IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.637 of 2007

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M/S The Oriental Insurance Company Limited, Siwan, PO/PS Gopalganj, District Siwan, appeal and appellant through the constituted attorney the Regional Manager, the Oriental Insurance Company Limited, Regional Office, Pirmohani, Patna..

.... Appellant/s

Versus

1. Narayani Devi, widow wife of Sri Ram Prasad alias Sri Ram Prasad Gupta alias Ram Prasad resident of Village Nayee Qwinla Patwa Toli, Near Mauleshwari Chawk, Siwan, P.S. Siwan Town, District Siwan -----Applicatn/Respondent
2. Ram Lagan Sah, son of late Deodhari Saw, resident of Village Puraina, P.O. Sarsar, P.S. Siwan, Muffasil, District Siwan ---Owner of the Vehicle ---O.P. No.1
3. Bhagwan Yadav, son of Narayan Yadav, resident of Village Sarsar, P.S. Siwan Moffasil, District Siwan (driver of the vehicle) ---- Opposite Party no.3

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. DURGESH KUMAR SINGH
For the Respondent/s : Mr. Ashok Kumar,
Mr. Kaushal Kumar Singh.
For Respondent No.2 : Mr. Ragani Ranjan Prasad Singh,
Mr. Ajay Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 24-09-2015

Heard the parties.

2. This appeal is directed against judgment and award dated 10.8.2007 and 5.9.2007 respectively passed by the Additional District and Sessions Judge (FTC Vth), Siwan in Claim Case No.3 of 2004/2 of 2005 by which Tribunal has awarded Rs.1,68,550/- as compensation amount.

3. In the present appeal limited question has been raised that the Tribunal has not recorded any finding with regard to the issue whether the driver had valid driving licence at the time of accident while driving the vehicle in question in a situation the

appellant had specifically raised this issue. As per the claim of appellant, the driver was not holding a valid licence and in that circumstances the Insurance Company will not be liable to indemnify the owner of the vehicle rather it is the owner who is responsible for the payment of compensation but for that claimant will not suffer. Even if it is recorded that driver was not holding a valid driving licence the Insurance Company will pay the amount and will be at liberty to recover the amount from the owner of vehicle but before giving final verdict it will be proper to consider the facts of this case.

4. Brief facts of the case is that the claimant Narayani Devi is legally wedded wife of late Ram Prasad Gupta alias Ram Prasad, resident of Mohalla Nayee Quilla Patwa Toli near Mouleshwari Chauk, P.S. Siwan Town, District Siwan and out of their wedlock one son, namely, Chandan Kumar and five daughters, namely, Manju, Madhu, Anjali, priyanka and Puja were dependents on the deceased. As per the claim the victim was aged about 51 years and he used to selling the cloths by cycle from one place to another and in the process of hawking he used to earn Rs.1,000/- per month. As per claim, Ram Prasad Gupta met with a road accident on 30.9.2002 at about 12.15 P.M. while he was going to sell the cloths from his home

towards Siwan- Gopalganj road, a taxi jeep bearing registration no. BR-29-A/9183 which was coming from Siwan rashly and negligently, dashed him resulting serious injuries to him. Thereafter he was brought to Sadar Hospital Siwan and after providing first aid, he was referred to Gorakhpur but as his condition deteriorated, he was admitted at Deoria Sadar Hospital and again he was brought to the private Nursing Home at Gorakhpur but being his critical condition, he was referred to Lucknow where he was admitted in Gandhi Memorial Hospital, Lucknow where he died on 3.10.2002 which led to filing of Siwan Muffasil P.S. Case No.217 of 2002 under Sections 279, 337 and 338 of the Indian penal Code. Claim has been made that victim was sole earning member of the family, claim has been made for medical expenses including the compensation amount.

5. The Insurance Company has appeared and has taken a plea that the taxi driver who dashed the victim was not holding the valid lincence and as such the insurance Company cannot be held liable to indemnify the owner of the vehicle.

6. The Tribunal has altogether framed six issues and forth issues relate to the present appeal. Important question has been raised by the appellant that whether driver had valid driving licence at the time of accident while driving the vehicle is the

question.

7. To prove the case the claimant has altogether examined five witnesses and exhibited some documents showing the treatment whereas opposite party the Insurance Company has also filed an investigation report of Ram Singh Surveyor and loss, assessor (Ext.A) certified copy of driving licence no. WB 11032505 of Shanker Das issued by licencing authority Howrah (Ext.B), photo copy of driving licence no. WB-01-032502 issued in the name of Bhagwan Das driver (Ext.C) to show that driving licence was forged.

8. The Tribunal has not recorded a finding with regard to issue no.4 though discussed the evidence, but held even though the driver may not have proper driving licence, but Insurance Company would pay the compensation and straightway computed the compensation amount recorded a finding that victim died on account of motor vehicle accident, computed the compensation amount of Rs,1,65,550/- and out of which Rs.50,000/- was already paid.

9. As the court has not recorded any finding with regard to holding of valid licence by the driver which is one of the crucial issue has not been decided by the Tribunal, as payment of the Insurance Company is dependent on the finding with regard to

holding of valid licence by the driver. If the driver is found to be not having valid licence then the Insurance Company cannot be compelled to indemnify the owner of the vehicle otherwise in case of coverage of insurance of the vehicle the Insurance Company is liable to indemnify the owner of the vehicle. This Court is of the view that as this is important issue which has not been gone into by the Tribunal accordingly this Court is remanding back the case for a limited purpose with regard to recording a finding about holding a proper licence by the driver at the time of accident. The parties, if so desire, they may file the additional evidence oral or documentary evidence, if any, and the Tribunal will decide this accordingly. But this exercise will not deprive the claimant of the amount that has been computed by the Tribunal.

10. In such view of the matter, this Court directs the Insurance Company to pay the compensation amount along with interest from the date of filing of the application and liberty to recover the amount from the owner if finding is recorded in their favour with regard to holding a valid licence. The counsel of the owner of the vehicle undertakes to appear in the case before the Tribunal and participate in the proceeding on the issue of making an enquiry on the point of holding valid licence by the

driver. The amount will be paid to the claimant within a period of two months from the date of receipt of the order.

11. Statutory amount deposited in this Court will be remitted to the court below and the same will be paid to the claimant that will be adjusted against the computed amount. Office is directed to send back the lower court records forthwith.

12. With the aforesaid observation and direction this appeal is allowed.

Vinay/-

(Shivaji Pandey, J)

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