

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.318 of 2011

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1. The New India Assurance Company Limited, Deoghar.
 2. The new India Assurance Company Limited, Chandralok Complex, Ghantaghar, Bhagalpur.
Appeal and Appellant through the Deputy Manager and Constituted Attorney, Regional Office, New India Assurance Company Limited, 6th Floor, B S F C Building, Frazer Road, Patna.

.... Appellant/s

Versus

1. Suhagani Devi, W/o Late Mahadeo Soren, resident of village – Bashutiya Magdiha, P.S.-Sonarsi, District-Deoghar, A/P-P.S. and Dist.-Bhagalpur.
2. Ful Mani Murmoo, W/o Manshi Soren, resident of Vilage – Bhalwindha, P.S.-Sonarsi, District-Deoghar.
3. Sudhir Chandra Rai, S/o Santi Rai, resident of village – Dhokai, P.S.-Sarwa, District-Deoghar (owner).

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate.

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 28-08-2017

From perusal of the record, it appears that the respondent no.2-Ful Mani Murmoo has died during the pendency of the appeal, but the heirs of respondent no.2 has not been brought on record by way of substitution. As the case under hand happens to be Motor Accident Claim Case and due to the death of the deceased Mahadeo Soren in the accident, his wife-Sohagini Devi has filed claim case as legal representative and dependent of the deceased making his mother Ful Mani Devi as one of the opposite party in the case and as one of the dependent is already on record, hence, the substitution of heirs of the aforesaid deceased/respondent no.2 who



happens to be another dependent of the deceased does not appear to be necessary.

2. Heard learned counsel for the appellants in this appeal. No one turned up on behalf of respondent nos. 1 and 3 despite service of notice.

3. This appeal has been filed against the judgment dated 09.11.2009 and award dated 25.03.2010 passed by the 2nd Additional District Judge-cum-Additional Motor Vehicle Accident Claim Tribunal, Naugachhia, Bhagalpur in Claim Case No. 105 of 2007, whereby directing the appellant-New India Assurance Company Limited to pay compensation to the tune of Rs. 4,17,500/- along with interest at the rate of 9% per annum from the date of filing of the claim case till the realisation of the compensation amount.

4. Factual Matrix of the case is that the Claim Case No. 105 of 2007 was filed under Sections 165 and 166 of the Motor Vehicle Act by Sohagani Devi against the appellants and others for awarding compensation to the tune of Rs. 3,00,000/- on account of death of her husband, Mahadeo Soren in the motor vehicle accident with the case in succinct that the deceased Mahadeo Soren was the driver of the tractor bearing Registration No. JH 15A 0198. On 03.12.2003 at around 10 P.M., the said tractor turned turtle at Village Siktiya Canal, near Heath Bariyar, P.S.-Sarath, District-Deoghar resulting into the death of the driver of the aforesaid vehicle on the



spot due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident as evident from the F.I.R. filed by the claimant herself. The deceased was the driver and he used to earn Rs. 3,000/- per month from the said vocation. The appellants put their appearance in the case and filed written statement, while the owner of the vehicle did not file any written statement despite putting his appearance in the case.

5. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in the earlier paragraph. Being aggrieved and dissatisfied with the impugned judgment and award, the appellant-Insurance Company has filed this appeal.

6. It is submitted by learned counsel for the appellants that as the claim case has been filed under Sections 163A and 166 of the Motor Vehicle Act, hence the said case is not maintainable in the eye of law as the case cannot be filed under both the sections and the claimant has to opt either of the aforesaid sections in filing the claim case. It is further submitted by the learned counsel for the appellants that the driver of the offending vehicle was driving the same rashly and negligently and met with an accident due to his own negligence resulting into his death. Hence, the Insurance Company is not liable to pay compensation for the accident caused due to negligence of the driver himself. It is further submitted by the learned counsel for the



appellants that the driving license of the driver (deceased) was not valid at the relevant time of accident, as the driving license had expired on 30.07.2003 while the accident has taken place on 03.12.2003. So, the Insurance Company is not liable to pay compensation to the claimant on the aforesaid counts rather owner of the vehicle is liable to pay the same.

7. From perusal of the impugned judgment, it appears that the claim petition has been filed by the claimant under Section 166 of the Motor Vehicle Act read with Section 163A of the Motor Vehicle Act. But from perusal of the original claim petition and lower court records, it appears that it was not filed under Section 163A rather Sections 165 and 166 of the Motor Vehicle Act and Section 163A has wrongly been mentioned in the impugned judgment.

8. The deceased was the driver of the offending vehicle and from perusal of the F.I.R. filed by the claimant herself marked as Exhibit-1, it appears that the aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver. CW-2 in his examination-in-chief itself has stated that the accident took place due to overturning of the tractor by rash and negligent driving of the same by its driver (deceased) resulting into death of the deceased. Thus, from perusal of the F.I.R. and deposition of the claimants' witness, it appears that the aforesaid accident took place due to rash



and negligent driving of the offending vehicle by the deceased himself who happened to be the driver of the offending vehicle. As the accident took place resulting into the death of the driver (deceased) due to negligence of the deceased himself, the insurance company would not be liable to pay any compensation to the claimant. Hon'ble Apex Court in the case of **Sridhar Versus United India Insurance Co. Ltd.** reported in **(2011) 0 Supreme (SC) 903** has been pleased to observe that if the negligence is attributable only on the person who was driving the vehicle, he is not entitled to get any compensation under the Insurance Policy. However, Insurance Company was directed to pay limited amount by way of compensation to the injured persons of an accident arising out of use of a motor cycle on the basis of "no fault liability" since the accident has arisen out of use of motor vehicle and resulted in grievous injuries to the claimant. Record further indicates that the appellant has already paid Rs. 50,000/- by way of ad-interim compensation to the claimant under Section 140 of the Motor Vehicle Act.

9. From perusal of the Exhibit-C, report of the District Transport Officer, Deoghar filed by the appellant in the case, it appears that the driving license No. 447/1995 issued in favour of the deceased Mahadeo Soren had expired on 30.07.2003 and as per the Motor Vehicle Act, the application for renewal of driving license might have been filed within one month from the date of its expiry,



but the same has not been renewed till the date of accident which took place on 03.12.2003. Thus, the deceased was not holding valid driving license at the time of accident, hence, there was utter violation of the terms and conditions of the policy. So, Insurance Company is not liable to pay any compensation rather the owner of the vehicle is liable to pay the same. Liability of the Insurance Company to pay compensation arises only when there is no violation of terms and conditions of the policy.

10. In the facts and circumstances of the case, I find and hold that the impugned judgment and award passed by the learned Lower Court awarding the compensation against the appellant is wrong and illegal and it is, accordingly, set aside and this appeal is allowed. Let the statutory amount of Rs. 25,000/- deposited by the appellant be returned to it by way of cheque.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	31.08.2017
Transmission Date	

