

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.162 of 2008

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National Insurance Comp. through Sri Anjani Kumar A.O. cum Duly Constituted Attorney National Insurance Company, Regional Office, 4th Floor Sone Bhawan B.C. Patel, Road P.O. G.P.O, P.S. Sachiwalaya, Patna District Patna (Opp. Party no. 3)

.... Appellant/s

Versus

1. Sanjay Sahay, S/o Late Dayanand Sahay (Claimant no. 2), R/o 186 Anugrahpuri Colony Gaya P.S. Rampur Gaya, District-Gaya
2. M/s Daya Engineering Works Ltd. F9/11 Vasant Vihar P.O. and P.S. Vasant Vihar New Delhi-110 057 (Opp. Party no. 1)
3. Ninhajali S/o Sadtholi Sunsara, 4 Rajkamal, GIDG Ankolshwar, Bhodly Nadiad Gujrat.
4. Smt. Bharti R. Srivastava, D/o Late Dayanand Sahay, H.I.G. 14, Madhav Bag Colony, Jamshedpur, Jharkhand (Opp. Party no. 4)
5. Smt. Surhriti Sahay, D/o Late Dayanand Sahay C/o Smt. Sushila Sahay R/o 186, Anugrahpuri Colony Gaya P.S. Rampur Gaya, District Gaya. (Opp. Party no. 5)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi
For the Respondent/s : Mr. Manish Kishore

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 07-08-2017

No one turned up on behalf of the respondents despite putting appearance in the case. Heard the learned counsel for the appellant.

2. This appeal has been filed against the order dated 23.01.2008 passed by 1st Addl. District Judge-cum-Motor Vehicles Accident Claim Tribunal, Gaya in M.A.C. Case no. 64 of 2005, whereby the learned Tribunal directed the Opposite Party nos. 2 and 3 to pay compensation to the tune of Rs. 25,000/- each to the applicants and Opposite Party no. 4 and 5 within two months from the date of the order.



3. Factual matrix of this case is that one Dayanand Sahay, who happens to be the father of the Director of Company namely, Sanjay Sahay was travelling in a Maruti Car bearing registration no. DL-2-CS/2093 hailing to M/s Daya Engineering Works Ltd from Gaya to Patna on the fateful day. When he arrived near the Makhdumpur district-Jehanabad, his car collided with Maruti van bearing registration no. GJ-16K/3349 due to rash and negligent driving of the aforesaid vehicles by their respective drivers. In the said collusion, Dayanand Sah died on the spot. Regarding the said accident, Makhdumpur P.S. Case no. 39 of 2002 was instituted under Sections 279, 337, 338 and 304(A) of the Indian Penal Code against the drivers of the offending vehicles. Due to the death of the deceased (Dayanand Sahay) in the said accident, his wife Sushila Sahay and son Sanjay Sahay filed a petition under Section 140 of the Motor Vehicles Act, making rest legal heirs of the deceased as Opposite Party nos. 4 and 5, insurer of the former vehicle and owner of the later vehicle as parties in the case.

4. After hearing the parties and perusing the records, the learned lower court allowed the aforesaid petition under Section 140 of the M.V. Act and directed the applicants who happens to be insurer of the Maruti Car bearing Registration no. DL-2-CS/2093 and owner of another vehicle to pay compensation to the tune of Rs. 25,000/- each within two months from the date of the order.



5. Being aggrieved and dissatisfied with the aforesaid order, the O.P. no. 3 of the said case has filed this appeal.

6. The learned counsel for the appellant submitted that M/s Daya Engineering Works Ltd. is a Private Limited Company run by wife, son and daughter of the deceased (Dayanand Sahay) besides two other persons as Directors of the said company. Wife, son and daughter happen to be the owner of the company. The said vehicle ferrying Dayanand Sahay at the time of accident, is hailing to the said company i.e. to the claimant Sushila Sahay and Sanjay Sahay and Dayanand Sahay stepped into the shoes of said claimants who happen to be Director and owner of the vehicle. As the deceased was the owner of the vehicle, the claimants are not entitled to get any compensation because insurance company is only liable to pay compensation indemnifying the owner of the vehicle in case of the death of the third party. It is further submitted that Dayanand Sahay may not be treated as gratuitous passengers as held by the learned lower court rather happens to be the owner of the vehicle. The appellant has also filed the list of the Director of the aforesaid company in buttress of his case.

7. On perusal of the records, it appears that the Maruti Car bearing registration no. DL-2-CS/2093 is hailing to M/s Daya Engineering Works Ltd. and the said company is a Private Ltd. Company. The list of the director indicates that Sanjay Sahay,



Sushila Sahay and Bharti R. Srivastava who happen to be the son, wife and daughter respectively, of the deceased (Dayanand Sahay) are Directors of the said company. The said Sushila Sahay and Sanjay Sahay were the claimants while Bharti R. Srivastava and one other daughter of the Dayanand Sahay were made Opposite Party nos. 4 and 5 in the petition. Sushila Sahay has died during the pendency of the appeal. The aforesaid son and wife of the Dayanand Sahay happen to be Director and owner of the said company. Deceased had stepped into the shoes of aforesaid owners of the vehicle and became owners of the vehicle.

8. The object of the Insurance is to compulsorily cover liability relating to the person and property of the third parties and not the owner of the vehicle. The Insurance Company is not liable to indemnify the owner of the vehicle. Father and husband of the owner of the vehicle does not come within the purview of the term person within Section 147 of the Motor Vehicle Act, Insurer would be liable to cover all the risk of the third party and not others who would not otherwise come within purview thereof. It is the settled principle of law that if insured cannot be fastened with any liability under the provision of Motor Vehicles Act, the question of insurer being liable to indemnify the insured, therefore, does not arise.

9. Moreover, as the deceased was father and husband of the owner of the vehicle and became owner by stepping into their shoes



he cannot be treated as gratuitous passengers. More so, the Hon’ble Apex Court in *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Ors. as reported in (2006) 4 S.C.C. 404* and *New India Insurance Co. Ltd., Vs. Vedvati & Ors.* reported in **2007(3) SCALE 397** has been pleased to observe that the insurance policy does not cover the gratuitous passenger. The liability of Insurance Company would be limited to a third party and not to a gratuitous passenger. The Insurance Company is not liable to indemnify the owner of the vehicle in case of death of gratuitous passenger.

10. Considering the aforesaid facts and circumstances, I find and hold that the appellant is not liable to indemnify owner of the vehicle and the impugned order holding the appellant liable to indemnify owner of the vehicle is wrong and illegal and is set aside. The appeal is accordingly allowed. The statutory amount deposited by the appellant be returned by way of account payee cheque.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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