

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.338 of 2007

United India Insurance Company, Divisional Manager, DO-I, Laxmi Apartment, 2nd Floor, The Times of India Building, Fraser Road, Patna, Appeal through Deputy Manager, Regional Office, The United India Insurance Company Limited, 3rd Floor, Chanakya Commercial Complex, R' Block, Patna.

.... Appellant/s

Versus

1. Mukesh Kumar, S/o Rajendra Prasad, R.o HGilsa- Bihar sharif Road, P.O./P.S. Hilsa, District Nalanda, at present residing at Chandmari Road, P.O. + P.S. Kankarbagh, District Patna (Owner-cum-Driver)
2. Lalwati Devi, W/o late Naresh Mahto
3. Rekha Kumari, W/o Gautam, D/o Late Naresh Mahto
4. Babita Kumari, D/o Naresh Mahto
5. Munni Kumari, D/o late Naresh Mahto
6. Bittu Kumari, S/o late Naresh Mahto, Respondent. Nos. 2 to 6 are R/o Vill. Chakraja, P.S. Shahjahapur, District – Patna.

.... Respondent/s

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Miscellaneous Appeal No. 841 of 2010

Mukesh Kumar, S/o Rajendra Prasad, R/o Hilsa, Bihari Road (Bharat Engineering Works), P.O. and P.S. Hilsa, District – Nalanda

.... Appellant/s

Versus

1. Lalwati Devi, W/o Late Naresh Mahto
 2. Rekha Kumari, W/o Gautam (Married daughter of Late Naresh Mahto)
 3. Babita Kumari, Minor D/o Late Naresh Mahto
 4. Munni Kumari, Minor D/o Late Naresh Mahto
 5. Bittu Kumar, Minor S/o Late Naresh Mahto, Serial Nos. 3 and 5 are minor under the guardianship of natural guardian the mother-Lalwati Devi.
- All are R/o Village – Chakraja, P.S. Shahjadapur, District - Patna

.... Respondent/s

Appearance :

(In MA No. 338 of 2007)

For the Appellant : Mr. Durgesh Kumar Singh
For the Respondent No.1 : Mr. Mukesh Prasad Singh
For the Respondent Nos. 2 to 6 : Mr. Rajesh Kumar.

(In MA No. 841 of 2010)

For the Appellant : Mr. Mukesh Kumar
For the Respondents No. 1 to 5 : Mr. Rajesh Kumar
For the Respondent No.6 : Mr. Durgesh Kumar Singh.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 25-03-2015

Heard learned counsel for the parties and perused the trial Court record.

Both the miscellaneous appeals have been filed under Section 173 of the Motor Vehicle Act, 1988 by the United India Insurance Company and Owner of the Motor Cycle bearing Registration its Registration no.BH-12B-3975 (hereinafter referred to as offending vehicle) against the judgment dated 10.05.2007 and award dated 23.08.2013 passed by the Additional District and Sessions Judge-VII-cum-Motor Accident Claim Tribunal, Patna (hereinafter referred to as 'Tribunal') in Claim Case No. 145 of 2005. Therefore, both the Miscellaneous Appeals are heard together and are disposed of by this common judgment.

In brief, the case is that on 12.08.2005 at about 10.30 pm. Naresh Kumar along with his wife Lalwati Devi, claimant no.1 were standing inside the road of Fatuha-Daniyawar Road. In the meantime, Hero Honda motorcycle, bearing its registration No. BH-12B-3975 came rashly and negligently and dashed Naresh Mahto. The owner-cum-driver run away leaving his motorcycle there and Naresh Mahto was rushed to P.M.C.H., Patna for treatment and thereafter, he was admitted for better



treatment at Sri Ram Nursing Home, Kankarbagh, Patna on 13.08.2005 to 19.08.2005 and on 20.08.2005 Naresh Mahto came to his house from the hospital and thereafter, he died in his village. The claimants, who are respondent nos. 2 to 6 in Miscellaneous Appeal no. 338 of 2007 and respondents no.1 to 5 in Miscellaneous No. 841 of 2010 claimed Rs. 2,00,000/- as compensation together with interest @ 12% per annum from the date of filing of the claim petition.

The O.P. No.1, Owner-cum-Driver of the offending vehicle did not appear before the Tribunal, while O.P. No.2, the United India Insurance Company appeared and filed its written statement raising several defence under Section 149(2) of the Motor Vehicles Act but admitted the insurance policy of the offending vehicle of the alleged date of occurrence.

On the basis of the pleadings of the parties, the Tribunal framed altogether seven issues. After considering the oral and documentary evidence produced by the parties, the learned Tribunal through the impugned judgment and order directed the opposite party no.2/United India Insurance Company Limited to pay the compensation of Rs. 1,19,500/- with interest @ 10% per annum from the date of filing of the claim petition till realization within one month from the date of order with liberty to

O.P. No.2 the United India Insurance Company to realize the compensation amount to the Opposite Party no.1, Owner-cum-Driver of the offending vehicle.

