

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.223 of 2011

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1. Branch Manager, National Insurance Company Ltd, Shyam Bazar Road, Dumka.

2. Divisional Manager, National Insurance Co. Ltd., Sumrit Mandal Complex, Jail Road, Tilak Manjhi, Bhagalpur

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

.... Opposite Party no.3 and 4-Appellant/s
Versus

1. Jai Lal Choudhary, son of late Feku Choudhary,

2. Dholi Devi, wife of Jailal Choudhary,

Both resident of village Sakri Gali, Rampur Leechi Bagan, P.O. Sakri Gali, P.S.Sahibganj, District Sahibganj, at present residing at Mohalla Noorpur, P.S. Nath Nagar, District-Bhagalpur.

....Claimants- Respondents 1st Set.

3. Devendra Yadav, s/o Ram Jatan Gope, resident of Sakri Gali, P.O. and P.S. Sahibganj, District-Sahibganj.

. owner of the vehicle bearing its registration No. HR 29C/8346.

Opposite Party no.1

4. Indra Lok Rai, s/o Prem Lal, resident of Lalmatia, P.S. Sahibganj, District-Sahibganj.

Driver of vehicle No. HR 29C/8346.

... Opposite Party no.2. – Respondents 2nd Set.

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Appearance :

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

For the Respondent/s : Mr. Vivekanand Vivek, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 13-07-2017

The delay in filing of this appeal is condoned.

Interlocutory Application No.7259 of 2014 stands allowed and disposed of.

This is an appeal by the National Insurance Company calling in question the tenability of an award dated 13th September, 2010 passed by the 3rd Additional District Judge-cum Motor Vehicles



Accident Claim Tribunal, Bhagalpur, in Claim Case No.127 of 2004 awarding a compensation of Rs.2,62,000/- to the claimants- legal heirs of the deceased Subodh Kumar Chaudhary alias Subodh Chaudhary alias Subodh Pandit in connection with an accident that took place on 21.02.2004 and challenge to the award of compensation and liability fastened on the Insurance Company is made only on the ground that the deceased Subodh Kumar Chaudhary alias Subodh Chaudhary alias Subodh Pandit was not a labourer working in the contract in question, on the contrary he was a gratuitous passenger travelling in the vehicle after payment of fair.

Even though such an averment is made in the memorandum of appeal, but on going through the award passed by the Tribunal, it is seen that no such issue was framed and the Insurance Company has not led any evidence nor has examined any witness who appeared in the witness box at the time of evidence with regard to the issue in question. The issue as to whether the passenger was travelling in the vehicle as gratuitous passenger is a question of fact and until and unless this fact is proved by evidence on behalf of the Insurance Company, the matter cannot be considered at this stage in an appeal that also when no application is filed under Order 41 Rule 27 of the Code of Civil Procedure for leading additional evidence. The Insurance Company having failed to prove this factual aspect of the matter before



the Tribunal, I see no reason to make any 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	

