

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.504 of 2014

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Dhaneshwar Singh, Son of Late Bhoki Singh, Resident of village - Muskipur, P.O. and P.S.- Gogri Jamalpur, District - Khagaria as Karta of the Joint Hindu Family

.... Appellant/s

Versus

1. The Union of India through G.M. East Central Railway Hajipur (Bihar).
2. The Branch Manager, New India Assurance Co. Ltd. Harhar Mahadeo Chowk N.H.- 31, at P.O., P.S. and District - Begusarai. Insurer of the Tractor No. BR-34-8984 vide its Chasis No. L04095A44649, Engine No. BU-6534, Insured on 06.12.2004 and valid upto 05.12.2005.

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate
Mr. Arun Kumar Singh, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 26-07-2017

Delay of 125 days in filing of this appeal is condoned.

I.A. No. 1278 of 2016 stands allowed and disposed of.

2. On account of collision between a Railway Engine and a tractor in an unmanned railway crossing appellant herein who is owner of the tractor in question bearing no. BR 34-8984 filed the application for compensation under Section 165 and Section 166 of the Motor Vehicles Act claiming damages for loss to the tractor in question impleading the Insurance Company of the tractor as a party. On examination, it was found that the Insurance in question was a third party insurance which did not cover the loss caused to the owner due to damage of property. That apart as there was no loss to any



person or persons, the learned Tribunal held that the application under Section 165 and 166 of the Motor Vehicles Act was not maintainable. Even though learned counsel for the appellant placing reliance on Supreme Court judgment in the case of **Union of India Vs. Bhagwati Prasad (dead) & Ors.- 2002 (2) PLJR 139 (SC)** argues that the claim petition pertaining to such accident where damages to property is caused was maintainable against a Railway Administration.

3. Learned Tribunal considered all these aspects and found that the insurance policy was a third party insurance and, therefore, for damages to the property of the self, a claim petition under Section 165 of the Motor Vehicles Act was not maintainable. It was held that the claim petition under Section 165 can be filed only with regard to damage to any property of a third party so arising out of an accident. Holding that damage to the property of the claimant was not property of the third party, the claim petition has been dismissed. That being the position, even the judgment in the case of **Bhagwati Prasad (dead)** (supra) will not apply as the case decided by the Supreme Court in the case of **Bhagwati Prasad (dead)** (supra) was with regard to death of a person in the accident that took place due to collision of a motor vehicle and a train and did not pertain to claim by a person who is not a third party with regard to loss to his property.



4. Finding the learned Tribunal to have decided the issue in accordance to the requirement of law and finding no error in the same, this appeal stands dismissed. However, in case the appellant is entitled to seek invoking the jurisdiction of the Railway Claims Tribunal or jurisdiction of any other authority or Court, liberty shall be available to the appellant in accordance with law.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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