IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.558 of 2009

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The Branch Manager, National Insurance Company Ltd. Municipal Chauk, P.S.- Chapra Town, Distt.- Saran, represented through the Chief Regional Manager, R.O.-1, National Insurance Co. Ltd. Sone Bhawan, 4th Floor, B.C. Patel Path, P.S. - Sachivalaya, Distt.- Patna

.... Appellant/s

Versus

1. Sunaina Devi W/O Late Dineshwar Prasad alias Dineshwar Prasad Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapra, at Present Mohalla- Mainpura (Kahar Toli), P.O.- Patna, P.S.- Pataliputra, Distt.- Patna
2. Vartika Kumari D/O Late Dineshwar Prasad Alias Dineshwar Pd. Yadav Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapra, at Present Mohalla- Mainpura (Kahar Toli), P.O.- Patna, P.S.- Pataliputra, Distt.- Patna
3. Priy Ranjan Kumar minor son of the deceased and they are Represented Through Their Natural Guardian Mother, Claimant No. 1, Sunaina Devi Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapra, At Present Mohalla- Mainpura (Kahar Toli), P.O.- Patna, P.S.- Pataliputra, Distt.- Patna
4. Rajeev Ranjan Kumar Minor Son of the deceased and they Are Represented through their natural Guardian Mother, Claimant No. 1, Sunaina Devi Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapra, at Present Mohalla- Mainpura (Kahar Toli), P.O.- Patna, P.S.- Pataliputra, Distt.- Patna
5. Jagdish Rai S/O Late Bala Rai Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapratown, Distt.- Chapra, Saran (Owner Of Offending Jeep)
6. Praro Devi W/O Late Ramanand Yadav Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapratown, Distt.- Chapra, Saran (Mother Of The Deceased)
7. Sunita Kumari D/O Late Dineshwar Prasad Vill.- Purbari Rouza, P.O.- Chapra, P.S.- Chapratown, Distt.- Saran, Chapra at Present Mohalla- Mainpura (Kahartoli), P.O.-Patna, P.S.- Pataliputra, Distt.- Patna (Major daughter of the deceased)

.... Respondent/s

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Appearance:
For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent nos. 1 to 4 & 7 : Mr. Ajay Kumar Tiwary

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

11 08-08-2017 This Miscellaneous Appeal has been filed against the

judgment dated 07.5.2009 and award dated 16.5.2009 passed in Claim Case No. 34 of 2004 by the 1st Additional District Judge-cum-Motor Accident Claim Tribunal, Saran, whereby allowing the claim petition the learned Tribunal has directed the National Insurance Company Limited to pay Rs. 4,92,400/- along with interest @ 6 per cent per annum from the date of filing of the case till its realization within two months from the date of the order to the claimants.

Factual matrix of the case is that claimants have filed claim petition vide Claim Case No. 34 of 2004 against the driver, owner and Insurance Company for awarding compensation to the tune of Rs. 16,80,120/- due to death of husband and father of the claimants, namely, Dineshwar Prasad @ Dineshwar Pd. Yadav with the case in succinct that while walking on Gheghta Gramin Road, P.S. Chapra Muffasil, District-Saran on the fateful day a Commander Jeep bearing registration no. B.R. 04B/9121 being driven rashly and negligently dashed the deceased, resultantly he sustained serious injuries and succumbed to his injuries on the spot. Regarding the said accident, FIR was lodged vide Chapra Muffasil P.S. Case No. 422 of 2003. The deceased was serving in Bihar Government (Building Construction Department) and used to earn Rs. 9,500/- per month from his service and also from tuition. The deceased was about 44 and half years old at the time of accident. The said offending vehicle was insured by the National Insurance Company Limited.

The Insurance Company by filing a written statement *inter alia* has claimed the benefit of Section 149 of the Motor Vehicles Act.

After hearing the parties and perusing the record, learned Tribunal has allowed the aforesaid claim case and awarded compensation as detailed in the earlier paragraph.

Being aggrieved and dissatisfied with the impugned judgment and award, the National Insurance Company Limited has filed this appeal.

The only submission of learned counsel for the appellant is that as the offending vehicle was running without valid permit, hence there is violation of terms and conditions of the policy so the Insurance Company is not liable to make any payment of compensation rather it is the owner who is squarely liable for the same. However, in case of payment of compensation by it, the Insurance Company must be given liberty to recover the same from the owner of the offending vehicle. Learned counsel for the appellant has relied upon a case law laid down by the Hon'ble Apex Court as reported in **2004(0) AIJEL-SC 19371 (National Insurance Company Limited vs. Challa Bharathamma)** in support of its case. In the said case law Hon'ble Apex Court has been pleased to observe that person without permit to ply vehicle cannot be placed on better pedestal vis-à-vis one who has permit but has violated any conditions thereof. Plying of vehicle without permit is infraction. Insurance company would not be liable to pay compensation indemnifying the owner of the vehicle.

No one turned up on behalf of the respondents no. 1 to 4 despite service of notice. While learned counsel for respondent no. 5 is present in Court and submitted that the impugned judgment and award has been passed by the learned Tribunal rightly considering all the facts and evidence on record and which is sustainable.

From perusal of the written statement of the Insurance Company filed before the Tribunal, it appears that though the Insurance Company has not taken specific plea regarding the non-validity of the permit of the vehicle at the relevant time of accident but it has claimed the benefit of Section 149 of the M.V. Act. As per aforesaid Section in case of not holding valid permit of the vehicle at the time of accident, the Insurance Company would not be liable to pay any compensation. The aforesaid plea raised by the appellant Insurance Company at this stage happens to be legal plea and it may be considered at any stage even at the stage of appeal.

From perusal of the documents filed along with the Memo of Appeal, it appears that the owner of the offending vehicle was having permit of the offending vehicle for the period 06.1.2004 to 05.5.2004 but the accident is of 28.12.2003 which means the owner was not possessing the valid permit for plying the offending vehicle at the time of accident. So there is utter violation of terms and conditions of policy, hence the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle.

However, in view of the submission of learned counsel for the appellant and to subserve the ends of justice, the appellant is directed to make payment of the awarded amount along with interest thereon to the claimants within three months from the date of receipt/ production of a copy of this order. The appellant would be entitled to recover the aforesaid amount paid from the owner of the offending vehicle.

With this modification, this appeal is accordingly allowed.

Let the statutory amount deposited in the Court be sent to the Tribunal for its payment to the claimants towards adjustment of the awarded amount.

(Prakash Chandra Jaiswal, J)

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