

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.195 of 2011

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National Insurance Company through Sri Anjani Kumar A.O.-Cum-Duly
Constituted Attorney National Insurance Company Ltd., Regional Office, 4th Floor,
Sone Bhawan, B.C. Patel Road, P.O.-G.P.O., P.S.-Sachiwalaya, Patna, District-
Patna.(Opposite Party No. 2)

.....Appellant

Versus

1. Gyanendra Kumar, Son of Ram Ekbal Singh, resident of Village-Samhar, P.O.-
Nenua, P.S.-Dumraon, District-Buxar.(Opposite Party No. 1)
 2. Santosh Kumar Choubey, Son of Uma Shankar Choubey, resident of Safakhana
Road Dumroan, P.S.-Dumroan, District-Buxar.(Opposite Party No. 3)
 3. Saddam Hussain @ Saddam Ansari, Son of Gulam Farid.(Claimant No. 1)
 4. Gulam Farid, Son of Abdul Nasim.(Claimant No. 2)
 5. Sultana Khatoon, Wife of Gulam Farid.(Claimant No. 1)
- Respondent Nos. 3 to 5 residents of Dumroan, Ward No. 10, Takia Mohalla,
P.O. & P.S.-Dumroan, District-Buxar.

.....Respondents

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Appearance :

For the Appellant : Mr. Ashok Priyadarshi, Advocate
For the Respondents : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Sanjay Kumar, Advocate
Mr. Rahul Nath, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 28-01-2015

Heard the parties.

2. This is an appeal preferred against the Judgment
and Award, respectively, dated 3rd November, 2010 and 8th

December, 2010 passed by Motor Vehicles Claims Tribunal-Cum-3rd Additional District Judge, Buxar in Claim Case No. 7 of 2007.

3. In view of the fact that the appellant (Insurance Company) has preferred this appeal only on the ground that in spite of the finding that the driver of the offending vehicle had no valid licence, the Claim Tribunal Below has directed the appellant (Insurance Company) to indemnify the liability of the owner and driver etc. with a right to recover which is contrary to law laid down by this Court in a case of **“New India Assurance Co. Ltd. v. Most. Lahaso Devi”**, reported in **2002 (3) PLJR 166** and the Hon’ble Apex Court in a case of **“Ishwar Chandra and Ors. v. Oriental Insurance Co. Ltd. and Ors.”** (2007 (10) SCC 650) which has been followed and relied upon in subsequent case of **“National Insurance Co. Ltd. v. Vidhyadhar Mahariwala and Ors.”**, reported in **AIR 2009 Supreme Court 208**.

4. While substantiating the findings of the Claim Tribunal Below, learned counsel for the respondent-owner pointed it out that in the written statement, the owner and driver have clearly stated that no term of policy was violated and the driver possesses valid and effective driving

licence.

5. True it is, neither in the pleading no further details are mentioned nor such licence was ever produced and unfortunately due to lack of communication etc. these opposite parties were not in attendance.

6. Taking into consideration all such aspects, on the prayer of appellant (Insurance Company) the Claim Tribunal Below vide its order dated 23rd December, 2009 ordered issuing notices upon the owner and driver directing to produce the relevant documents including driving licence and the appellant (Insurance Company) was directed to file requisites for such notice, but as is evident, nothing could be done on behalf of the appellant (Insurance Company); consequently, the direction of the Court could not be communicated to the owner and driver.

7. On going through the record of the court below, learned counsel for the appellant (Insurance Company) has left with no option but to concede.

8. In view of the above, there appears no merit in this appeal, accordingly, it is dismissed. The appellant (Insurance Company) is directed to satisfy the Award, as imposed by the Claim Tribunal Below, within a month

from today and if he, on proper verification, is convinced about the lack of valid driving license etc. as directed by the Claim Tribunal Below at its own risk may initiate proceeding for recovery, wherein, the owner and driver of the offending vehicle shall have every right to contest and produce the required materials.

9. As prayed for, the statutory amount, if so deposited, be remitted to the Claim Tribunal Below for needful.

(Akhilesh Chandra, J)

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