

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.319 of 2012

Branch Manager National Insurance Company Ltd., Shahi Road, Cinema Road, Gorakhpur - 273001 through Branch Manager, National Insurance Co. Ltd., Municipal Chowk, Near Patrol Pump, Chapra - 841301 (Saran) represented through Sri Anjani Kumar working as A.O. and duly constituted attorney of National Insurance Company Co. Ltd. Having its Regional Office at 4th floor, Sone Bhawan, P.S. - Sachivalya, District - Patna.

.....Appellant

Versus

1. Urmila Devi, Wife of Tarkeshwar Mahto
2. Punwajee Kumari, Daughter of Tarkeshwar Mahto
3. Mithageya Kumari, Daughter of Tarkeshwar Mahto
4. Guriya Kumari, Daughter of Tarkeshwar Mahto
5. Pachu Kumar, Daughter of Tarkeshwar Mahto

Respondent Nos. 2 to 5 are represented through their mother, the natural guardian.

All are resident of Village - Baguni, P.S. - Parsa, District – Saran (Chapra).

.....Claimants-Respondents - Ist Set

6. Manish Kumar Shukla, Son of Ram Narayan Shukla, R/o Village - Panapur, Bhainsa Bajar, Gorakhpur (U.P.) (owner of vehicle bearing its Registration No. - UP-23/1979).

.....O.P. No. 2

7. Sukanti Devi, Daughter of Late Tarkeshwar Mahto, Wife of Mukesh Mahto, R/o Village - Tarawa Shikarpur, P.S. - Dariyapur, District - Saran (Chapra).

.....O.P. No. 3-Respondents - IInd Set

Appearance :

For the Appellant/s : Mr. Shailendra Kumar, Advocate
For the Respondent Nos. 1 to 5 : Mr. Ajay Kumar Tiwary, Advocate
For the Respondent No. 6 : Mr. Ajit Kumar, Advocate
Mr. Santosh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the appellant, learned counsel for the respondent nos. 1 to 5 and learned counsel for the respondent no. 6.

2. This appeal has been preferred against the Judgment and Award, respectively, dated 16th February, 2012 and 29th February, 2012 passed by Sri Vijay Shankar Pathak, learned 2nd Additional District Judge-Cum-Motor Accident Claim Tribunal, Saran at Chapra in Claim Case No. 41 of 2009.

3. Learned counsel for the appellant (Insurance) simply submits that since the driver of the offending truck having no driving license nor the owner had road permit, the Claim Tribunal Below without taking into consideration such defect fixed the liability of compensation against the appellant (Insurance) without giving right to recovery from the owner of the offending vehicle in spite of the fact that before the Claim Tribunal Below the owner (defendant no. 2) entered into appearance by filing power on 15th

December, 2009, but avoided filing any pleading or document.

4. It is also pointed out that the amount of interim compensation has already been paid by the appellant (Insurance) but rest of the amount against Award are yet to be paid and the appellant (Insurance) is ready to pay the same within a month from today with a liberty to initiate proceedings for recovery at its own risk against the owner-respondent no. 6, if at all on thorough enquiry the appellant (Insurance) is convinced to substantiate its claim with a right of the owner-respondent no. 6 to contest such claim, if preferred.

5. It is pointed out by learned counsel appearing on behalf of owner-respondent no. 6 that the relevant documents are available with the Lower Court Records though not formally marked as Exhibit/s.

6. In view of the above, there appears some substance in the submissions; hence, as prayed for, this appeal stands disposed of with modification in the Award to the extent aforementioned/as offered.

7. The appellant (Insurance) is directed to satisfy the Award within a month from today with a liberty as prayed for and indicated above.

8. Let the statutory amount, if so deposited, be remitted to the Claim Tribunal Below for needful.

(Akhilesh Chandra, J)

Praveen-II/-

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