

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.320 of 2012

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1. National Insurance Company Ltd. Deepak Hotel, Madhubani, P.O. And Distt. Madhubani, Represented Through Sri Anjani Kumar Working As A.O. And Duly Constituted Attorney Of National Insurance Company Co. Ltd. Having Its Regional Office At 4th Floor, Sone Bhawan, P.S. Sachivalya, Distt. Patna.

.... Appellant/s

Versus

1. Mamta Jha W/O Late Nawal Jha Resident Of Bardepur, P.O. Kalikapur, P.S. Kaluahi, Distt. Madhubani.
2. Ranjeet Jha S/O Late Nawal Jha Resident Of Bardepur, P.O. Kalikapur, P.S. Kaluahi, Distt. Madhubani.
3. Narayan Ji Jha S/O Late Nawal Jha Resident Of Bardepur, P.O. Kalikapur, P.S. Kaluahi, Distt. Madhubani.
4. Bimla Devi W/O Mahendra Jha Resident Of Bardepur, P.O. Kalikapur, P.S. Kaluahi, Distt. Madhubani.
5. Mahendra Jha Resident Of Bardepur, P.O. Kalikapur, P.S. Kaluahi, Distt. Madhubani.
6. Ramchandra Singh S/O Ram Yatna Singh R/O Village Narar, P.S. Kaluahi, Distt. Madhubani (Owner Of Bus Bearing Its Registration No. Br-7p-2427

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar, Advocaste.

For Respondent Nos. 1 To 5 : Mr. Raj Kumar,

Mr. Ratnakar Jha, Advocate.

For Respondent No.6 : Mr. Rekha Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-07-2015

Heard the parties.

2. In the present appeal a primary issue has been raised by the Insurance Company that the order and award suffer from illegality as the amount calculated is based on that the victim was travelling inside the bus but the admitted fact which is apparent from the First Information Report as well as the claim application where it has specifically been mentioned that he



was travelling on the roof. As per Section 123 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') no person driving or in-charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle or on the top or on the bonnet of a motor vehicle. If he travels violating strict mandate, though the vehicle has been insured the Insurance Company will fall outside to indemnify the liability of owner.

3. In the present appeal as it appears that the victim as per the First Information Report was travelling on 1.5.2007 on the roof of the bus, the driver was driving the Mini Bus rashly and negligently and due to this rashness of the driver, the deceased fell down and died. A police case vide Khajauli P.S. Case No.95 of 2007 for offences under Sections 279, 337, 338 and 304(A) of the Indian Penal Code was instituted. The claimant filed an application for compensation as provided under the Act.

4. The Insurance Company contested the claim of the claimant. The parties have led their oral evidences and documentary evidences. Father of the claimant, in the claim application, has mentioned that the victim was travelling on the roof of the bus but in the evidence the witnesses have stated

that the victim was travelling inside the bus.

5. The Tribunal has not framed specific issue with respect to manner the victim was travelling, whether he was traveling on the roof of the bus or inside the bus. If the victim was travelling inside the bus then he will be entitled 100% compensation but if a finding comes that he was travelling on the roof of the bus then Section 123 of the Act will affect the claim of the claimant and so much so in terms of judgment in the case of Kalpana Devi and others V. Jhagru Pandit and others, reported in 2011(1) TAC 772 will be entitled for only 50% compensation as mode and manner of the travelling of the victim is very important issue for deciding the entitlement of the claim. The Tribunal did not frame this issue specifically so much so finding on manner of traveling is absent as entitlement of full compensation amount is dependent on the decision of the aforesaid issue.

6. In such view of the matter, the judgment and order dated 22nd October, 2011 is set aside and matter is remanded back for the limited purpose that the Tribunal will frame the issue with regard to mode and manner the victim was travelling and will decide the issue on the material already available on record. The parties will not be allowed to bring any further evidence.

The court below is directed to frame the issue and dispose of the case within a period of three months from the date of receipt/production of a copy of this order.

7. Office is directed to remit back Rs.25,000/- to the court below and that would be invested by the court below in a nationalized Bank under the scheme so that the said amount should earn maximum interest and payment will be subject to the result of the case.

(Shivaji Pandey, J)

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