

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.744 of 2012

=====

Branch Manager, the New India Assurance Company Ltd., Magardahi Ghat, Samastipur, District Samastipur, represented through Shri Prabhakar Pradhan, working as Deputy Manager, having its Regional Office at 6th and 7th Floor, B.S.F.C. Building, Frazer Road, P.S. Kotwali, District Patna and duly constituted Attorney of the New India Assurance Company Limited.

.... Appellant.

Versus

1. Prema Devi, wife of Birendra Prasad Singh.
2. Birendra Prasad Singh, son of Rameshwar Prasad Singh, both resident of village Bhagwanpur Desua, P.S. Ujiarpur, District Samastipur.
..... Respondent 1st Set.
3. Prafulla Kumar, son of Late Ram Vilash Singh, resident of village Bhagwanpur, Desua, P.S. Ujiarpur, District Samstipur, owner of the vehicle bearing its registration no. BR 9C/5579.
... .. Respondent 2nd Set.

=====

Appearance :

For the Appellant : Mr. Shailendra Kumar, Adv.
For the Respondent Nos.1&2 : Mr. Mukesh Prasad Singh, Adv.
Md. A.H. Sahara, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 08-09-2017

Heard learned counsel for the appellant and learned
counsel for the respondent nos.1 & 2.

2. This miscellaneous appeal has been preferred against the order dated 20.07.2012 passed by the Fast Track Court-I, Samastipur in Claim Case No.3 of 2005, whereby the learned lower Court, allowing the petition under Section 140 of the Motor Vehicles Act of the claimants, directed the New India Assurance Company Limited (hereinafter in short referred to as the 'Insurance Company') to pay ad interim compensation to the tune of Rs.50,000.00 to the claimants.



3. The factual matrix of the case is that the claimants who happens to be the parents of the deceased-Ajit Kumar Singh has filed claim petition under Section 140 of the Motor Vehicles Act vide Claim Case No.3 of 2005 for awarding ad interim compensation to the tune of Rs.50,000.00 with the case in succinct that their son, namely, Ajit Kumar Singh was khalasi of the pick-up van bearing registration no.BR 9C 5799. In course of plying the said vehicle, on 09.12.2004 when it arrived on Saidpur Sarfuddin Road at village Tepri P.S. Piar, District Muzaffarpur some unknown miscreants surrounded the vehicle and eliminated its khalasi & driver and thrown their dead bodies on the road side ditch and fled away with the vehicle. Regarding the aforesaid occurrence, Piar P.S. Case No.141 of 2004 was instituted under Sections 302 and 201/34 of the Indian Penal Code against some unknown miscreants. The said vehicle was insured with the New Indian Assurance Company Limited at the time of accident. The Insurance Company put its appearance in the case and filed its rejoinder to the claim petition stating therein that the incident was not an accident rather it was a murder committed by some unknown miscreants regarding which F.I.R., has been lodged under Section 302 and 201/34 of the Indian Penal Code against some unknown miscreants. Hence, the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the



vehicle.

4. After hearing the parties and perusing the record, the learned lower Court vide its impugned order dated 20.07.2012 directed the Insurance Company to pay ad interim compensation to the tune of Rs.50,000.00 to the claimants.

5. Being aggrieved and dissatisfied with the impugned order, the Insurance Company has preferred this appeal.

6. Learned counsel for the appellant-Insurance Company has submitted that the deceased has not died in motor vehicle accident rather he was murdered by some unknown miscreants during the course of plying the vehicle and regarding which Piar P.S. Case No.141 of 2004 under Sections 302 and 201/34 of the Indian Penal Code against some unknown miscreants has been lodged. Hence, the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle.

7. On the other hand, learned counsel for the claimants/ respondents has submitted that the deceased was khalasi of the vehicle and his death was caused during the course of employment and in course of plying the vehicle and the said vehicle was insured at the time of occurrence by the appellant-Insurance Company, so the appellant is liable to pay the compensation to the claimants.

8. It is admitted case of the parties that the deceased



was murdered by some unknown miscreants during the course of plying the offending vehicle. It is also not denied by the appellant that the deceased was the khalasi of the vehicle. As the deceased was khalasi of the offending vehicle and eliminated by some unknown miscreants and the said murder of the deceased was during the course of use of the motor vehicle, hence, in my considered opinion, the appellant, being the insurer of the offending vehicle, is squarely liable to pay the compensation to the claimants. Hon'ble Apex Court in the case of **Smt. Rita Devi and others Vs. New India Assurance Company Limited and another** reported in **2000 (2) T.A.C. 213 (SC)** has been pleased to rule that the death of the deceased was caused accidentally in the process of committing theft of auto-rickshaw. The murder of the deceased was due to an accident arising out of the use of the said motor vehicle. Hence, the claimants were entitled for compensation as claimed by them from the Insurance Company. This Court also in the case of **National Insurance Company Limited Vs. Sidhu Devi and others** reported in **2001 (1) T.A.C. 367 (Pat.)** following the law laid down in the case of **Smt. Rita Devi (supra)** has also been pleased to hold that where the death of the deceased was not caused due to motor accident rather they were killed by miscreants, the Insurance Company is liable to pay the compensation to the claimants.



9. In view of the aforesaid facts and proposition of law, I find and hold that the appellant is liable to pay the aforesaid amount of interim compensation to the claimants indemnifying the owner of the vehicle. Hence, the impugned order passed by the learned lower Court is upheld. Accordingly, this appeal is dismissed. However, the appellant will have a liberty to take all the pleas before the learned lower Court. The statutory amount deposited by the appellant be sent to the learned lower Court for payment to the claimants.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.09.2017
Transmission Date	NA

