

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 210 of 2003

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1. Champa Devi, wife of Late Shanker Singh
 2. Girija Devi, wife of Late Lukho Singh
 3. Rinki Kumari (Minor) daughter of Late Shanker Singh
 4. Pinki Kumari (Minor) Daughter of Late Shanker Singh
 5. Sinki Kumari (minor) Daughter of Late Shanker Singh

All resident of Village-Shripur P.O. Manjamore, P.S. Naugachhia, District Bhagalpur. (Minors are represented through their natural guardian mother appellant no. 1)

(Claimants in the court below)

.... Appellants

Versus

1. J.P. Singh, Son of Raghuvir Singh, resident of mohalla Mandhama Kanpur (Owner of the vehicle)
2. Ram Singh, Son of Ram Kishan Singh, resident of Nawada, P.S. Rasulabad, District Kanpur (Driver of the vehicle)
3. The Divisional Manager, the New India Assurance Company Ltd. T.P. Nagar, Kanpur, PIN 422200
4. The Divisional Manager, the New India Assurance Company Ltd. Chanlok Complex, Radha Rani Road, P.S. Kotwali, District Bhagalpur (Insurer of vehicle) (Opposite parties in the court below)

.... Respondents

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Appearance :

For the Appellants : Mr. Vivekanand Vivek, Adv.
Mr. Debest Kr. Poddar, Adv.

For Insurance Company : Mr. Shailendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 22-06-2017

1. Heard learned counsel for the appellants as well as learned counsel appearing for the New India Assurance Company Ltd.



i.e. for respondents no. 3 and 4. No one appears on behalf of respondents no. 1 and 2.

2. This miscellaneous appeal has been preferred against the judgment and award dated 09.04.2003 passed in Claim Case No. 133 of 2001 by learned 1st Additional District Judge, Bhagalpur by which and whereunder he allowed the Claim Case No. 133 of 2001 and directed the respondent no. 1, who happens to be owner of offended vehicle, to pay compensation of Rs. 2,02,000/- to claimants within sixty days of passing of the order and also directed the respondents no. 3 and 4 to make payment of Rs. 50,000/- to claimants as interim compensation under Section 140 of the Motor Vehicles Act.

3. The aforesaid award was passed by learned Tribunal on the ground that the claimants failed to produce valid license of the concerned driver and, therefore, the owner of the aforesaid vehicle was liable to make payment of above stated compensation.

4. Admittedly, the owner of the vehicle has not challenged the impugned award rather claimants came before this court and filed the present miscellaneous appeal.

5. Learned counsel appearing for the appellants submits that it is an admitted position that after the accident in question the vehicle and driving license of the concerned driver were seized by the



police and according to Motor Vehicles Act, it was the duty of the concerned police officer to send the seized driving license to the Tribunal. He further submits that appellants had no occasion to procure the driving license of the concerned driver and moreover, appellants had filed photostat copy of driving license of the concerned driver and the aforesaid photostat copy of driving license goes to show that the driver of the offended vehicle was carrying a valid license at the time of accident in question but the aforesaid photostat copy of driving license was not considered by the Tribunal. He further submits that the Insurance Company also failed to bring anything on record to show that the concerned driver was not carrying valid license at the time of accident in question and, therefore, the learned Tribunal committed error while dealing issue no. 1 as a result whereof, the Tribunal came to wrong conclusion.

6. On the other hand, learned counsel appearing for the Insurance Company submits that the deceased was a gratuitous passenger of the offended truck and, therefore, the Insurance Company was not liable to pay compensation to the legal heirs of the deceased and, therefore, the Tribunal rightly held that it is owner who was responsible for making payment of compensation amount to the claimants.

7. Having heard the contentions of both the parties, I



have gone through the record along with lower court record. It is an admitted position that deceased died in an accident which took place on 27.09.2001 when the loaded truck bearing registration no. UP 78T-1621 overturned and in the aforesaid accident deceased died. After the aforesaid accident, Naugachia P.S. Case No. 191 of 2001 under Section 304 A and other minor sections of the Indian Penal Code was registered against driver of the aforesaid truck. The death of the deceased in the aforesaid accident is not in dispute and it is also not in dispute that the truck in question was insured by the respondents no. 3 and 4 and at the time of accident in question there was valid insurance policy. However, the learned Tribunal exonerated the Insurance Company on the ground that claimants failed to produce valid license of the concerned driver. In my view, the Tribunal committed gross error in holding that the claimants could not get compensation from the Insurance Company due to their failure of production of valid driving license of the concerned driver. It is an admitted position that photostat copy of driving license of the driver was brought on record. Although, the aforesaid photostat copy of driving license could not be exhibited yet the Tribunal had power to look into the photostat copy of driving license for just and proper decision of the claim case. It is well known factor that claim case filed under Motor Vehicles Act is neither the criminal case nor the civil case and, therefore, it is not



essential to strictly follow the provisions of Evidence Act. However, It is also well known fact that if an accident takes place, it is the duty of the concerned police officials to seize the vehicle and driving license as well as other documents and also send the same to the Tribunal within a prescribed period of time. Moreover, in the present case, photostat copy of driving license goes to show that the driver was carrying valid license at the time of accident in question.

8. So far as submission of learned counsel appearing for the Insurance Company is concerned, in my view, the deceased was not a gratuitous passenger of the offended truck because the F.I.R. of the concerned accident reveals that he was engaged for work and while going on the said truck he met an accident and, therefore, the contention of learned counsel appearing for the Insurance Company is not acceptable.

9. On the basis of aforesaid discussions, the impugned judgment and award dated 09.04.2003 is modified to this extent that compensation amount of Rs. 2,02,000/- shall be paid by the respondent no. 3 and 4 to the claimants with interest as imposed by the Tribunal by the impugned award within two months from the date of this judgment. However, the Insurance Company may recover the aforesaid amount from the owner of the offended vehicle, if law permits the same. Accordingly, this miscellaneous appeal stands



disposed off.

10. The office is directed to return the lower court record immediately.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.06.2017
Transmission Date	N.A.

