

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.777 of 2013

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Dinesh Singh @ Dinesh Prasad Singh S/o Late Sanehi Singh Resident of Village Sherpur, Police Station Maranchi, District Patna.

.... Appellant/s

Versus

1. Amresh Kumar S/o Jugeshwar Prasad Resident of Village Barahpur, P.O. More, Police Station Mokama, District Patna (Owner of the vehicle).
2. Perma Nand Kumar S/o Geeta Prasad Singh Resident of Village Nepal Tola, Police Station Maranchi, District Patna (Driver of the Vehicle).

.... Respondent/s

with

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Miscellaneous Appeal No. 687 of 2013

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The Branch Manager, The New India Assurance Company Ltd. Branch of Biharsharif, Appeal And Appellant through the Manager & Constituted Attorney, Regional Office, New India Assurance Company Limited, 6th Floor, BSFC Building, Frazer Road, Patna.

.... Appellant/s

Versus

1. Dinesh Singh @ Dinesh Prasad Singh S/o Late Sanehi Singh Resident of Village Sherpur, Police Station Maranchi, District Patna.
2. Amresh Kumar S/o Jugeshwar Prasad Resident of Village Barahpur, P.O. More, Police Station Mokama, District Patna (Owner).
3. Permanand Kumar S/o Geeta Prasad Singh Resident of Village Nepal Tola, P.S. Maranchi, District Patna (Driver).

.... Respondent/s

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Appearance :

(In MA No.777 of 2013)

For the Appellant/s : Mr. Rajesh Kumar
For the Respondent no. 3 : Mr. Durgesh Kumar Singh

(In MA No.687 of 2013)

For the Appellant/s : Mr. Durgesh Kumar Singh
For the Respondent no. 2 : Mr. D.K. Pandey
For the Respondent no. 1 : Mr. P Kumar Singh
For the Respondent : Smt. Divya Bharti

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 11-10-2017

Heard learned counsel for the appellants and learned



counsel for the respondents in the aforesaid two Miscellaneous Appeals and perused the records.

2. As the aforesaid two Miscellaneous Appeals have cropped up from the common Judgment, hence, these two appeals are being taken together for consideration and are disposed of by the common Judgment.

3. The aforesaid two Miscellaneous Appeals have been filed against the Judgment dated 12.08.2013 and Award dated 23.09.2013 passed by 1st *Adhoc* Addl. District Judge-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case no. 81 of 2003 whereby the learned Tribunal directed the opposite party no. 3 (New India Assurance Company Limited) to pay final amount of compensation to the tune of Rs. 1,27,000/- to the claimant with interest @ 7% per annum within two months from the date of filing of the claim case, except for the period 11.12.2007 to 26.04.2012, till its realization giving liberty to the New India Assurance Company Ltd. to recover the aforesaid amount from the owner of the offending truck after its payment.

4. Factual matrix of the case is that the claimant Dinesh Prasad Singh filed the Claim Case no. 81 of 2003 for awarding compensation to the tune of Rs. 11,00,000/- against the opposite parties with the case in succinct that while he was coming from his village on bullock cart on 07.03.2001, a truck bearing



registration no. BR-1G-3783 being driven rashly and negligently by its driver dashed the said bullock cart resulting into a permanent disability of 65% in his both the legs. After the accident, the claimant was rushed to the local hospital and during the course of treatment, he was treated at different places i.e. Begusarai, Patna and Barh and after long treatment for over one year, his right leg below ankle was amputated and his left leg was damaged in the accident. He spent Rs. 5 lacs on his treatment. He was an agriculturist aged about 50 years and used to earn Rs. 2,000/- per month from the said vocation.

5. The opposite party nos. 1 and 2 who happen to be owner and driver of the offending vehicle and opposite party no. 3 The New India Assurance Company Ltd. who happens to be insurer of the said vehicle put their appearance in the case and filed their separate written statement. The claimant has examined two witnesses and filed several documents in buttress of his case while opposite party no. 3 also filed two documents in buttress of its case.

6. After hearing the parties and perusing the record, learned lower court passed the impugned Judgment and Award as detailed in the earlier paragraph.

