

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.104 of 2012

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Divisional Manager, National Insurance Co. Ltd. Sumit Complex, Tilak Manjhi,
P.S.- Kotwali, District- Bhagalpur, Represented through Sri Anjani Kumar,
Working as A.O., duly constituted attorney of National Insurance Co. Ltd., having
its Regional Office at 4th Floor, Sone Bhawan, P.S.- Sachivalaya, District- Patna,
O.P. No.-4

.... Appellant/s

Versus

1. Lalita Devi, W/o Late Dharmendra Kumar @ Phagul Kumar Sharma
2. Yugal Rana @ Yugal Sharma, S/O Late Roshan Rana, both are R/o Chhota Kuran, P.S.-Katoria, District- Banka
3. Deputy Superintendent, BSRTC, Dhanbad (Jharkhand)
5. The Administrator, BSRTC, Patna....O.P. No.-2

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar, Advocate
For the Claimant	:	Mr. Madan Mohan, Advocate
		Mrs. Pallavi Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 13-07-2017

Delay in filing of the appeal is condoned. I.A. No.
3686 of 2014 stands allowed and disposed of.

2. This is an appeal by the Insurance Company calling
in question tenability of an Award passed by the 3rd Additional
District Judge-cum-Motor Vehicle Accident Claims Tribunal,
Bhagalpur in Claim Case No. 17/2005, Trial No. 04 of 2011 on 27th
of August, 2011, whereby claimants, legal heirs of deceased
Dharmendra Kumar @ Phagul Kumar Sharma have been awarded a
compensation of Rs. 3,93,500/- along with interest at the rate of 7 per



cent per annum from the date of filing of the claim till its realization.

3. Facts in nut-shell goes to show that the deceased was traveling in a bus owned by the Bihar State Road Transport Corporation, Dhanbad now owned by the Jharkhand Government and due to the accident that took place, he succumbed to the same and ultimately the accident proved fatal. Be that as it may be, the only ground on which the Award in question has been challenged is the fact with regard to imposing liability on the Insurance Company.

4. It is the case of the Insurance Company that even though the vehicle was insured with the Insurance Company but as the vehicle in question was plying on the day in question without a valid permit, the terms and conditions of the policy are violated and, therefore, the Insurance Company is not liable to pay the compensation.

5. Learned counsel for the Insurance Company Sri Shailendra Kumar invites my attention to Issue No. 6 and its adjudication in Paragraph 12 of the judgment by the learned Tribunal and argues that the learned Tribunal found that on the day in question, the vehicle did not have a valid permit but as it was a public vehicle owned by the Government, it was stated that the vehicle was validly plying and, therefore, the liability on the Insurance Company.

6. It is the case of the Insurance Company that once a



statutory provision warrants certain conditions to be fulfilled for plying a vehicle on the road and when under law there is no exception to any class of vehicle from fulfilling the statutory condition, merely because a vehicle owned by the Government was plying without a valid permit, the liability cannot be imposed upon the Insurance Company in the garb of public interest and the requirement of plying a public vehicle even though it was not permissible under law. Accordingly, learned counsel argues that the findings recorded by the learned Tribunal for fastening liability on the Insurance Company is perverse, contrary to the law, erroneous and cannot be sustained.

7. Records indicate that Respondent Nos. 3, 4 and 5 are the authorities who are custodian and owners of the vehicle in question and the office note goes to show that notices have been validly served on them. It is reported that Respondent No. 4 refused to receive notice and Respondent No. 5 has been validly served. Based on the scrutiny of the office report, it has already been indicated by this Court on the previous date that notice is deemed to have been validly served on Respondent Nos. 4 and 5, inspite of the same, they are not appearing.

8. Keeping in view the aforesaid, I proceed to deal with the matter on merit.

9. Sri Madan Mohan, learned counsel appears for the



claimants and has supported the Award. However, on going through the findings recorded with regard to Issue No. 6 and the reasons that are indicated in Paragraph 12 of the judgment, this Court is in full agreement with the learned counsel appearing for the Insurance Company and finds that the vehicle in question on the day when the accident took place was plying without a valid permit. The learned Tribunal holds that the bus does not run regularly in the route in question. On the said day, the vehicle was running in public interest due to the *Bol Bum Mela* which was to be held and even though the vehicle was running without a valid permit and in violation to the statutory requirement, but by holding that it was plying in public interest it has been held that the Insurance Company is liable to make good the compensation.

10. In my considered view, once it is found that a vehicle which is required to ply on a road after complying with the requirement contemplated under the Motor Vehicles Act and the rules framed thereunder is plying on the road contrary to the requirement of law and the statute whosoever it may be the violation of law renders the person concerned who are owners and custodians of the vehicle liable to be proceeded against and once it is found that there was violation of the statutory provision which ultimately results in violation of the policy condition imposing the liability on the



Insurance Company was not warranted. Merely on public interest, the public authority is not permitted to violate the law and ply a vehicle contrary to the requirement of law. This vital aspect of the matter which is the basic principle of law has been totally ignored and given a go-bye by the learned Tribunal in the matter of fastening liability on the Insurance Company. Once it is established from the material available on record that the vehicle was a vehicle owned by the Jharkhand State and it was plying on the road in violation to the terms and conditions of the Motor Vehicles Act and the rules framed thereunder, the learned Court should have imposed liability on the Government and should not have transferred the liability on the Insurance Company on public consideration and the requirement of plying a vehicle on public interest on a particular day because of certain festive occasion. In my considered view, it was the responsibility of the State authorities to ensure that a vehicle, even if plying on public interest on a particular day, was plying after making all the requirements of law. If this was not done, the negligence on the part of the State authorities renders vicariously liable for the act of their officers and on such count, the State is liable to make good the compensation.

11. In view of the above, this appeal is allowed. The findings recorded with regard to exonerating the Respondent Nos. 4



and 5 and the Jharkhand State for payment of compensation is quashed. It is held that as the vehicle in question was plying contrary to the requirements of law, the Insurance Company is not liable to make good the compensation, instead Respondent Nos. 4 and 5 and the Jharkhand State are liable to pay the compensation. The Insurance Company should satisfy the Award by paying the compensation to the claimants at the first instance and thereafter they are at liberty to recover the same from Respondent Nos. 4 and 5 and the State of Jharkhand under the principle of pay and recover. The Insurance Company to deposit the compensation after deducting the amount already paid. The statutory amount be transmitted to the Tribunal and after payment of the compensation and settlement of the same within a period of 60 days the Insurance Company is at liberty to recover the same from the State of Jharkhand and from Respondent Nos. 4 and 5.

12. With the aforesaid, the appeal stands allowed.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.07.2017
Transmission Date	

