

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.56 of 2009

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Oriental Insurance Company Limited through its Patna Regional Office, which is at present situated at Pirmuhani More, P.O. – Kadamkuan, P.S. – Gandhi Maidan, Town and District – Patna.

(Opp. Party No. 2 in the Claim Case)

-----Appellant

Versus

1. Manju Devi, wife of Late Tribhuvan Prasad Gupta @ Tribhuvan Prasad Sah (wife of the deceased)
2. Vikash Kumar, son of Late Tribhuvan Prasad Gupta (son of the deceased)
3. Chanchal Kumar, son of Late Tribhuvan Prasad Gupta (son of the deceased)
4. Chandan Kumar, son of Late Tribhuvan Prasad Gupta (son of the deceased)
5. Ujala Kumari, daughter of Late Tribhuvan Prasad Gupta (daughter of the deceased)

Respondent no. 2 to 4 are minor sons and respondent no. 5 is minor daughter of the deceased Tribhuvan Prasad Gupta under the natural guardianship of their mother respondent no. 1.

All residents of village – Kanti Kasba, P.O. & P.S. Kanti, District – Muzaffarpur (Claimant in the Claim Case)

-----Respondent 1st Set.

6. Suresh Kumar, son of Jamuna Prasad Thakur, resident of village – Hardaspur, P.S. – Kanti, District – Muzaffarpur
(Owner of the Bus No. BR – 06D – 9321)
(Opp. Party no. 1 in the Claim Case)

-----Respondents 2nd Set.

7. Narayan Prasad Gupta, son of Ram Prasad Gupta, resident of Pakri Dayal, District – East Champaran at present Bhagwanpur Chowk, Muzaffarpur.

(Owner of the Truck No. BR – 06C – 4971)

(Opp. Party no. 3 in the Claim Case)

-----Respondents 3rd Set.

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Appearance :

For the Appellant/s : Mr. Rana Randhir Singh, Advocate

For the Respondent/s : Mr. Dhananjay Kumar No.2, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA
ORAL JUDGMENT

Date: 06-02-2015

Heard learned counsel for the parties.

2. Delay in filing the appeal is condoned.

Accordingly, Interlocutory Application No. 2885/2009 stands allowed.

3. The present Memorandum of Appeal is being filed for setting aside the Judgment and Order dated 04.09.2008 and Award dated 14.08.2008 passed by Sri Daya Nand Pandey, 5th Additional Motor Vehicle Claim Tribunal, Muzaffarpur, in Claim Case No. 30/2005.

4. The insurer appellant has preferred this appeal on solitary ground that in spite of the accident taking place due to collusion of two vehicles but liability has been settled against one vehicle under insurance by the appellant.

5. On going through the findings of the court below as well materials available with lower court records, learned counsel for the appellant had left with

no option but to concede that except taking a plea of contributory negligence there is nothing more neither the witnesses adduced have been cross-examined in that like nor any evidence is produced by the appellant.

6. He is simply relying upon submission of charge-sheet in police case against the concerned related with both the vehicles.

7. It is also submitted that in spite of finding that none of the drivers of the respective vehicles have produced their driving license, and issue no. 3 has been decided against, but the Claim Tribunal failed to provide right of recovery to the insurer. Having regard to the facts and circumstances, there appears agreement between the members of the bar that if the insurer appellant is given a right at his own risk to initiate steps for recovery of amount so paid to the claimants from the owners, in the event, from materials it is satisfied of such claim keeping the right of owners intact to contest.

8. Finding substance in the above modification, to the extent, as prayed for, giving right to recovery at own risk to the appellant, this appeal stands disposed of. Learned counsel for the insurer appellant is directed to pay remaining amount of the Award within one month from the date of



communication of this order.

9. It is also noticed that Award prepared by the Claim Tribunal below is not in consonance with its earlier order dated 20th March, 2007, permitting certain amendments in the Claim Tribunal with condition of two opposite parties who have all such things appears incorporated in the application and the added parties after appearance participated in the trial but in Award the names of two added opposite party nos. 3 & 4 does not find place.

10. The Claim Tribunal is directed to do all the needfuls immediately on receipt of Lower Court Records and make the defects in Award good.

11. Registry of this Court is directed to at once transmit the Lower Court Records to the Claim Tribunal for further needful. Simultaneously, statutory deposit be also sent to the Claim Tribunal.

Rajeev/-

(Akhilesh Chandra, J.)

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