

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.382 of 2013

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1. Nilam Devi W/o Late Ram Pravesh Rai
2. Anand Kumar Rai
3. Prince Rai Both (ii) and (iii) sons of Late Ram Pravesh Rai All resident of village- Narharpur, Post Office- Narharpur, P.S.- Marhowrah, District- Saran

.... Appellant/s

Versus

1. Dhanesh Manjhi son of Dularchand Manjhi Resident of village- Gangwa Tola Badarjimi, Police Station- Ekma, District- Saran
2. The New India Assurance Co. Ltd., Chapra Branch through its Branch Manager, Chapra

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Choubey, Advocate.

For the Respondent no.2 : Mr. Bimlesh Kumar Jha,

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-09-2015

Heard learned counsel for the appellants and learned counsel for respondent no.2.

In the present appeal the Tribunal has found that the driver who was driving the vehicle bearing registration no. BRO-4A-9107 was holding a fake driving licence. The claim application was filed with regard to death of Radhika Devi who was traveling in the demised bus aforesaid from her own home to Chapra. The bus was loaded with Banana, as soon as the bus reached near Bhuli bridge, the same came into the contact of electric wire, so electric current ran into the body of the bus, body of the victim was scorched and she died in the clinic of Dr. S.

Kumar. The evidence has come that she was doing work of labour and was earning Rs.3,000 per month and on that basis the computation was made.

During trial the Insurance Company has taken a plea that driver who was holding the licence was a fake one and as such the Insurance Company is not liable to indemnify the owner with the amount computed.

It appears that the Tribunal has appointed a lawyer investigator, Binay Kumar Srivastava who had gone to the office of the DTO Jamshedpur. He paid the requisite fee and with the permission of DTO examine the record and found that the licence no.9804F/95 was issued in favour of B.L. Mahto, son of S. Mahto whereas the driver of the vehicle was Sheo Pujan Rai. He submitted the report dated 18.3.2011 giving details of the fact but said Binay Kumar Srivastava was not examined by the Insurance Company to prove the report but merely his report was produced. It appears from the order dated 12.5.2011 that Advocate investiugator did not appear as a witness but said letter was marked as Exhibit A with objection. The parties who are litigating the case did not get an opportunity to cross-examine Binay Kumar Srivastava as he was required to prove his report by coming to the dock. The entire basis of order of the trial court for

holding the licence no.9804F/95 to be taken is based on the report of Binay Kumar Srivastava who was never examined and put to cross-examine.

This Court is of the view that merely on the basis of this report the Tribunal should not have recorded such finding in stead the Tribunal itself should have taken steps for calling the DTO Jamshedpur to produce the original record and after proper verification should have recorded its finding with regard to validity of the driving licence.

In such view of the matter, the impugned order is set aside and this appeal is allowed to the aforesaid extent only with respect to examining the validity of the driving licence that has been claimed by the owner of the vehicle with respect to the driver, namely Shiv Kumar Rai to be proper. The Tribunal will hold an enquiry with regard to genuineness of driving licence, in the manner either Insurance Company would produce Binay Kumar Srivastava or Insurance Company may take any other step in accordance with law for production relevant document from the office of DTO Jamshedpur.

This Court is not interfering with regard to the amount computed by the Tribunal. Statutory amount deposited in this Court is remitted back to the court below subject to the result

of the case. Office is directed to return the lower court record forthwith.

With the aforesaid observation and direction this appeal is disposed of.

(Shivaji Pandey, J)

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