IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.801 of 2009

==

Branch Manager, National Insurance Company Ltd. Biharsharif, Nalanda represented through Shri Anjani Kumar working as A.O. and duly constituted attorney of National Insurance Company having its Regional Office at 4th Floor, Sone Bhawan, P.S. Sachiwalaya, District Patna.

.... O.P. No.2-Appellant/s

Versus

1. Chinta Devi wife of Shri Gajendra Singh
2. Gajendra Singh son of Late Ramrup Singh both residents of village - Bhagwanpur, P.S. - Silao, District - Nalanda.

…. Claimants-Respondents 1st Set.

3. Yashwant Kumar Singh, son of Bindeshwar Prasad Singh, resident of village - Madhobigha, P.S. - Muffasil, District - Nawada, Owner of Trekker No. BR - 27A - 0324.

.... O.P. No.1- Respondent 2nd Set.

==

For the Appellant/s	:	Mr. Shailendra Kumar, Advocate
For the Respondent/s	:	Mr. Pramod Kumar, Advocate
		Mr. Dhirendra Kumar, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date: 13-07-2017

The delay in filing of this Appeal is condoned.

Interlocutory Application No.8643 of 2009 stands allowed and disposed of.

This is an Insurance Company's Appeal under Section 173 of the Motor Vehicles Act challenging an award passed by the Motor Vehicles Accident Claim Tribunal, Nalanda at Biharsharif on 6th of April, 2009 in Claim Case No.92 of 2008.

The accident in question took place on 26.11.2000 when a Tata 407 Truck coming from the opposite side dashed with an another vehicle (Trekker) due to which Arbind Kumar suffered injuries and died. The claim in question has been filed by the legal heirs of the deceased and the claim having been allowed to the tune of Rs.1,84,500/- and the liability has been imposed upon the Insurance Company, the Insurance Company has filed this appeal.

The singular objection of the Insurance Company was that the vehicle in question insured with the Insurance Company was complying without a valid permit. It is alleged that the owner did not submit the documents pertaining to the vehicle, namely the permit in question, and as the vehicle was plying without a valid permit there being breach to the terms and conditions of the policy, the Insurance Company could not be held liable, the liability should have been fastened upon the owner and the driver of the vehicle. It is further argued by learned counsel for the appellant that the objection in this regard was raised in the written statement by the Insurance Company, but the Tribunal did not advert to consider this question and awarded compensation without addressing the question of fastening liability, therefore, the award is unsustainable.

Apart from the above submission, alternate plea of Insurance Company is that at least liberty should be granted to the Insurance Company for paying the amount of compensation to the claimants and thereafter recovering from the owner and the driver of the vehicle in question.

Having heard learned counsel for the Insurance Company and on going through the records, it is seen that in this case, various issues were framed as is evident from the award in question. In all, five issues were framed and there is no specific issue with regard to the question raised now in this appeal. When issues were raised, there seems to be no objection made by the Insurance Company for formulating specific issue with regard to the vehicle plying without a valid permit.

The question as to the vehicle in question was plying without a valid permit is a mixed question of law and fact and has to be decided on the evidence led by the parties after the issues were framed on this count. When the issues were framed, the Insurance Company should have immediately objected to the framing of issues and insisted on framing of an issue on this question. Even if it was not framed at the relevant time, the Insurance Company should have raised the same under Order 8 Rule 11 CPC by filing an application during the pendency of the case before the Tribunal. Records indicate that this was not done and without framing of the aforesaid issue, the trial was permitted to the completed by the Insurance Company. The accident took place in the year 2000 and the award was passed in the year 2009, the Insurance Company having not taken proper steps for ensuring adjudication on the aforesaid issue by raising objection before the

Tribunal in accordance to the requirement of law, now it is too late in the day to raise such a plea in this appeal.

Accordingly, finding no ground for making indulgence into the matter, the appeal stands dismissed.

Statutory amount deposited with the Court be transmitted to the Tribunal and the Tribunal shall make payment of the amount to the claimants after adjustment of the statutory amount and other amounts already paid within sixty days from today.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2017
Transmission Date	