7. Being aggrieved and dissatisfied with the aforesaid Judgment and Award, the opposite party no. 3 (The New India Assurance Company Ltd.) has filed Misc. Appeal no. 687 of 2013



and claimant has filed Misc. Appeal no. 777 of 2013.

8. The New India Assurance Company Ltd. has assailed the impugned Judgment and Award mainly on the ground that the owner of the offending vehicle was not having valid road permit and the said vehicle was being plied without valid road permit at the relevant time of accident in utter violation of terms and conditions of policy, hence, it is not liable to pay any compensation to the claimant. It is also not liable to pay the same to the claimant and then recover from the owner of the offending vehicle. The impugned Judgment passed by the learned lower court directing pay and recovery to the appellant is wrong and illegal and is liable to be set aside.

9. On the other hand, the claimant has filed the aforesaid Misc. Appeal for enhancement of quantum of the compensation submitting that the compensation granted in the head of pain and suffering and medical expenses by the learned lower court is very meager. The learned lower court has not granted any compensation towards transport expenses made by him in rushing from one place to other in the course of treatment and food and diet expenses made by him for early recovery and healing up of his wound.

10. It is submitted by the learned counsel for the owner of the offending vehicle that the owner was having valid road permit



at the time of accident. Hence, the New India Assurance Company Ltd. is liable to pay compensation and not the owner of the vehicle and the same cannot be recovered from him.

11. Regarding quantum of compensation awarded by the Tribunal, from perusal of record, it appears that in the head of medical expenses Rs. 15,000/- has been awarded by the Tribunal to the claimant. The claimant has failed to bring on record the evidence of expenses made by him on his treatment such as voucher and cash memo for purchasing medicine etc. rather has filed prescription regarding his treatment and for want of evidence regarding expenses made by the claimant on his treatment, the medical expenses awarded by the Tribunal appears to be proper and adequate.

12. However, Rs. 5,000/- awarded towards pain and suffering appears to be quite inadequate as the claimant has suffered 65% disability in his leg and he was treated at several places for over a year and finally his leg was amputated, so he must have suffered lot of mental agony trauma and suffering. Hence, I think it proper and adequate to award Rs. 25,000/- under the said head. Beside the aforesaid head, as the claimant was treated in Patna, Begusarai and Barh, he must have visited the aforesaid places several times in course of his treatment along with at least one attendant. Hence, I think it proper and adequate to award Rs. 25,000/- in the head of transportation and also Rs. 25,000/- in the head of food and diet



which would have been taken by him during the course of treatment for early recovery and heal up of the wound.

13. On addition of aforesaid heads of compensation and other head of compensation as awarded by the learned Tribunal, the total amount of compensation comes to Rs. 2,22,000/-. As the New India Assurance Company Ltd. has already pay Rs. 25,000/- to the claimant under Section 140 of the M.V. Act, it would be liable to pay Rs. 1,97,000/- to the claimant. Beside the aforesaid amount of compensation, I also think it proper and adequate to award interest @ 7% per annum on the aforesaid compensation amount from the date of filing of the claim case except for the period 11.12.2007 to 26.04.2012, till its realization.

14. On perusal of record, it appears that the accident is of 07.03.2001 and Ext-X and Ext-X/1 filed by the New India Assurance Company Ltd. indicate that the owner of the offending vehicle was having permit for plying of the aforesaid vehicle valid from 17.03.2001 to 16.07.2001 which means that there was no road permit at the time of accident and the offending vehicle was being plied without any road permit. Thus, there was utter violation of terms and conditions of the policy. Hence, the New India Assurance Company Ltd. is not liable to pay any compensation to the claimant. However, as the claimant happens to be third party to the contract of insurance entered into between the owner and the insurer of the



vehicle and as the Motor Vehicle Act happens to be beneficial legislation, hence, the New India Assurance Company Ltd. is directed to pay the compensation and interest thereon to the claimants and recover the same from the owner of the offending vehicle after its payment. However, it is made clear that the insurer will pay the aforesaid amount to the claimant only on furnishing security of the adequate amount by the owner.

15. Accordingly, the impugned Judgment and Award passed by the learned Tribunal is modified and this appeal stands disposed of.

16. Let the statutory amount of Rs. 25,000/- deposited by the appellant (Insurance Company) be returned to it through cheque.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

