

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.932 of 2010

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The Divisional Manager, the Oriental Insurance Company Ltd. Divisional Office-II,
Patna.

..... Appellant/s

Versus

1. Jamila Khatoon wife of Late Md. Munna @ Daroga.
2. Nazni Parveen daughter of Late Md. Munna @ Daroga.
3. Roji daughter of Late Md. Munna @ Daroga.
4. Md. Obbash Raja son of Late Md. Munna @ Daroga All resident of Mohalla-Sui ki Masjid, PS-Jhaje Kalan, District Patna.
5. Suresh Rajbanshi son of Ganesh Rajbanshi, resident of Moihalla-Pradhan Nagar, Silliguri, PS-Silliguri, District-Silliguri(WB).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Barun Kr. Choudhary

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-09-2015

Heard the counsel for the appellant.

In the present case, there is no dispute that the vehicle was not cover under the Insurance Policy.

Primarily, the point has been raised that the driver of the vehicle was not holding a proper license and the owner of the vehicle did not have any valid permit, so much so, no application was filed in terms of Rule 246 of the Bihar Motor Vehicles Rules, 1992 showing claimants were heirs of victim. With regard to the improper driving license and not having a valid permit, the Insurance Company will recover the amount from the owner of the vehicle, but the claimants should not be deprived of the said amount. So far the claimants have

not filed the heirship certificate, was not raised before the Tribunal and it is not the case of the Insurance Company that the claimants are not heirs of the deceased.

Learned counsel for the appellant submit that the point of heirship was raised, but the court below did not deal with the matter, but the fact is that even before this Court, the appellant is not challenging respondents are not heirs of the deceased.

In such view of the matter, it will not be justified for this Court to interfere with the Award which has been passed in the favour of the victim.

It appears from the record that claimants have claimed that the victim was a Welder and was crushed by the offending truck bearing registration No. N.L.01-D-5593.

The counsel for the appellant is not challenging that the calculation made by the Tribunal, is any way incorrect.

In such view of the matter, the Insurance Company is directed to make payment of the aforesaid amount, subject to condition that if the owner of the vehicle was not holding a proper permit or the driver was not holding a valid license, the Insurance Company will have liberty to recover the amount from the owner of the vehicle.

The statutory amount be remitted back to the court below and the same should be released in favour of the

claimants which will be adjusted in the final award.

With the above observation, this application is disposed of.

Mahesh/-

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(Shivaji Pandey, J)