Learned counsel appearing on behalf of the United India Insurance Company-appellant in Misc. Appeal No. 338 of 2007 submits that while the Tribunal framed seven issues, including the issue no.3 whether the driver of the offending vehicle had valid and genuine driving license on the alleged date of accident but the learned Tribunal did not record the finding on that issue and only recorded the finding on issue no.6 relating to the factum of accident and entitlement of compensation of the claimants and directed through the impugned judgment and award to the O.P. No.2-United India Insurance Company to pay the same. He further submits that according to Rule 19 of the Bihar Motor Vehicles Accident Claim Rule, 1961 the Claim Tribunal in passing the order shall record the consciously in the judgment the finding of each of the issues framed and the reasons for such finding but the learned Tribunal has not given finding on issue no.3 relating to the validity and genuineness of the driving license of the Owner-cum-Driver of the offending vehicle. As such, the learned Tribunal committed illegality in passing the judgment and award without giving the finding on that issue. It is also submitted



that in support of the defence, the United India Insurance Company had filed the photocopy of the information received from the District Transport-Officer, Patna regarding the validity of the license of the Owner-cum-Driver of the offending vehicle from 22.08.2005 to 13.01.2022, which has been marked as Ext. A, which clearly indicates that on the date of accident i.e. 12.08.2005 the Owner-cum-Driver of the offending vehicle had no driving license but that has not been considered by the Tribunal.

Learned counsel appearing on behalf of Owner-Driver/appellant in Miscellaneous Appeal No. 841 of 2010 submits that it would appear from the trial Court record that the learned Tribunal proceeded against the owner-driver ex parte without declaring the service of notice upon him and he came to know about claim case and award passed by the Tribunal after receiving the notice in Misc. Appeal No. 338 of 2007 filed on behalf of United Indian Insurance Company. As such, the Owner-driver of the offending vehicle had no opportunity to file the written statement and to produce the evidence in support thereof. He further submits that in fact, the learner's driving license was issued to the appellant on 10.05.2005 and the same was valid till 09.11.2005, which would appear from Annexure-2 to the Memo

of Appeal. As such, on the date of accident appellant Owner-Driver-appellant had learner's driving license.

On the other hand, the learned counsel for the claimants-respondents submits that the claimants have not received the awarded amount of compensation due to pendency of appeal since 2007 but conceded that the learned Claim Tribunal has not given finding on all issues as framed by the Claim Tribunal. The trial Court record shows that the tribunal proceeded for ex parte hearing on 22.05.2006 against opposite party no.1, Owner-cum-driver of the offending vehicle without giving any finding regarding service of notice to him. The impugned judgment and order show that while the learned Tribunal framed seven issues including the issue no.3 in respect to validity and genuineness of the driving license of the owner-driver, but it appears that the learned Trial Court only recorded finding on issue no.6 entitlement of the amount of compensation of the claimants discussing the evidence of factum of the occurrence. As such, there is no finding on the other issues specially in respect of issue no.3, which is related to the validity and genuineness of driving license of owner of the driver of the offending vehicle on the date of accident.

On bare reading of Rule 19 of Bihar Motor



Vehicle Accident Claim Tribunal Rule, 1961, it is apparent that Claim Tribunal in passing the judgment and order shall record consciously in the judgment finding on each of the issues framed and the reason for such finding but the learned Tribunal has not considered all issues as framed specially issued no.3 relating to valid and genuineness of the driving license of the owner-driver of the offending vehicle.

In view of the Rule 19 of the Bihar Motor Vehicle Accident Claim Tribunal, 1961, it is mandatory on the part of the Claim Tribunal to record finding concisely on each issue in the judgment but the learned Tribunal has not recorded the finding on issue no.3 and other issues.

In the aforesaid facts and circumstances of the case, as discussed above, both the Miscellaneous Appeals are allowed and accordingly, the judgment and award dated 10.05.2007 and 23.08.20013 passed by the 7th Additional District and Sessions Judge-Claim Tribunal, Patna in Claim Case No. 145 of 2005 is hereby set aside. Keeping in view of the facts that evidence has already been adduced by the claimants and insurance company and the case is very old, it is desirable to direct the tribunal to finally adjudicate within six months from the date of receipt of copy of this order along with lower Court record

giving opportunity to owner-cum-driver to file written statement and to give evidence, if any, without any unnecessary adjournment.

Let the copy of this order along with lower Court record be returned to the claim Tribunal and statutory amount deposited by the appellants in both the above Miscellaneous Appeals at the time of filing of the case be also returned, which will be kept in abeyance till disposal of the claim case.

(Rajendra Kumar Mishra, J.)

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