

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.259 of 2009

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United India Insurance Company Ltd.

.... Appellant/s

Versus

Mostt.Kaili Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate
Ms. Seema, Advocate with him

For the Respondent/s : Mr. Sanjay Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

- 25-08-2017** **1.** This Misc. Appeal has been filed against the judgment dated 02.12.2008 and Award dt.18.12.2008 passed by Ist Addl. District Judge-cum-Motor Vehicle Accident Tribunal, Gaya in M.A. Case No.12/1995/85/2003 whereby the learned Tribunal awarding final compensation to the tune of Rs.2 lakhs along with interest @ 8 per cent per annum from the date of filing of claim petition till its realization in favour of the respondent No.1 to 3 directed the United India Insurance company Ltd. to pay the aforesaid amount and interest thereon to the aforesaid respondents with liberty to recover the same from owner of the offending vehicle.
- 2.** The factual matrix of the case is that Rameshwar Ravi Das was a band player. On 17.05.93 at 1 P.m., he had gone to village Mahkampur to attend the Barat party and while he was playing band



along with his band party in the mean time a Tata 407 mini bus bearing registration No.BR-2/8379 being rashly and negligently drive by its driver dashed Rameshwar Das resulting into his death on the spot. Regarding said accident, Barachatti P.S. Case No.56/93 has been instituted under Section 279, 333, 338, 304A IPC against driving of the offending vehicle. The aforesaid offending vehicle was insured by United India Insurance Co. Ltd. at the time of accident. The deceased used to earn Rs.1800/- per month from the said vocation. Due to his death in the motor vehicle accident, claimants filed M.A. Case No.12 of 1995 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs.5,50,000/- along with interest @ 15 per cent per annum against the appellant and the owner of the offending vehicle. The United India Insurance Ltd. Appeared in the aforesaid case and filed written statement while the owner of the offending vehicle in spite of putting appearance in the case did not file the written statement hence the case proceeded ex.-parte against him. By filing written statement, the appellant has inter alia taken the defence that offending vehicle was being driven by its owner-cum-driver and the owner was not having valid driving licenece at the time of relevant accident. So the Insurance Company is not liable to pay any compensation to the claimants.

3. After hearing the parties and perusing the record, learned



Tribunal passed the aforesaid Judgment and Award as detailed in the earlier paragraph. Being aggrieved and dissatisfied with the aforesaid judgment and Award, the United India Insurance Company Ltd. has preferred this Appeal.

4. It is submitted by learned counsel for the appellant that as the owner was himself driving the offending vehicle at the time of accident and was not having valid driving licence to drive the said vehicle at the relevant time of accident within his knowledge there is utter violation of terms and conditions of the Policy so Insurance company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle. Moreso as the driving license was not valid, so order of pay and recovery passed by the learned Tribunal is wrong and illegal and is liable to be set aside.

5. On the other hand, it is submitted by learned counsel for the respondent No.1 to 3 that learned Tribunal has correctly passed the impugned Judgment and Award directing the appellant to pay aforesaid amount of compensation to these respondents giving it liberty to recover the same from the owner of the offending vehicle. As these respondents are third party to the contract entered into between the insurance company and the owner of the vehicle, it is impossible for them to recover the amount of compensation from the



owner of the vehicle, so it is the demand of justice that the amount of compensation be paid by the insurance company to them and to recover the same from the owner of the vehicle.

6. From perusal of the impugned judgment and record, it appears that owner of the offending vehicle was himself driving the same at the relevant time of accident. From perusal of the ext. 'A' 'B' and 'C', it appears that owner of the offending vehicle was possessing two driving licence, i.e., DL No.1627/91 and DL No.129/92 issued by D.T.O. It has been reported by DTO, Gaya vide ext. 'C' that driving licence No.1627/91 has not been issued by its office. Ext. 'B' indicates that as per report of the surveyer driving licence No.129/92 was not issued in the name of owner of the offending vehicle rather in the name of Sri Ajay Kumar Sinha s/o Sri Dwarika Prasad. Thus, the driving licence possessed by the owner was fake. Hence, the owner of the vehicle driving offending vehicle at the relevant time of accident was not having any valid licence in utter violation of terms and condition of the Policy. So Insurance company is not liable to pay any compensation to the claimant indemnifying the owner of the vehicle. Liability of the insurance company arises only when there is no violation of terms and conditions of the policy.

7. The Hon'ble Apex Court in the case of *National Insurance*



Co. Ltd. Vs. Swaran Singh and Ors. Reported in (2004)3 SCC 297

has been pleased to held in paragraph 110(ii), (iii) and (iv) as follows :-

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them

8. In the case under hand, it is admitted fact that the owner of the offending vehicle was himself driving the same at the time of accident hence the factum of driving the vehicle without having any valid driving license was in the full knowledge of the owner. Thus, the owner of the vehicle has willfully and knowingly violated the terms and conditions of the policy. Hence, in my considered opinion, the insurance company cannot be made liable to pay the amount of compensation to the claimants and recover the same from the owner. In fact the insurance company is not liable to pay any compensation at all rather the owner of the offending vehicle is liable to pay the same.



9. Accordingly, this Appeal is allowed and the impugned judgment and Award of giving direction to the insurance company to pay the aforesaid amount of compensation and recover the same from the owner of the vehicle is set aside.

10. Let the statutory amount to the tune of Rs.25000/- deposited by the appellant be returned to it by way of cheque. As the appellant has paid Rs.25,000/- to the claimants as ad interim compensation under Section 140 of the M.V. Act, it may recover the same from the owner of the vehicle.

(Prakash Chandra Jaiswal, J)

Sanjeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

