IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.631 of 2010

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The Divisional Manager United India Insurance Company Ltd. D.O. II Patna through Sri Salim Ahmad, Dy. Manager-cum- and duly constituted Attorney United India Insurance Company ltd. Regional Office 3rd Floor Chanakya Complex B.C. Patel Road P.O. G.P.O, P.S. Sachiwalaya Patna District Patna

…….(Opposite party no.1).... .... Appellant/s

Versus

1. Chandeshwar Rai, son of Shri Ram Sewak Rai, resident of Village Tajpur P.O. P.S. Lalganj District Vaishali …..Owner) ….(Opp. Party no.2)
2. Suresh Sahni, son of Ram Chandra Sahni, resident of Village Jahanabad P.S. Lalganj District Vaishali ….(Opp. Party no.3)
3. Anju Devi, wife of late Lalan Kishor Azad alias Lalan Singh
….. (Claimant No.1)
4. Micky Kumari daughter of late Lalan Kishor Azad alias Lalan Singh
…..(minor) ….. Claimant NO.2)
5. Chandan Kumar Azad, son of late Lalan Kishor Azad alias Lalan Singh
….. (minor) ….. Claimant No.3)
6. Kundan Kumar, son of late Lalan Kishor Azad alias Lalan Singh
……. Minor) …..Claimant no.4)

Minors respondents no.4 to 6 under the Guardianship of their mother Anju Devi, respondent no.1, all residents of Village Mushepur, P.O. Bihar, District Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate.
For Respondent Nos. 3 to 6 : Mr. Rajen Sahay, Advocate.
For Respondent Nos. 1 & 2 : Mr. Sakti Suman Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-06-2015

Heard the parties.

2. In the present appeal the appellant is challenging the judgment dated 13.4.2010 and award dated 5.6.2010 passed by the Motor Vehicles Claims Tribunal-cum- Additional District Judge VI, Patna in Claim Case No.56 of 2008/20 of 2008 by which the court below has made as assessment of entitlement of compensation amount to the tune of Rs. 2,95,600/- including 6%

interest.

3. From the record it appears that it was a case of accident by a truck bearing registration no. BR-06G-4311 on 9.3.2007 whereupon a police case was instituted as Traffic P.S. Case No.60 of 2007 for the offences under Sections 279, 337, 338 and 304(A) of the Indian Penal Code.

4. The parties have appeared and a plea was taken by the Insurance Company that the driver was not holding valid and effective licence to drive the said vehicle as well as the truck did not have a valid permit to run. Both parties have led their evidences oral as well as documentary. The Tribunal found that the truck was covered under the valid insurance policy and awarded the amount as aforesaid.

5. Learned counsel for the Insurance Company submits that the driver had not a valid licence. He did have licence to drive the light motor vehicle, not for a heavy vehicle. Proper road permit was also not there and as such the Insurance Company cannot be held liable to compensate the claim of awarded amount. He has recourse to recover the said amount from the truck owner, not from the Insurance Company.

6. Learned counsel for the claimant has drawn the attention towards Ext.3 which shows that weight of unloaded vehicle was

6250 Kg. Further a document shows the owner had temporary permit to run the vehicle from 8.2.2007 to 7.6.2007. Though this document was filed but it was not exhibited. On the strength of two documents he submits that plea of the appellant is not a proper as well as the Tribunal has also failed to look into two documents showing that the said vehicle is light vehicle as defined under Section 2(21) of the Motor Vehicle Act. As per the definition of light motor vehicle under the Motor Vehicle Act, the vehicle having weight of 7500 Kg will be treated to be light vehicle and ext.3 itself shows the weight was much below to 7500 Kg. So the findings recorded by the Tribunal is perse illegal. So much so road permit itself shows that vehicle had valid permit that also is completely wrong.

7. But it appears that the claimant has not challenged this finding. It is the appeal of Insurance Company and in such view of the matter this Court is of the view that Insurance Company should pay the amount as calculated by the Tribunal and this Court remands back the matter for proper adjudication as to whether the said truck was a light motor vehicle or heavy motor vehicle, at the same time whether the truck was having a valid road permit or not.

8. In such view of the matter, the judgment dated

13.4.2010 and award dated 5.6.2010 are set aside and matter is remanded back for the limited purpose. If the Insurance Company would be able to satisfy the aforesaid two points in its favour certainly the Insurance Company will have a liberty to recover the said amount from the truck owner. In the meantime, Insurance Company will pay the said amount within a period of two months from today. Statutory amount that has been deposited will be remitted back and the same should be paid to claimant.

9. Office is directed to remit back the lower court records forthwith without any delay.

10. Accordingly this appeal is allowed.

(Shivaji Pandey, J)

Vinay/-

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