

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.18 of 2012

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The Oriental Insurance Company Bhagalpur Through Sri Anil Kr. Bishal, Dy.
Manager Cum and Duly Constituted Attorney The Oriental Insurance Company
Ltd. Regional Office Pir Mohani Kadam Kuan Patna

.... Appellant/s

Versus

1. Gulab Chand Thakur S/O Baleshwar Thakur R/O Village - Telgi P.O. and P.S.
Kharik Bazar, District - Bhagalpur
2. Ina Devi alias Iniya Devi S/o Late Dharmendra Mandal Alias Dharmendra
Sharma
3. Guru Dayal Sharma Alias Mandal S/O Late Saudagar Mandal
4. Jhakho Devi W/O Guru Dayal Sharma Alias Mandal,
5. Deepak Kumar S/O Late Dharmendra Sharma, Minor
6. Sony Kumari D/O Late Dharmendra Sharma, Minor Both minors under the
guardianship of their mother Ina Devi Alias Iniya Devi,
All residents of Village - Dhuwabai, P.S. Sanokhar (Sanhaulla), District -
Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate
For Respondent No.2 : Mr. S.M. Ashraf, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 13-07-2017

This is an appeal by the Insurance Company under
Section 173 of the Motor Vehicles Act, 1988 challenging the
judgment and Award passed on 25.08.2011 and 16.09.2011
respectively in Claim Case No. 141 of 2001 awarding a compensation
of Rs. 4,41,500/- to the claimants on account of death of deceased
Dharmendra Mandal @ Dharmendra Sharma in an accident that took
place on 06.06.2002.

It was the case of the claimants that on the fateful day



the deceased was going on the road in a place near Rampur Kharhara when a tractor bearing No. BR 11B 4556 with a trailer bearing No. BR11B 6740 came, it was being driven in a rash and negligent manner by the driver, as a result of which the trolley turned turtle and fell over the deceased who was walking on the road. Based on the aforesaid pleadings the claim petition was filed and the claim has been allowed accepting the same.

However, now in this appeal it is the case of the Insurance Company that the deceased was not moving on the road and the accident did not take place in the manner indicated. On the contrary, the deceased was traveling as a gratuitous passenger in the trolley bearing No. BR 11B 6740 and he died because of the trolley turning turtle. It is stated that inspite of specific objections in this regard raised before the Tribunal and inspite of an application filed for framing additional issue in this regard the Tribunal ignored this aspect of the matter and proceeded to decide the issue and awarded the compensation holding the Insurance Company liable for payment of compensation. Placing reliance on the judgment of the Supreme Court in the case of **United India Insurance Co. Ltd. Vs. Serjerao and Ors.- AIR 2008 Supreme Court 460(1)** and **National Insurance Co. Ltd. Vs. Rattani and Ors.- AIR 2009 Supreme Court 1499** learned counsel argues that if a person is traveling on a



tractor trolley as a gratuitous passenger, the terms and conditions of the Insurance policy are violated and in such case the Insurance Company cannot be held liable. Learned counsel invites my attention to the original record of the Tribunal received from Page 209 onwards, the F.I.R. available on record from Page 246 onwards, the final report and the challan filed and argues that all these documents go to show that the deceased was traveling in the trolley and was not moving on the road as claimed and inspite of objections by the Insurance Company an issue in this regard was not framed and no trial in this regard was held, there is an apparent error in the Award which warrants reconsideration.

Nobody appears for the claimant. However, Sri S.M. Ashraf appears for the owner and vehemently opposes the aforesaid prayer and argues that the Insurance Company having not led any evidence in this regard cannot now raise this plea.

Having considered the rival contentions, I am of the considered view that the appeal has to be allowed and the matter remanded back to the Tribunal for the simple reason that overwhelming evidences are available on record from Page Nos. 209 onwards of the original records which goes to show that after filing of the written statement on 19.04.2007 and additional petition-cum-additional written statement was filed on behalf of the Insurance



Company and in Paragraph 3 of the aforesaid additional written statement specific averments have been made with reference to the documents of the criminal case, the F.I.R. and various other judgments of the Supreme Court to say that the deceased was traveling as a gratuitous passenger in trolley bearing No. BR 11B 6740 and, therefore, the Insurance Company is not liable to pay the compensation. That apart, when issues were framed, an application was filed for framing of additional issue and all these aspects have been ignored by the Tribunal and the liability has been imposed upon the Insurance Company without addressing this question with regard to the right of the Insurance Company to plead violation of the policy condition and seek exoneration from payment of compensation and imposition of liability.

As the learned trial court has not adverted to consider these aspects of the matter which were already available on record, it is a fit case where the matter should be remanded back to the Tribunal for framing additional issue and reconsidering the question of imposing of liability on the Insurance Company.

Accordingly, the appeal is allowed in part. Even though the Award passed which is not challenged is upheld but the Tribunal is directed to frame an additional issue with regard to the liability on the Insurance Company on the grounds as are canvassed



in this appeal and after giving opportunity to the parties to lead evidence on this issue, the issue may be decided and the question of liability on the Insurance Company or the owner of the vehicle be decided in accordance with law within a period of three months from the date of receipt of copy of this order along with records. Office to transmit the records. The statutory amount deposited by the Insurance Company with this Court be sent back to the Tribunal for necessary payments to the claimant, if found liable.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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