IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.557 of 2012

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United India Insurance Company Ltd. Ara Through Sri L.N. Dinkar, Dy. Manager Cum And Duly Constituted Attorney United India Insurance Company Ltd. Regional Office 3rd Floor Chanakya Complex B.C. Patel Road, P.O. G.P.O., P.S. Sachiwalaya, Patna, District Patna.

.... Appellant/s

Versus

1. Bashisht Mishra S/O Late Sri Ganga Prasad Mishra Resident of Village and P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
2. Mahabir Mishra S/O Late Sri Ganga Prasad Mishra Resident of Village and P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
3. Ragubir Mishra S/O Late Sri Ganga Prasad Mishra Resident of Village and P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
4. Ragunath Mishra S/O Late Sri Ganga Prasad Mishra Resident of Village and P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
5. Bharat Paswan S/O Kapil Paswan Resident of Village Karnamepur, P.S. Shahpur, District Bhojpur.
6. Sandhya Kuer W/O Late Late Hari Belas Sah Resident of Village and P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
7. Parsuram Sah S/O Late Late Hari Belas Sah Minor Under The Guardianship Of Their Mother Respondent No. 6 Resident Of Village And P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
8. Pati Ram S/O Late Late Hari Belas Sah Minor Under The Guardianship Of Their Mother Respondent No. 6 Resident Of Village And P.O. Parasaunda, P.S. Sahpur, District Bhojpur.
9. Baby S/O Late Late Hari Belas Sah Minor Under the Guardianship of Their Mother Respondent No. 6 Resident of Village and P.O. Parasaunda, P.S. Sahpur, District Bhojpur.

.... Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Ashok Priyadarshi, Advocate.
For the Respondent nos.1 to 4	:	Mr. Arun Kumar Pandey, Advocate.
For Respondent Nos. 6 to 9	:	Mr. Ajit Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 01-09-2017

Heard learned counsel for the appellant and learned counsels for respondent nos. 1 to 4 and 6 to 9.

2. This miscellaneous appeal has been filed against the judgment dated 28.04.2012 and award dated 09.05.2012 passed by the Additional District and Sessions Judge, F.T.C.-V, Ara in Claim Case No. 37 of 2004, whereby learned lower court awarded the amount of compensation to the tune of Rs. 4,15,000/- subject to deduction of the amount of interim compensation paid under Section 140 of the M. V. Act along with interest at the rate of 6% per annum from the date of filing of the claim case till its final payment and directed the opposite party no.3-United India Insurance Company Limited to pay the aforesaid amount of compensation and interest thereon to the claimants.

3. The factual matrix of the case is that the claimants who happen to be the widow and sons of the deceased Hari Belas Sah have filed the claim case No. 37 of 2004 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 6,50,000/- against the owner, driver and insurer-united India Insurance Company Limited with the case in succinct that on 05/06.01.2003 Hari Belas Sah had gone to Sahpur by tractor bearing registration no. BR-3-9283 and trailer no. BR-3-9285 for procuring grains and while he was regressing to his house with the bags of grains on the said tractor, the said tractor turned turtle near Bharauli Bridge at Shahpur-Karnamepur pitch road within Shahpur police station due to rash and negligent driving of the aforesaid tractor by its driver resultantly Hari Belas Sah was crushed beneath the tractor-trailer and he died on the spot. Regarding the said accident, Shahpur P.S. Case No. 02 of 2003 was instituted under Sections 279 and 304A of the Indian Penal Code. The deceased was aged about 28 years at the time of accident and he used to earn Rs. 10,000/- per month from his business and he was the sole earning member of his family.

4. The owner and insurer of the offending vehicle put their appearance in the case, but only the Insurance Company filed written statement. The driver of the vehicle did not turn up in the case and the case proceeded against him ex parte. The claimants adduced ocular as well as documentary evidence in buttress of the case. But the opposite parties of the case neither adduced any ocular nor documentary evidence in support of their case.

5. After hearing the parties and perusing the record, the learned Tribunal passed the impugned judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award passed by the learned Tribunal, the Insurance Company has preferred the present appeal.

7. It is submitted by learned counsel for the appellant that the deceased was travelling on the tractor-trailer carrying his cereal bags on it, so he was a gratuitous passenger. The tractor was insured under the farmer package insurance scheme, but it was being used as a passenger vehicle, hence, there is utter violence of terms and conditions of the policy and the Insurance Company is not at all liable to pay any compensation to the claimants indemnifying the owner of the vehicle.

8. On the other hand, learned counsels for the respondent nos. 1 to 4 who happen to be the heirs of the original owner of the vehicle and respondent nos. 6 to 9 who happens to be the claimants submitted that the tractor was insured for carrying all types of foods and grains and the deceased was carrying grain on it, so the deceased was covered under the policy of insurance issued by the appellant. So, the appellant cannot escape from its liability of payment of compensation to the claimants indemnifying the owner of the vehicle. He has further submitted that the Insurance Company can be exonerated from its liability from payment of compensation only in the case where there is violation of terms and conditions of the policy within the knowledge of the owner of the vehicle. As in the case under hand, the vehicle was being driven by the driver and not by the owner of the vehicle, so the carrying of grain by the deceased on the tractor-trailer was not in the knowledge of the owner, hence, the Insurance Company is squarely liable to pay the aforesaid amount of compensation. However, it may recover the same from its owner.

9. From perusal of the record**,** it appears that it is admitted case of the parties that at the time of accident, the deceased was travelling in a tractor-trailer carrying grain in the bags on the trailer. It is also admitted case of the parties that the said tractor-trailer was insured by the United India Insurance Company Limited under the Farmer Package Insurance Scheme. The Hon'ble Apex Court in the case of **M/s Natwar Parikh & Co. Ltd. v. State of Karnataka & Ors.** reported in **AIR 2005 SC 3428** has been pleased to rule that the tractor-trailer falls under the category of goods carriage and consequently it falls under the definition of transport vehicle. Hon'ble Apex Court in the case of **Smt. Thokchom Ongoi Sangeeta & Anr. vs. Oriental Insurance Co.Ltd. & Ors.** reported in **AIR 2008 SC 245** has been pleased to rule that when the passenger is travelling in a goods carriage, insurer is not liable to pay any compensation as carrying of passenger in goods carriage is not contemplated in the Act. This court in the case of **United India Insurance Company Ltd. Vs. Biltan Sao @ Biltan Prasad & Ors.** reported in **2016 (1) BBCJ 74** has ruled that the deceased traveling on a tractor-trailer will be treated as gratuitous passenger and is not entitled to get compensation from the Insurance Company. If the tractor insured for agricultural purpose is engaged in different purpose, such as carrying passenger or other commercial activity, the person travelling on tractor will not be entitled to get compensation amount from the Insurance Company but from the owner of the vehicle. In the case under hand, the deceased was travelling on the trailer carrying grains with him, will be treated as gratuitous passenger and as the premium for carrying the deceased/passenger has not been paid by the owner to the insurer, in my considered opinion, the Insurance Company would not be liable to pay any compensation to the claimants indemnifying the owner of the vehicle rather the owner would be squarely liable to pay the same.

10. In view of the aforesaid facts and circumstances of the case, the impugned judgment and award passed by the learned Tribunal is set aside and the case is remitted back to the court below to decide the case afresh in the light of the observation made by me hereinabove. Accordingly, this appeal stands disposed of. Let the statutory amount deposited by the appellants be returned to it forthwith by way of cheque or demand draft.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.09.2017
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