IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.50 of 2012

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United India Insurance Company Limited through its Patna Regional Office Situated at 3rd Floor, Chanakya Tower, R - Block, Patna – 1.

.... Appellant/s

Versus

1. Nathiya Devi W/o Late Ratan Mahto R/o Village- Bind Toli, Post- Ayodhyaganj Bazar, P.S. Kursala, District - Katihar, at present resident of Parwatti, Post - Naya Bazar, P.S. University (Kotwali), District – Bhagalpur.
2. Shankar Mahto S/o Late Ratan Mahto R/o Village- Bind Toli, Post- Ayodhyaganj Bazar, P.S. Kursala, District - Katihar, at present resident of Parwatti, Post - Naya Bazar, P.S. University (Kotwali), District – Bhagalpur.
3. Basudeo Mahto S/o Late Ratan Mahto R/o Village- Bind Toli, Post- Ayodhyaganj Bazar, P.S. Kursala, District - Katihar, at present resident of Parwatti, Post - Naya Bazar, P.S. University (Kotwali), District – Bhagalpur.
4. Harku Mahto S/o Late Ratan Mahto R/o Village- Bind Toli, Post- Ayodhyaganj Bazar, P.S. Kursala, District - Katihar, at present resident of Parwatti, Post - Naya Bazar, P.S. University (Kotwali), District – Bhagalpur.
5. Harilal Mahto S/o Late Ratan Mahto R/o Village- Bind Toli, Post- Ayodhyaganj Bazar, P.S. Kursala, District - Katihar, at present resident of Parwatti, Post - Naya Bazar, P.S. University (Kotwali), District – Bhagalpur.
6. Babulal Mahto S/o Late Ratan Mahto R/o Village- Bind Toli, Post- Ayodhyaganj Bazar, P.S. Kursala, District - Katihar, at present resident of Parwatti, Post - Naya Bazar, P.S. University (Kotwali), District – Bhagalpur.
7. Kanik Lal Yadav S/o Late Chamak Lal Yadav R/o at & P.O. Kheria, P.S. Kursela, District – Katihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. Seema Kumari
For the Respondent nos. 1 to 6 : Mr. Sanjay Kumar Tiwari
For the Respondent no. 7 : Md. Qumrul Hoda

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 22-09-2017

Heard learned counsel for the appellant and learned counsel for the respondents on this Miscellaneous Appeal and perused the records.

2. This appeal has been filed against the Judgment dated 19.08.2011 and Award dated 14.10.2011 passed by 2nd Addl. Sessions Judge-cum-Motor Vehicle Accident Claim Tribunal, Bhagalpur in Claim Case no. 99 of 2009 whereby the learned Tribunal allowing the claim petition, directed the appellant (United India Insurance Company Ltd.) to pay final amount of compensation to the tune of Rs. 2,01,500/- with interest @ 9% per annum from the date of filing of the case till its realization to the claimant no. 1.

3. Factual matrix of the case is that the Claim Case no. 99 of 2009 was filed by the respondent nos. 1 to 6 due to death of the deceased (Ratan Mahto) in the motor vehicle accident with the case in succinct that on 07.07.2009, the deceased Ratan Mahto was proceeding from Bind Tola to Rajapakhar by commander jeep bearing registration no. WB 72A-4082 and when he reached near village Sisiya P.S. Barari district-Katihar at about 09:30 PM, the aforesaid vehicle met an accident due to rash and negligent driving of the said vehicle by its driver in which the deceased sustained serious injury which proved fatal. Regarding the said accident, Barari P.S. Case no. 116 of 2009 was instituted under Sections 279, 337 and 304-A of the Indian Penal Code against the driver of the offending vehicle. The deceased was aged about 52-55 years at the time of death and used to earn Rs. 3000/- from private business.

4. The Insurance Company and owner-cum-driver of the offending vehicle put their appearance in the case and filed their written statement.

5. After hearing the parties and perusing the record, learned lower court passed the impugned Judgment and Award as stated in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid Judgment and Award, the appellant (United India Insurance Company Ltd.) has preferred the present appeal.

7. The appellant has assailed the impugned Judgment and Award only on the ground that the owner of the offending vehicle was not having valid road permit and the said vehicle was being plied without road permit at the relevant time of accident. The claimants have not filed any permit in the court below despite taking plea in this regard by the appellant in his written statement, but the learned lower court without verifying the materials on record has wrongly found that the owner was having valid road permit, in absence of any contrary evidence led by other sides. As the offending vehicle was being plied without valid road permit, there was utter violation of terms and conditions of policy, hence, the appellant is not liable to pay any compensation to the claimants. Moreover, the learned Tribunal has also not given any liberty of recovery to the appellant, of the amount of compensation and interest thereon to be paid to the claimants, from its owner.

8. On the other hand, it is submitted by the learned counsel for the respondents that the learned lower court has rightly found the owner of the vehicle having valid road permit in absence of any contrary evidence adduced by the appellant and has rightly passed the impugned judgment and award correctly appreciating the facts and evidence available on record and the same is liable to be sustained and this appeal has no substance in it and is liable to be dismissed.

9. On perusal of record, it appears that the appellant by filing the written statement has *inter alia* taken plea that the owner of the offending vehicle was not having valid road permit for plying the offending vehicle on road, hence, there is violation of terms and conditions of policy. The learned lower court has also framed issue regarding the said controversy. As the issue of road permit was in controversy, so the burden to prove that the owner of the offending vehicle was having valid road permit at the relevant time of accident to make the appellant (United India Insurance Company Ltd.) liable to pay the compensation to the claimant indemnifying owner of the vehicle squarely lies on the shoulder of the owner of the vehicle, but on perusal of record, it appears that the owner of the vehicle has not filed any such permit. Moreover, the claimants have also not filed the same, but the learned lower court without any road permit available on record has wrongly held that the owner of the vehicle was having valid road permit at the time of accident as the appellant has failed to adduce any contrary evidence in this regard.

10. As the owner of the offending vehicle has not filed the road permit in the case despite taking plea by the appellant (United India Insurance Company Ltd.) in this regard, this court is constrained to hold that the owner of the offending vehicle was not having valid road permit at the time of accident, as had the same been with the owner of the vehicle, it would have been filed by him in the court below. As the offending vehicle was being plied on the road without valid road permit at the relevant time of accident, there is utter violation of terms and conditions of policy. Hence, the appellant (United India Insurance Company Ltd.) is not liable to pay any amount of compensation and interest thereon to the claimants, but as the claimants happen to be third party to the contract of policy entered into between the owner and the insurer and as the Motor Vehicle Act is a beneficial legislation, hence the appellant (United

India Insurance Company Ltd.) is directed to pay the aforesaid amount of compensation and interest thereon to the claimants with liberty to recover the same from the owner of the offending vehicle after its payment which would subserve the end of justice as well. Accordingly, the impugned Judgment and Award passed by the learned lower court is modified and this appeal is disposed of.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03.10.2017
Transmission Date	N.A.