

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.843 of 2011

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1. NARESH YADAV SON OF BECHAN YADAV
2. RATANDEO YADAV SON OF NARESH YADAV
3. SAKALDEO YADAV SON OF NARESH YADAV
4. PUJA KUMARI D/O NARESH YADAV 12 YEARS
5. RAJDEO KUMAR YADAV AGED ABOUT
(APPELLANT NO.4 & 5 ARE MINORS AND ARE UNDER THE CARE AND
GUARDIANSHIP OF APPELLANT NO.1)VILLAGE- BATHENE, P.S.-
PANDAUL, DISTRICT- DARBHANGA.

.... APPELLANT/S

VERSUS

1. MAMATA SINGH W/O NARANDRA KUMAR SINGH MUHALLA-
BALBHADRA PUR, P.S. LAHERIA SARAI,DARBHANGA (OWNER OF
THE OFFENDING TRUCK NO.BR7G/8664)
2. SHANKER PASWAN MAHADEO PASWAN VILLAGE- MANU CHOWK,
P.S. SURJ GADHA, DISTRICT- MUNGER (DRIVER OF THE OFFENDING
TRUCK)
3. CHIEF REGIONAL MANAGER ORIENTAL INSURANCE COMP. LTD.
PEER MUHANI, PATNA.

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Md. Ataul Haque, Adv.
For the Respondent No.3 : Mrs. Abha Kumari, Adv..

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER
Date: 23-06-2016

Being dissatisfied with the quantum of compensation
having been granted by the Additional District Judge, Ist cum Motor
Vehicle Accident Claims Tribunal, Darbhanga, in Claim Case No.27
of 2005, vide its judgment dated 24.11.2010 and award dated
07.09.2011, appellants /claimants have filed instant appeal asking for
enhancement thereof.

2. It has been pleaded by the appellant/claimant that on
07.04.2005 at about 05:30 AM while claimant along with other
persons including Bachchi Devi @ Bachcha Devi deceased were



proceeding towards their village after hiring a jeep bearing registration no.BR7P 3351, it was dashed by a truck bearing registration no.BR7G 8664. Mrs. Mamta Singh, wife of Narendra Kumar Singh has been shown as owner of the truck while Shankar Paswan has been shown as driver at the relevant time. At the relevant time, offending truck was insured under Oriental Insurance Company Limited.

3. On being noticed, the insurance company, oriental insurance company limited appeared and filed petition under Section 170 of the MV Act and the same was allowed vide order dated 15.04.2006. Subsequently thereof, on 24.05.2006 W.S. was filed wherein apart from ornamental objections, specific plea has been made that it happens to be a case of contributory negligence and on account thereof, owner as well as driver of the aforesaid jeep BR7P 3351 happen to be necessary party and to be impleaded accordingly.

4. It is evident from perusal of the order sheet of the learned lower court dated 07.06.2006 that court had directed the appellant/claims to implead owner and driver of the jeep bearing BR7P 3351 to be opposite party but the said order never been complied with.

5. Unfortunately, during passing of the judgment and award impugned, the learned tribunal also failed to acknowledge the same. Even during course of filing of instant appeal the aforesaid order dated 07.06.2006 has not been taken note of.

6. As, the appellant /applicant failed to challenge the order dated 07.06.2006 on account thereof, had met with finality. Consequent thereupon, it was obligatory on the part of the appellants /claimants to have it duly complied with. As, the appellants/claimants failed to comply the order dated 07.06.2006, made the claim petition defective one on account of non-pleading of necessary party. As the insurance company had not challenge the judgment and award impugned on account thereof, its adverse impact over propriety of the judgment and award impugned goes out of question but, during course of entertaining instant appeal at the end of the appellant /claimants relating to enhancement of the claim amount, certainly the non-compliance of the order dated 07.06.2006 will cause hurdle and that being so, the instant appeal is found devoid of merit and is accordingly dismissed.

(Aditya Kumar Trivedi, J)

PN/-

AFR/NAFR	AFR
CAV DATE	29.03.2016
Uploading Date	23.06.2016
Transmission Date	