

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.654 of 2010

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Renu Devi, wife of Ghooran @ Ghooran Poddar, resident of village + P.O. + P.S. – Bheja, District – Madhubani, at present residing at Mohalla – Laxmi Nagar, P.S. – L.N.M.U. P.O. and District – Darbhanga.

----- (Claimant in the Court below) ----- Appellant

Versus

1. Shri Rajesh Kumar
2. Shri Rakesh Kumar

both sons of Shri Surya Narayan Sah. Both resident of at and P.O. – Nirmali, District – Supaul (Owner of Tractor No. BR-32 A – 7768, Trailer No. BR-32 A-7769/Opp. Parties No. 1 and 2 in the Court below)

3. Ganga Prasad Das, son of Sito Das, resident of At and P.O. – Nirmali, District – Supaul. (Driver of Tractor No. BR-32 A – 7768, Trailer No. BR-32 A-7769 and Opposite Parties No. 3 in the Court below)

4. The Oriental Insurance Company Ltd. Branch Office, Sakma Pul, Mirjapur Road, Darbhanga. (Insurer of Tractor No. BR-32 A – 7768, Trailer No. BR-32 A-7769, Opposite Party no. 4 in the Court below)

----- Respondents

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Appearance :

For the Appellants : Mr. Shivendra Shankar, Advocate
Ms. Rekha Prasad, Advocate

For the Respondent No.4 : Mr. Barun Kumar Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA
ORAL JUDGMENT

Date: 26-02-2015

This appeal has been placed under the heading **“For hearing under Order XLI Rule 11 of the Code of Civil Procedure”**.

2. Heard learned counsel for the parties. They agreed to get this appeal disposed of at this stage itself.

3. This appeal has been preferred against Judgment dated 26.04.2010, passed by Shri Brij Nandan Prasad, 2nd Additional District Judge cum Motor Vehicle Claim Tribunal, Darbhanga, in connection with Claim Case No. 17/2007.

4. During course of arguments, it is pointed out that in spite of recording statement of witness and hearing the parties at length, Claim Tribunal below opted to dismiss the claim only on the point of jurisdiction.

5. Undisputedly, accident took place within the jurisdiction of District Madhubani, wherein claimant appellant had permanent resident, but as per claimant appellant in connection of his livelihood he resides under the jurisdiction of District Darbhanga, consequently, he preferred the claim before the Tribunal at Darbhanga.

6. Learned counsel for the appellant placed reliance upon decision of Hon'ble Apex Court in a case **Sohan Lal Passi Vs. P. Sesh Reddy and others reported in (1997) 1 BLJR 247**; wherein Hon'ble Apex Court considering the amendments made in Motor Vehicle Act in the year 1994, giving way to the claimants to prefer claim application where they reside. Since earlier provision was cause of great hardship in many cases as referred in para – 10 of the Judgment.

7. Learned counsel for the respondent No. 3, the Insurance Company placed reliance upon decision of this Court in a case **Additional Manager, Oriental Insurance Company and another Vs. State of Bihar and others reported in 2010 (4) PLJR 1036**; and submitted that Claim Tribunal has arrive at just decision.

8. In a case before Division Bench of this



Court referred to above, matter was quite different, Claim Application was preferred at Muzaffarpur only because Divisional Office of insurance was situated there, not on any other ground like present one as residence of claimant appellant.

9. Thus, said decision with due respect is not applicable in the present case which appears squarely covered under the decision of Hon'ble Apex Court. Consequently, order impugned is not sustainable, accordingly, it is set aside. The matter is remitted for fresh decision on all the issues by the Claim Tribunal who is also directed to conclude the hearing and dispose of the case preferably within three months. Parties are directed to appear there on 16th March. 2015.

10. Meanwhile, Registry of this Court is directed to ensure communication of the order.

Rajeev/-

(Akhilesh Chandra, J.)

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