IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.806 of 2011

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1. The New India Assurance Company Ltd., through the Branch Manager, The New India Assurance Co. Ltd., Building 87, Mahatama Gandhi Road, Fort, Bombay-40001.
2. Divisional Manager, The New India Assurance Company Ltd., Divisional Branch, Muzaffarpur.
3. Branch Manger, The New India Assurance Company Ltd., Motihari.

.... Appellant/s

Versus

1. Mostt Mano Devi, wife of Late Rupdeo Ram.
2. Dhananjay Kumar, Minor.
3. Sanjay Kumar, Minor.
4. Ajay Kumar, Minor, All sons of Late Rupdeo Ram, Minors under the guardianship of their mother Most. Mano Devi and natural guardian. All resident of village – Tajpura, P.S.-Obara, District-Aurangabad.

…Claimants … Respondent 1st Set

5. Dinesh Kumar Mishra, S/o Late Rama Nand Mishra, resident of village – Mananpur, P.O. and P.S.-Govindganj, District-East Champaran, owner of the vehicle bearing its Registration No. BR 22B/1773.

6. Umesh Mishra, Son of Late Rama Nand Mishra, resident of village – Mananpur, P.O. and P.S.-Govindganj, Dist-East Champaran.

…Respondent 2nd Set

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Appearance:

For the Appellant/s : Mr. Shailendra Kumar, Advocate.

For the Respondent/s : Mr. Ashok Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 30-08-2017

Heard learned counsel for the appellants and learned counsel for the respondent nos. 1 to 4 in this appeal. No one turned up on behalf of respondent nos. 5 and 6 despite service of notice.

2. This appeal has been filed against the judgment dated 26.04.2011 and award dated 01.06.2011 passed by the 2nd

Additional District Judge-cum-Motor Accident Claims Tribunal, Motihari in Claim Case No. 44 of 2000, whereby the learned Tribunal disposing of the claim petition directed the opposite party no.3-The New India Assurance Company Limited to pay the amount of compensation to the tune of Rs. 12,42,804/- along with the interest at the rate of 6% per annum from the date of filing of the claim case till its realisation to the claimants with liberty to recover the same from the owner of the offending vehicle.

3. Factual Matrix of the case is that the Claim Case No. 44 of 2000 was filed under Section 166 of the Motor Vehicles Act by the widow and sons of the deceased against the owner, driver and the New India Assurance Company Limited for awarding compensation to the tune of Rs. 14,00,000/- along with the interest at the rate of 6% per annum on account of death of her husband and father respectively, namely, Rupdeo Ram in the motor vehicle accident with the case in succinct that on 13.05.2000, the appellants and the deceased along with other family members were travelling from Patna to Govindganj by a Commander Jeep bearing Registration No. BR 22B 1773 and when the said vehicle arrived near village – Chandrahiya, the jeep plunged into a ditch and rammed into a tree due to rash and negligent driving by its driver resulting into the death of several persons including the deceased, Rupdeo Ram. The deceased was a government servant and used to draw salary of Rs. 13,916/- per month at the time of his death. He was aged about 52 years at the time of his death. Regarding the said accident, Mufassil (Motihari) P.S. Case No. 91 of 2000 was registered under Sections 279, 337, 338 and 304A of the Indian Penal Code.

4. All the opposite parties put their appearance in the case by filing their respective written statement and also adduced evidence in buttress 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, the appellant-New India Assurance Company Limited has filed this appeal.

7. It is submitted by learned counsel for the appellant that the offending vehicle was insured as a private vehicle but it was being used as a passenger vehicle at the time of accident and the deceased was travelling in the said vehicle as a gratuitous passenger. So there was utter violation of terms and conditions of the policy, hence, the appellant is not liable to pay the aforesaid amount of compensation at all. Though the learned Tribunal considering the facts and circumstances has also held that the appellant is not liable to pay the amount of compensation to the claimants, but wrongly and allegedly directed the appellant to pay the same to the claimants with liberty to recover the same from the owner of the offending vehicle. As the appellant has not been held liable to pay the compensation due to violation of the terms and conditions of the policy, it cannot be directed to pay the same to the claimants and recover it from the owner of the offending vehicle.

