

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.600 of 2013

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The Branch Manager, National Insurance Company Ltd., Tilak Complex, Namak Gola, through the Chief Regional Manager and the constituted Attorney Comp. Ltd. 4th Floor, Sone Bhawan, B.C. Patel Marg, PS-Sachivalaya, District-Patna.

.... Appellant/s

Versus

1. Prabhawati Devi wife of Late Chhedi Pd. Sah.
 2. Rachita Kumari
 3. Sarita Kumari
 4. Anita Kumari
- All 2 to 4 are minor daughters of Late Chhedi Prasad Sah
5. Shatrughan Kumar Minor son of Late Chhedi Pd. Sah, represented through Mother Prabhawati Devi
- All resident of village & P.O. Nai Bazar Ward No. 4, PS- Buxar Town, District-Buxar.
6. Pramod Kumar son of Sidharth Thakur, resident of Civil Lines, Buxar, PO-Buxar, PS-Buxar(Town), District-Buxar.

.... Respondent/s

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Appearance :

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

For the Respondent/s : M/s Anil Kumar Roy and Dhruw Swawini, Advs.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-08-2015

Heard learned counsel for the appellant and learned counsel for the respondents.

In this case, the appellant is challenging the judgment and award dated 1st June 2013/4th June 2013 passed by the Adhoc Additional District Judge 1st –cum-Motor Vehicle Accident Claim Tribunal, Buxar in M.V. Claim Case No. 2 of 2006 whereby and whereunder he has fixed the compensation amount of Rs. 2,71,500/- along with 9% interest from the date of filing of the application.

The short point has been raised by the appellant that the driver who was driving the vehicle, was not with the proper driving license met with an accident, the Insurance Company cannot be asked to indemnify the liability incurred.

The short facts of this case is that on 15th April 2005, the victim along with his nephew, Hari Narayan Prasad reached near F.C.I. gate. At about 5.15 P.M. a truck bearing registration no. U.P.60A/6911, whose driver was driving the vehicle in a rash and negligent manner, dashed the southern gate as a result of which the victim died at the spot.

The case was instituted as Buxar (M) P.S. Case No. 45 of 2005 for offences under sections 279/304(A) of the Indian Penal Code.

The Tribunal, after taking into consideration the different items for the purposes of calculation of compensation amount, arrived to a finding that the claimant is entitled to Rs. 2,71,500/-.

Counsel for the Insurance Company submits that as the driver, who was driving the vehicle, was not with the proper driving license, it is the liability of the owner to pay compensation and Insurance Company cannot be asked to indemnify the owner.

As per the judgment of Hon'ble Supreme Court and this Court the Insurance Company will have liberty to recover the

amount of compensation from the owner of the vehicle, if so advised.

Let Rs. 25,000/- deposited be remitted to the court below that will be released in favour of the claimant.

Accordingly, the appeal is disposed of in the above terms.

Lower Court Records of the court below be returned back to the office concerned.

(Shivaji Pandey, J)

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