IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.458 of 2006

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1. The New India Assurance Company Limited, Purnia Branch office Purnia, (The insurer of Vehicle no.BR 11A-3112 Tata Maxi)
2. The New India Assurance Company, Branch office Chandralok Complex Ghantaghar Chowk, Bhagalpur

.... Appellant/s

Versus

1. Smt.Sumitra Devi, wife of Buddhu Rishi (Deceased) resident of village Mohammad Nagar (Rajdhani), P.S. Falka, Dist- Katihar, at present residing at Naugachia, P.S. & Dist- Naugachia
2. Bindeshwari Prasad Sharma, Son of late Ayodhi Sharma, resident of village Phulwaria, P.S. Korha, Dist Katihar, the owner of vehicle no. B.R. 11A-3112 (Tata Maxi)

.... Respondent/s

with

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Miscellaneous Appeal No. 393 of 2006

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1. The New India Assurance Company Limited, Purnia Branch office Purnia, (The insurer of Vehicle no.BR 11A-3112 Tata Maxi)
2. The New India Assurance Company, Branch office Chandralok Complex Ghantaghar Chowk, Bhagalpur

.... Appellant/s

Versus

1. Shri Umesh Rishi, Son of Makeshwar Righi, Village Parmanpur, P.S. Korha, Dist- Katihar, at present residing at Naugachia, P.S. & Dist- Naugachia
2. Bindeshwari Prasad Sharma, Son of late Ayodhi Sharma, resident of village Phulwaria, P.S. Korha, Dist Katihar, the owner of vehicle no. B.R. 11A-3112 (Tata Maxi)

.... Respondent/s

with

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Miscellaneous Appeal No. 415 of 2006

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1. The New India Assurance Company Limited, Purnia Branch office Purnia, (The insurer of Vehicle no.BR 11A-3112 Tata Maxi)
2. The New India Assurance Company, Branch office Chandralok Complex Ghantaghar Chowk, Bhagalpur

.... Appellant/s

Versus

1. Smt. Hakia Devi, wife of Prithvi Rishi & mother of Rudal Rishi (Deceased) Village Mohamad Nagar (Rajdhani), P.S. Falka, Dist- Katihar
2. Bindeshwari Prasad Sharma, Son of late Ayodhi Sharma, resident of village Phulwaria, P.S. Korha, Dist Katihar, the owner of vehicle no. B.R. 11A-3112 (Tata Maxi)

.... Respondent/s

with

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Miscellaneous Appeal No. 605 of 2007

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New India Assurance Co. Ltd. & Ors

.... Appellant/s

Versus

Manjula Devi & Ors

.... Respondent/s

with

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Miscellaneous Appeal No. 311 of 2008

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The New India Assurance Co. Ltd. & Anr

.... Appellant/s

Versus

Bholiya Devi & Anr

.... Respondent/s

with

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Miscellaneous Appeal No. 312 of 2008

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The New India Assurance Co.Ltd. & Anr

.... Appellant/s

Versus

Sumegha & Anr

.... Respondent/s

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Appearance :

For the Appellants : Mr. Shailendra Kumar, Advocate

For the Respondents: Mr. Madan Mohan, Advocate

Mr. Pallavi Pandey, Advocate

Mr. Sanjay Kumar Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 06-07-2017

These are appeals filed by the Insurance Company under Section 173 of the Motor Vehicles Act calling in question the award passed by the learned 2nd Additional Sessions Judge-cum-M.V.A.C. Tribunal, Naugachia, Bhagalpur in Claim Case No.198 of

2004.

The Insurance Company challenges the award on the ground of the driver of the offending vehicle not having a valid licence and, therefore, pleading breach of the terms and conditions of the insurance policy, the appeal has been filed. That apart, certain grounds have also been raised to say that the compensation has been assessed on the higher side and, therefore, the award is not sustainable.

Learned counsel for the respondent Shri Sanjay Kumar Pandey opposed the aforesaid prayer and argued that as far as the claim being on the higher side is concerned, the Insurance Company under law is not permitted to raise such a ground. They are only entitled to raise grounds with regard to breach of terms and conditions of the policy and the only condition of breach raised is of the driver not having a valid licence. However, no specific averment in this regard was made in the written statement and, therefore, no issues were framed on this count. Even the evidence on behalf of the Insurance Company to say that the driver was not having a valid licence was not led and, therefore, this argument by the learned counsel for the appellant is not sustainable.

Having heard learned counsel for the parties and on going through the award in question, it is clear that the Insurance

Company in its written statement, as is detailed by the learned Tribunal in para-3, with regard to evidence and objections denying the allegations were made, there was no specific allegation to say that the driver was driving the vehicle without a valid licence and after framing 9 issues on the basis of the pleadings of the parties, an award was passed and there is no issue with regard to the question of the driver having a valid licence or not.

That being so, the Insurance Company having failed to prove the factum of the driver driving the vehicle on the basis of an invalid licence and there being no prayer in the appeal filed in the year 2006 for leading additional evidence under Order 47 C.P.C. in this regard, I see no reason to make any indulgence as at this appellate stage the Insurance Company cannot be permitted to raise a ground which was not raised or adjudicated before the learned Tribunal.

As far as the quantum of award is concerned, it is seen that after framing the issues in this regard, the same has been decided on the basis of the evidence that came on record and I see no infirmity in the consideration.

Accordingly, finding no ground for indulgence, the appeal is dismissed.

The amount awarded shall be paid by the Insurance

Company within 60 days after deducting the amount already deposited along with interest at the rate of 9% per annum from the date of the award till the actual payment.

The High Court to return the amount along with the record to the learned Tribunal at the earliest.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.7.2017
Transmission Date	N/A