8. On the other hand, learned counsel for the respondent nos. 1 to 4 submitted that though there was violation of terms and conditions of the policy, but as the Claimants happen to be the third party to the contract of policy entered into between the Insurer and the owner of the offending vehicle and it is a beneficial legislation, it is the Insurance Company who has to pay the compensation to them at first and then recover the same from the owner of the offending vehicle in accordance with law. Learned counsel for the aforesaid respondents relied upon the case law given in the case of **National India Company Ltd. Vs. Bhagwat Bhagat reported in 2009 (3) PLJR 39** in buttress of his argument.

9. From perusal of the record, it appears that it is admitted case of the parties that the deceased has died in the motor vehicle accident met by the offending vehicle due to rash and negligent driving by its driver at the time of accident. It is also admitted case of the parties that the offending vehicle was registered as a private vehicle. It is also admitted case of the parties that the offending vehicle was being used as a passenger vehicle at the time of accident. The amount of compensation and interest thereon as awarded by the learned Tribunal has also not been assailed by the appellant-Insurance Company. The only controversy between the parties is that as per the appellants, the Insurance Company is not liable to pay the compensation to the claimants due to violation of the terms and conditions of the policy at all, so it cannot be made liable to pay the amount of compensation to the claimants first and then recover the same from its owner, while as per the respondent nos. 1 to 4, though there was violation of terms of conditions of the policy, but as the claimants happen to be the third party to the insurance policy entered into between the Insurer and owner of the offending vehicle and as it is a beneficial legislation, it is the Insurance Company who is liable to pay the compensation to them first and it may recover the same from the owner of the offending vehicle in accordance with law.

10. As the offending vehicle was insured as a private vehicle and was being used as a passenger vehicle at the time of relevant time of accident, there was utter violation of the terms and conditions of the policy and the deceased travelling in the offending vehicle must be treated as a gratuitous passenger and the Insurance Company cannot be made liable to pay any compensation to the claimants indemnifying the owner of the vehicle. The Insurance Company stands liable to pay the compensation only when there is no violation of the terms and conditions of the policy. As the Insurance Company is not at all liable to pay any amount of compensation to the claimant, it cannot be compelled to make payment of compensation first and then recover the same from the owner of the offending vehicle.

11. A co-ordinate Bench of this Court in the case of **Branch Manager, Oriental Insurance Com. (Ltd.) Vs. Md. Yunus and Ors**. and in the case of **Oriental Insurance Company Ltd. Vs. Leelawati Devi and Ors.** has been pleased to observe that if the insurance company is not at all liable to pay any compensation to the claimant, it cannot be compelled to pay the said compensation to the claimants first and then recover it from the owner of the vehicle. The Hon'ble Apex Court in the case of **National Insurance Company Ltd. Vs. Parvathneni reported in 2010 (1) PLJR (SC) 76** has been pleased to observe that if Insurance Company proves that it has no liability to pay compensation to the claimants, the Insurance Company cannot be compelled by order of court to make payment and later on recover it from the owner of vehicle.

12. In view of the aforesaid facts and circumstances of the case, I find and hold that the appellant-Insurance Company is not at all liable to pay any compensation to the claimants indemnifying the owner of the vehicle rather it is the owner of the vehicle who is liable to pay the same. The appellant may also not be compelled to pay the said compensation to the claimants first and then recover the same from the owner of the vehicle. Accordingly, the impugned judgment and award passed by the learned Lower Court is modified to the aforesaid extent and this appeal is disposed of accordingly.

13. Let the statutory amount of Rs. 25,000/- deposited by the appellant in the court be returned to it in accordance with law.

(Prakash Chandra Jaiswal, J)

Mishra/-

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