indemnified by the Insurance Company covered the truck which the brother of the informant was driving.

Counsel for the appellant has argued many points in support of his submission including share should be 50%, not 75% as it appears, the vehicle in which brother of the informant was driver, was an offending vehicle. The submission is incorrect as Tribunal rightly found the vehicle which was being driven by his brother, was not the offending vehicle.

This Court does not find any error in the order passed by the Tribunal. Accordingly, this petition is dismissed.

However, as has been claimed by the Insurance Company that the driver was not holding a valid license, it

requires enquiry by the Tribunal.

If such application is filed by the Insurance Company, the Tribunal will make an enquiry whether the driver of the offending vehicle was holding a valid license or not. If it is found that the driver was not holding a valid license, the Insurance Company will have liberty to recover the statutory amount from the owner of the vehicle.

(Shivaji Pandey, J)

Mahesh/-

U			
---	--	--	--