

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.759 of 2010

=====

Branch Manager, National Insurance Company Ltd., Rajendra Nagar, Nawadah represented through Shri Anjani Kumar working as AdvocateO. And duly constituted attorney of National Insurance Company having its Regional Office at 4th Floor, Sone Bhawan, P.S. Sachiwalaya, Distt-Patna.

.... Appellant/s

Versus

1. Shanti Devi wife of late Karu Yadav
2. Sanjay Prasad son of Late Karu Yadav
3. Rita Kumari D/O Late Karu Yadav represented through her natural Guardian mother namely Shanti Devi all resident of village- Kumdilpur, PS-Akabarpur, P.O. Kuhila, Distt-Nawadah....Claimants/... Respondents 1st Set.
4. Saroj Kumar son of Aditya Singh Village-Balia Bujurg, PS-Akabarpur, Distt- Nawadah Owner of the Village bearing Reg. No. BR-13P/6539

=====

Appearance :

For the Appellant/s : Mr. Shailendra Kumar, Advocate

For the Respondent/s : Mr. Maruth Nath Rai, Advocate
Mr. Mrityunjay Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

13 21-06-2016

Instant appeal has been filed at the behest of National Insurance Company Ltd. against judgment dated 21.04.2010 and award dated 29.03.2014 passed by 2nd Additional Sessions Judge-cum-Additional Motor Accident Claims Tribunal, Nawada in Claim Case No. 13/2006 whereby and whereunder while allowing the claim petition, appellant/O.P. has been directed to pay Rs, 4,23,000/- minus Rs. 50,000/- having been paid in terms of Section 140 of the Motor Vehicle Act with a simple interest @ 8% per annum effective from the date of order till final realization of the amount.



2. Respondents 1st Party/claimants filed claim petition on account of death of Karu Yadav on 30.12.20005 while he along with others were travelling by Tata Maxi bearing Registration No. BR-13P/6539 after participating in a funeral of Bedam Devi their co-villager from Barh. The aforesaid vehicle met with an accident on account of rash and negligent driving. The deceased who was sitting inside the Maxi sustained injuries and in a way to Patna, he succumbed. It has further been disclosed that the deceased was engaged in milk business and was earning Rs. 160/- per day. At the time of death the deceased was aged about 45 years.

3. Saroj Kumar and Niranjana Kumar were impleaded as Opposite Parties out of whom Saroj Kumar was identified as owner of the vehicle while Niranjana Kumar as driver. It is further evident from the record of learned lower court that Saroj Kumar and Niranjana Kumar appeared but could not file their WS and on account thereof, the proceeding sailed *ex parte* against both of them.

4. The appellant/opposite party appeared and filed WS whereunder apart from raising ornamental objections and further pleading statutory protection in terms of Section 149(2) of the M.V. Act and further, to substantiate the same also pleaded



that driver was not at all a licensee and in likewise manner, road permit was also lacking. Fitness certificate was not at all on record. Adding furthermore, it has been pleaded that the strength of Tata Maxi happens to be that of 22 passengers while 25-30 passengers were inside the vehicle at the relevant time apart from having presence over roof, additionally. On account thereof, it has been submitted that there happens to be breach of policy and so, Insurance Company is not at all liable to indemnify the burden against the owner. Furthermore, it has been submitted that Saroj Kumar has been shown as owner of the vehicle while as per policy the name of the owner happens to be Ashok Kumar Pandey, therefore, there happens to be non identification of necessary party whereupon, the proceeding is defective and would not survive.

5. Apart from this, it has also been submitted that charge-sheet has been submitted against Arvind Kumar identifying him as a driver while Niranjana Kumar has been pleaded in the present petition as a driver. As such, there happens to be complete absence of proper identification of both *tortfeasors* making the petition non maintainable in the eye of law.

6. On the basis of rival pleading, the learned Tribunal had framed the following issues:-

1. Whether the alleged accident took place on

30.12.2005 at 3 P.M. by aforesaid offending vehicle Tata Maxi 407 bearing no. BR-13P/6539.

2. Whether the driver of the Tata 407 Maxi bearing no. BR-13P/6539 was driving the vehicle very rashly and negligently as a result of which the said vehicle turned own on the alleged date and time of occurrence.

3. Whether the driver of the aforesaid Tata Maxi was driving at the place where Karu Yadav died in alleged accident?

4. Whether the alleged accident took place during the stipulated valid period of its insurance?

5. Whether the death of Karu Yadav was caused due to alleged accident?

6. Whether the claimants are entitled to get compensation in this case.

7. It is evident from memo of appeal that Saroj Kumar has been pleaded as owner of the vehicle while Niranjana Kumar as driver of the vehicle out of whom the name of Niranjana Kumar has been deleted at the end of appellant at his own risk.

8. Learned counsel for the respective parties have shown performable, perforative submissions repelling each other on merit of the case but none of them could be able to perceive the deficiency over status of the parties and the plea having been taken on behalf of appellant/insurance company since its initial stage

whereupon would not have taken step for wiping out presence of Niranjana Kumar from memo of appeal.

9. Because of the fact that the judgment impugned happens to be deficient one, on account of non framing of issues over the controversy regarding owner of the Tata Maxi bearing registration No. BR-13P/6539 as well as driver of the vehicle who had driven the same at the fateful time and so there happens to be complete absence of relevant evidence to enlighten the real position whether Saroj Kumar, the person who has been impleaded as Opposite Party identifying him as owner of Tata Maxi bearing registration no. BR-13P/6539 or Ashok Kumar Pandey against whose name insurance policy stood and in likewise manner Arvind Kumar, the charge-sheeted accused or Niranjana Kumar, the party so pleaded as driver of the aforesaid Tata Maxi bearing registration no. BR-13P/6539 at the relevant time of accident.

10. While framing of the issues, the learned Tribunal should have properly appreciated the rival pleading whereunder status of the parties have properly been pleaded, the parties would have opportunity to lead the evidence followed with proper explanation coupled with definite finding at the end of Tribunal. At the present moment, one aspect could be perceived and that is,

regarding admission at the end of appellant over having vehicle in question insured at its end whereupon are under legal obligation to indemnify against owner, who is found vicariously liable for the negligence having committed by his employee during his employment.

11. In the aforesaid background, driver happens to be main *tortfeasor* and the status of the owner could be found under heading of vicarious liability in the background of his status as an employee and further, the accident took place at the hands of driver while the driver was under employment of owner. Therefore, actually, there should have been proper identification of both the *tortfeasors*, that means to say, driver and owner. As is evident from the facts of this case, identity of both these two is found shrouded under mystery and further, if such situation is allowed to survive, then in that event, the miscarriage of justice will really occur.

12. Lower court record has minutely been gone through in order to trace out whether there are sufficient materials available on the record whereupon after recasting of the issue the matter could be decided but, as is found deficient one, so it looks better to direct the learned lower court for proper exercise after recasting the issue over the controversy as indicated above as well

as after collecting evidence at both end, in case produced.

13. In the aforesaid facts and circumstances of the case, the judgment and award impugned are set aside. Appeal is allowed.

14. The matter is remitted back to the learned lower court to frame additional issue on that very score and procure evidence from respective sides and then, after hearing both the parties will pass an appropriate order in accordance with law on all issues afresh.

15. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Patna High Court
21st day of June 2016
perwez/AFR

U			
---	--	--	--