

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.684 of 2013

=====

The Branch Manager, National Insurance Company Ltd., Nawadah

.... Appellant/s

Versus

Brahmadeo Paswan & Ors.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Raj Kumar Singh Vikram, Adv.

For the Respondent/s : Mr. Sanjay Parasmani, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL ORDER

9

18-08-2015

Heard counsel for the appellant and the respondents.

In this case, the Insurance Company has filed this appeal against the judgment and order dated 25th Aril 2013 by which the Tribunal has directed for payment of Rs.50,000/- in exercise of power under Section 140 of the M.V.Act

The sheet anchor of challenge by the appellant is that the victim was travelling on the roof of the bus and the driver applied hard break as a result of which the victim had fallen down from the roof of the bus and died.

He has placed reliance on the statement made by the brother of the victim before the Police where he stated that the victim was employed in a sweet shop while returning home by Star bus bearing Regd. No. BR 27-2803 as the bus reached at Kachana More, on account of negligent and rash driving his brother had fallen down and while being taken to the hospital, died.

From the side of claimants, three witnesses were examined, one is the wife of the victim, namely, Baby Devi and two other witnesses were also examined. In their statements, they stated that the victim was inside the bus, on account of negligent driving was thrown out of the bus and died. The Insurance company also got examined the Surveyor as D.W.1 where he stated that he had conducted survey he had gone to the spot and during inspection he could know that the victim was sitting at the top of the bus and on account of fall from the roof of bus he died. He proved the investigation report which was marked Ext-B.

Counsel for the respondent submits that from the FIR it is clear that the victim was not running at the top of the bus rather he was inside the bus and died by falling outside the bus.

It does not stand to reason, how a person occupying a seat inside the bus, can fall outside the bus but a person travelling on the roof of the bus can fall if hard break is applied by the driver. The improved statement that has been accepted by the court below does not stand to the reason and it is against the common intelligence and this Court is of the view that the court below has wrongly, on the basis of statement made in the complaint, has recorded that the victim was inside the bus and died due to negligent and rash driving. The statement of the surveyor and its report does not indicate that the Victim was inside

the bus.

In such view of the matter, the impugned order of the court below is not sustainable. However, in view of the judgment reported in 2011(2) PLJR 124 a person is travelling on the roof of the bus should not be deprived of 100 per cent compensation but the amount will be made half. In such view of the matter, the order under appeal is modified to the extent that the claimant s will get half of the compensation amount as calculated by the Tribunal. The Court below is directed to make necessary correction in the award within four weeks from the date of receipt or production of copy of the order. The counsel for the Insurance Company undertakes to deposit the amount within two months thereafter. Rs.25,000/- deposited in this Court be remitted to the court below for being paid to the respondents which will be adjusted against the amount to be paid to the claimants-respondents.

Accordingly the appeal is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Jay/-

U			
---	--	--	--