IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.260 of 2002

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The New India Assurance Company Limited having its registered and Head Office at 87, Mahatma Gandhi Road, Fort, Bombay 400023 and amongst others a Divisional Office at Govind Bhawan, 2nd Floor, 122 New Dak Banglow Road, Patna 800001 and a branch office at Begusarai Dist. Begusarai represented through the Regional Manager at Regional Office, B.S.F.C. Building, VI Floor, Fraser Road, Patna, a duly constituted Attorney of the Company

.... Appellant/s

Versus

1. Shahjadi Begum, W/O Late Md. Rakim @ Lalo
2. Jahan Arah
3. Sahana Khatoon
4. Shabeena Khatoon
5. Nazma Bano

All 2 to 5 are minor daughters of Late Md. Rakim @ Lalo under the guardianship of their mother Shahjadi Begum the Respondent No. 1 well wisher and next friend. All residents of Village & P.O. Papraur, P.S. Barauni, Dist. Begusarai

6. Om Prakash Raman
7. Ved Prakash Suman, both sons of Ramotar Rai, Both residents of village-Malhipur, P.S. Bhagwanpur, Dist. Begusarai
8. Brahamdeo Poddar, son of Sukhdeo Poddar, Resident of Motipur Verokhra, P.S. Tajpur, Dist. Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R.K.P.SINGH, ADVOCATE

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 20-07-2017

This is an appeal by the Insurance Company challenging the liability imposed upon the Insurance Company with regard to the accident in question. Imposition of liability on the Insurance Company is challenged mainly on the ground that the Insurance Company has been held liable inspite of the fact that the Insurance Company had proved that the driver of the vehicle was not having a valid licence when the accident took place.

Facts in brief go to show that on 17.06.1993 the accident in question took place in National Highway No. 31 near Barauni Refinery. Md. Rakim @ Md. Lalo along with his son had boarded the vehicle and when the vehicle reached a place near Deonah dhala, due to rash and negligent driving of the vehicle by the driver, it met with an accident. The deceased along with his son sustained multiple injuries and claiming compensation for death, the application in question was filed. The application has been allowed and a compensation of Rs. 1,20,000/- has been awarded and the Insurance Company has been held liable.

It is an admitted position that in the written statement the Insurance Company raised a plea with regard to violation of the policy condition on account of the fact that the driver of the vehicle was not having a valid licence and to substantiate the aforesaid contention examined their surveyor O.P.W.-1 one Sri Chandra Bali Rai who had conducted inquiry and investigation into the matter and produced his Inquiry Report (Exhibit-A) based on inquiry conducted by him which did show that the driver did not have a valid licence. The witness had gone to the District Transport Office, Samastipur and according to him based on the information collected by him the report was submitted as per documents obtained from the office of District

Transport Office, Darbhanga. However, we find that inspite of the said evidence being on record, the Tribunal has not adverted to consider the question of liability on the Insurance Company, it is said that once the Insurance Company has proved by evidence that the driver was not having a valid licence, imposing of liability on the Insurance Company was not proper.

In the case of **Lal Chand Vs. Oriental Insurance Company Limited- (2006) 7 SCC 318** Hon'ble Supreme Court has laid down the principle that if the owner of the vehicle takes a plea that he was not aware of the fact about the driver's licence being fake, there is no breach of Insurance Policy. However, in this case, it is seen that the owner has not entered the witness box and does not say that he was not negligent in engaging the driver and he is not responsible for the breach of policy condition and does not give any statement or evidence which meets the requirement of the law as laid down by the Supreme Court in the case of **Lal Chand** (supra).

That being so, the Insurance Company cannot be held liable and to that extent the appeal is allowed. There being violation of the terms and conditions of the insurance policy, it is directed that the Insurance Company shall make good the Award by paying the compensation along with interest and thereafter liberty shall be available to the Insurance Company to recover the amount from the owner of the vehicle. The statutory amount be transmitted back to the Tribunal and the Insurance Company to settle the claim if not already done by depositing the amount with the Tribunal within 60 days and thereafter liberty shall be available to the Insurance Company to recover the amount from the owner.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
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