

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.39 of 2010

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Branch Manager, National Insurance Co. Ltd., Sudarshan Building
Ground Floor Municipal Chouck, Chhapra represented through Sri
Anjani Kumar working as A.O. and duly constitute attorney of
National Insurance Company, having its regional office at 4th Floor,
Sone Bhawan, P.S. Sachiwalaya, Distt. Patna.

-----Appellant--- O.P. No.1

Versus

1. Urmila Devi W/O Dashrath Rai R/O Vill- Mirjapur, P.S. Parsa,
Distt. Saran at Chapra.

-----Claimant – Respondent 1st Set.

2. Anand Kumar S/O Vishwanath Rai, R/O Village - Chottan Parsa,
P.S. Parsa, District - Saran at present residing at 173/4 Bela Ghat
Road, Kolkatta – 700 005.

3. Dashrath Rai S/O Late Pujan Rai R/O Vill- Mirjapur, P.S. Parsa,
Distt. Saran At Chapra

.... Respondents

With

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Miscellaneous Appeal No. 44 of 2010

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Branch Manager, National Insurance Co. Ltd., Sudarshan building,
Ground Floor Municipal Chowk, Chapra, represented through Shri
Anjani Kumar working as A.O. and duly constituted Attorney of
National Insurance Company. Having Its Regional Office at 4th
Floor, Sone Bhawan, P.S. Sachiwalaya, District - Patna

-----Appellant-----O.P.No.1

Versus

1. Sita Devi W/O Late Ramesh Kumar
2. Abishekha Kumar S/O Late Ramesh Kumar represented through
his Natural Guardian Mother Namely Sita Devi R/O Vill- Harpur
Parsa, P.S. Parsa, Distt. Saran at Chapra
3. Anand Kumar S/O Vishwanath Rai R/O Vill- Chottan Parsa, P.S.

Parsa, Distt. Saran at present residing at 173/4 Bela Ghat Road, Kolkatta-700015.

4. Sri Bhagawan Singh S/O Not Known R/O Vill- Harpur Parsa, P.S. Parsa, Distt. Saran at Chapra.

.... Respondents

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Appearance :

(In MA No. 39 of 2010)

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

For the Respondent/s : Mr. Ajay Kumar Tiwary, Advocate

(In MA No. 44 of 2010)

For the Appellant/s : Mr. Shailendra Kumar. Advocate

For the Respondent/s : Mr. Ajay Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the appellants and learned counsel for the respondent.

2. The two appeals since arising out of same accident, as prayed, are being heard together and disposed of by this common judgment.

3. Both these appeals have been preferred against judgment and Award dated 27.10.2009 and 07.11.2009 respectively passed by Shri Rajeev Srivastava, 9th Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Saran, (Chapra), in connection with Claim Case Nos. 18/2005 and 19/2005. Undisputedly, both the deceaseds respectively were Khalasi and driver of the truck bearing registration No. WB-23/9076, which during transit disappeared and subsequently the dead body of both of them were

recovered from the place where they were thrown and identified by their employer who undisputedly has been received payment against loss of the vehicle in question.

4. Since all other details are undisputed but appeal is preferred only on the ground that driving license of the driver and road permit etc. were not placed and it was a case of killing after abduction not of accident. But, since admittedly, during evidence, the insurer appellants produced nothing to establish its objection and Exhibit – 2, the charge-sheet of criminal case bearing Dighwara P.S. Case No. 30/2004 though indicates its submission under section 364, 302, 201, 379, 411/34 of the Indian Penal Code, but details of investigation or relevant papers indicating otherwise than the claim put forward by the claimant respondent no. 1 has not been produced, and during course of the argument, it remains undisputed that on the ground taken the appeal is not at all sustainable. Hence, no detailed reference is required except the facts indicated.

5. One thing more is also relevant to mention here that owner of the vehicle who is respondent no. 2 here though did not appeared against summons before the Claim Tribunal as opposite party, filed written statement or adduced any statement but as the witness on behalf of the claimant he deposed as P.W. 2 and



clearly stated that owner book of the vehicle and driving license of the driver both were in the vehicle itself, and likewise vehicle he lost everything. In fact, there is no cross-examination on all such submissions of this witness by the insurer appellants. Rather, as stated earlier, accepting loss of owner book loss against vehicle has been compensated by the insurer. In that view of the matter, also the insurer appellants cannot escape from the liability to compensate against death of driver and Khalasi, who undoubtedly, were on duty and serving their employer as driver and Khalasi of the vehicle in question. Their heirs i.e. claimants may also be compensated even under section 167 of the Motor Vehicles Act, 1988, which reads as such:

“167. Option regarding claims for compensation in certain cases –

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.”

6. The claimants have opted to proceed



under Section 166 of the M.V. Act, and their claims cannot be defeated. Accordingly, finding no merit in these appeals. Both the appeals are hereby dismissed. Learned counsels for the appellants are directed to make payment to satisfy the Award within a month from today.

7. The Statutory amount be transmitted to the Claim Tribunal below for further needful.

(Akhilesh Chandra, J.)

Rajeev/-
AFR/

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