

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.596 of 2009

Divisional Manager, National Insurance Company Ltd., Division No. 1 Arunachal Bhavan, Exhibition Road, P.O. G.P.O., District- Patna, through the Chief Regional Manager, R.O. National Insurance Co. Ltd., 4th Floor, Sone Bhavan, B.C. Patel Marg, P.S. Sachivalaya, District-Patna.

.... Opposite Party No.6....Appellant.

Versus

1. Tilari Devi, wife of Late Janakdhari Mahto, Age- 24 years.
2. Geeta Kumari, daughter of Late Janakdhari Mahto, Age- 5 years.
3. Pawan Kumar, son of Late Janakdhari Mahto, Age -3 years.
4. Lal Muni Devi, wife of Gouri Mahto, Age- 44 years (Mother of Deceased).

Respondent No.1 is wife and Respondent Nos.2 and 3 are minors represented through their legal guardian mother (Respondent No.1) and daughter and son of the deceased.

All the above are residents of village-Amnabad, Post Office-Katesher, P.S. Bihta, District-Patna.

.....Applicants-Respondents Ist Set.

5. Anil Yadav @ Anil Kumar Yadav, son of Dilchand Yadav, resident of village-Jaruadih, P.O. Domchanch, P.S. & District-. Koderma, Jharkhand (Driver of Truck No. BR-47-1278G).

.....Opposite Party No.1.

6. Sambhu Mehta, son of Feglal Mehta, resident of Mohalla- Madhauti Mahua, Domchanch, P.O. Domchanch, P.S. & District- Koderma- Jharkhand.

.....Opposite Party No.2

(Owner of Truck No. BR-47-1278G)

7. Divisional Manager, United India Insurance Co. Ltd., Div. No. 2, Exhibition Road, P.O. G.P.O., District- Patna.

.....Opposite Party No.3.

8. Sanjay Mahto, son of Anant Mahto, resident of village-Amnabad, P.O. Katesher, P.S. Bihta, District- Patna (Driver of Truck No. BR-1B-9833).
9. Ashutosh Kumar Singh & Vinay Kumar Singh, sons of Late Vijay Kumar Singh & Satrugan Singh respectively, resident of village- Dhandiha, P.O.+P.S. Koilwar, District-Bhojpur, A/P Indrapuri, Test Book Colony, P.O. Keshri Nagar, P.S. Patliputra, District- Patna (Owner of Truck No. BR-1B-9833).

.....Opposite Party No.5.

.... Respondents II Set.

Appearance :

For the Appellant : Mr. Raj Kumar Singh Vikram, Advocate.

For the Claimants/Respondents. : Mr. Rajesh Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 09-04-2015

Heard learned counsel for the appellant and

claimants/Respondent Nos.1 to 4.

2. This Misc. Appeal under Section 173 of the Motor Vehicle Act, 1988, has been filed on behalf of the appellant against the Judgment/Award dated 21.04.2009/20.08.2009 passed in Claim Case No.88 of 2005, whereunder, the 6th Additional Sessions Judge, Patna-cum-Motor Vehicle Claims Tribunal, Patna (hereinafter referred to as “the Tribunal”) directed the opposite party no.3/ Respondent No.7, United India Insurance Company and opposite party no.6/appellant, National Insurance Company limited to pay Rs.1,42,550/- each to the claimants/Respondent Nos.1 to 4 within two months with interest at the rate of 7% per annum from the date of filing of the claim case till realization.

3. The brief facts leading to this Misc. Appeal is that on 29.03.2004, a truck bearing Registration No.BR-1B-9833 loaded with sand was going to Patna from Koilwar on which the deceased Janakdhari Mahto had occupied the seat of Khalasi. In the way, a truck bearing Registration No.BR-47-1278G coming from the opposite direction in high speed driven by the driver rashly and negligently dashed to electric pole due to which electric poll broken and the said truck also dashed to truck bearing Registration No.BR-1B-9833 in which the deceased, Janakdhari Mahto sustained injury and later on he succumbed to the injury. The further case is that the



truck bearing Registration No.BR-1B-9833 on which the deceased Janakdhari Mahto was sitting as Khalasi was owned by Mr. Ashutosh Kumar Singh and Vinay Kumar Singh (opposite party no.5/Respondent No.9) and the said truck was insured with the National Insurance Company limited/appellant (opposite party no.6) and the truck bearing Registration No.BR-47-1278G was owned by opposite party no.2/Respondent No.6, Sambhu Mehta and was insured with opposite party no.3/Respondent No.7.

4. After hearing the parties and perusing the evidence available on the record, the learned Tribunal assessed the compensation as Rs.2,85,100/- and also arrived at the conclusion that the accidents occurred due to rash and negligent driving by the driver of both the trucks and, accordingly, ordered the opposite party no.3, United India Insurance Company Limited, the insurer of the truck bearing Registration No.BR-47-1278G and opposite party no.6, the National Insurance Company Limited (appellant), the insurer of the truck bearing Registration No.BR-1B-9833 to pay Rs.1,42,550/- each to the claimants/Respondent Nos.1 to 4 within two months with interest at the rate of 7% per annum from the date of filing of the claim case till realization.

5. Learned counsel for the appellant, National Insurance Company Limited, the insurer of the truck bearing Registration



No.BR-1B-9833 submits that the Investigator's Report clearly indicates that the said truck had no valid permit at the time of accident but the learned Tribunal illegally directed the appellant, which is the insurer of the said truck bearing Registration No.BR-1B-9833 to pay Rs. Rs.1,42,550/- to the claimants/Respondent Nos.1 to 4 within two months with interest at the rate of 7% per annum from the date of filing of the claim case till realization through the impugned Judgment and Award.

6. From perusal of the impugned Judgment and Award, it appears that in deciding Issue No.V, which relates to having valid driving licence and road permit at the time of accident of both the trucks in question, the learned Tribunal has given his finding that the Investigator's Report (Ext.A) as filed by the opposite party no.3/appellant, the National Insurance Company Limited, shows that the driver of the truck bearing Registration No.BR-1B-9833 had valid driving licence and permit from 22.02.2004 to 21.06.2004 and the driver of the truck bearing Registration No.BR 47-1278G had also valid licence and permit from 07.06.2002 to 06.06.2004.

7. Ext.A, which is the Investigator's Report and has been filed by the appellant, the National Insurance Company Limited, shows that in column 'E', validity of temporary permit in respect to the truck bearing Registration No.BR 47-1278G of which the

appellant was insurer has been shown from 07.06.2002 to 06.06.2007 while the occurrence of accident is said to have taken place on 29.03.2004. The Investigator's report, as detailed in column-'J' shows that he visited at the office of the SRTA, Patna, then he found that the permit no.438 of 2004 was not issued regarding the truck bearing Registration No.BR 1B-9833. The Investigator has not been examined to support his report (Ext.A).

8. I find no illegality and infirmity in the impugned Judgment and Award. Accordingly, this Misc. Appeal stands dismissed. Let the statutory amount be returned by the appellant to the learned Tribunal for needful.

(Rajendra Kumar Mishra, J)

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