

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.39 of 2011

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Division Manager, National Insurance Co. Ltd & Ors
..... Appellant/s

Versus

Fulkumari Devi & Ors
..... Respondent/s

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with
Miscellaneous Appeal No.40 of 2011

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Division Manager, National Insurance Co. Ltd & Ors
..... Appellant/s

Versus

Mahamuni Devi & Ors
..... Respondent/s

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Appearance :
(In MA No.39 of 2011)
For the Appellant/s : Mr. Shailendra Kumar
For the Respondent/s : Mr.
(In MA No.40 of 2011)
For the Appellant/s : Mr. Shailendra Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

12 19-08-2016 Both the Miscellaneous Appeals have been filed against the judgment and award passed in Claim Case No. 73 of 2007 and 72 of 2007 dated 01.10.2010 and 27.10.2010 respectively by learned 3rd Additional District Judge-cum- Motor Accident Claims Tribunal, Bhagalpur.

Limitation petition vide Interlocutory Application No. 5457 of 2015 for condoning the delay in filing Misc. Appeal No. 40 of 2011 is hereby allowed.

The main ground taken by the appellants is that at the time



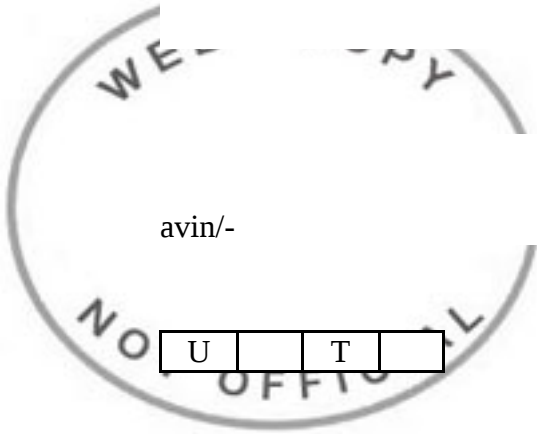
of accident the driver of the vehicle was not having valid license and further there was no valid road permit and this plea was taken before the learned court below also in paragraph 8 and 9 of written statement filed by National Insurance Company Ltd. It is submitted that it is a case where there is breach of condition and, as such, the Insurance Company is not liable to pay the compensation amount.

On behalf of respondent no. 1 in both the appeals, on the other hand, it is submitted that even if there is breach of condition then also the Insurance Company is liable to pay the amount so decreed having the option open to proceed against the owner for recovery of the aforesaid amount.

In view of the decision of the Apex Court in the matter of **S. Iyyapan Vs. United India Insurance Company Ltd. and Anr.** reported in **(2013) 7 SCC page 62**, the appellants are liable to pay the amount so decreed having with option open to proceed against the owner for recovery of the said amount if there is any breach of condition.

With the aforesaid observations both the appeals are hereby disposed of. The appellants are directed to pay the amount of award to the claimants within two months from today. The statutory amount of Rs. 25,000/- so deposited by the appellants be

returned to the learned Tribunal for paying the same to the claimants.



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(Jitendra Mohan Sharma, J)