

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.653 of 2009**

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

2. Divisional Manager, National Insurance Company Ltd. R.B.S.S. Road, Bhagalpur, both represented through Shri Anjani Kumar working as A.O. and duly constituted attorney of National Insurance Company having its Regional Office at 4<sup>th</sup> floor, Sone Bhawan, P.S. Sachiwalaya, District-Patna.

... .. Appellant/s

Versus

1. Mola Devi, W/o Late Shankar Mandal.

2. Niroda Devi W/o Late Ram Das Mandal.

3. Ashok Mandal.

4. Santosh Mandal.

5. Shomit Mandal.

3 to 5 minor sons of Late Shankar Mandal represented through their mother Mola Devi as a natural guardian and next friends.

All R/o Vill-Shukhshena, P.O. Sarkanda, P.S. Rajmahal, Distt-Sahebganj at present residing at Vill-Manoharpur, P.O. Sahjodpur, P.S. Nath Nagar (Madhusudanpur), Distt-Bhagalpur.

6. Lakhan Yadav Son of Late Kishun Yadav, R/o Kerampurato (Maharajpur), P.S.-Talijhari, Distt-Sahebganj. Owner of vehicle bearing its Registration no. BRK 3535

7. Pradip Kumar Yadav S/o Naresh Kumar Yadav, R/o Vill-Budhsaria, P.S. Rajmahal, Distt-Sahebganj. Driver of the offended vehicle.

... .. Respondent/s

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**Appearance :**

|                                |   |                       |
|--------------------------------|---|-----------------------|
| For the Appellant/s            | : | Mr. Shailendra Kumar  |
| For the Respondent nos. 3 to 5 | : | Mr. Vivekanand Vivek  |
|                                |   | Mr. Dabesh Kr. Poddar |

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**  
**ORAL JUDGMENT**  
**Date : 12-07-2018**



**Ref: I.A. no. 7380 of 2009**

The aforesaid interlocutory application has been filed under Section 5 of the Limitation Act for condoning the delay of about 2 days in preferring this appeal.

After hearing both sides, I find sufficient grounds in the said application for condoning the delay. Accordingly, the delay in preferring the Appeal is condoned and the aforesaid interlocutory application is allowed.

2. Heard learned counsel for the appellants and learned counsel for the respondents-claimants on this Miscellaneous Appeal.

3. This miscellaneous appeal has been preferred against the judgment dated 22.06.2009 and award dated 21.07.2009 passed by learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Bhagalpur in Claim Case no. 64 of 2003 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 3 & 4 of the said case i.e. National Insurance Company Ltd. to pay compensation to the tune of Rs. 3,19,500/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants.

4. Factual matrix of the case is that the claimants-



respondents no. 1 to 5 filed the Claim Case no. 64 of 2003 under Section 166 of the M.V. Act for awarding compensation on account of death of Shankar Mandal in motor vehicle accident with the case in succinct that on 06.05.2003 at around 12:00 O'clock, claimant no. 1 Mola Devi was regressing to her house along with her husband, Shankar Mandal from their field, as soon as they arrived on the road of Sukhsena Ghat Chowk, abruptly a truck bearing registration no. BRK 3535 being rashly and negligently driven by its driver dashed Shankar Mandal and ran over his leg, resultantly, he died on the spot. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Regarding the said incident, Taljhari P.S. Case no. 25 of 2003 was instituted under Sections 379 and 304(A) of I.P.C. Further case is that the deceased Shankar Mandal was aged about 45 years at the time of his death and was hawker of fruit and used to earn Rs. 100/- per day from the said vocation.

5. Opposite parties put their appearance in the case and filed separate written statements. The O.P. no. 3 & 4 also filed supplementary written statement in the case. Both parties adduced ocular and documentary evidence in buttress of their



respective case.

6. After hearing the parties and perusing the record, learned Tribunal passed the impugned judgment and award as detailed in the earlier paragraph.

7. Being aggrieved and dissatisfied with the aforesaid judgment and award, the O.P. no. 3 & 4 have preferred the present appeal.

8. The appellants have preferred this appeal on solitary ground that the driver of the offending vehicle, namely, Pradeep Kumar Yadav was not having valid driving licence at the relevant time of accident. Hence, the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the offending vehicle rather it is the owner, who is liable to pay the same. Utmost, the Insurance Company may be directed to pay the compensation to the claimants, with liberty to recover the same from its owner after its payment.

9. On the other hand, learned counsel for the claimants-respondents made no objection against the aforesaid submission of the appellants.

10. On perusal of record, it appears that the appellants by filling the written statement, had taken the plea



that the driver of the offending vehicle was not having valid driving licence at the relevant time of accident. Further by filing supplementary written statement dated 04.01.2005, the appellants have taken the case that as per the surveyor report dated 24.08.2004 of its surveyor, driving licence no. 1772/2000 BGP allegedly issued in the name of Pradeep Kumar Yadav is fake as reported by D.T.O. Bhagalpur vide letter dated 14.08.2004 and as the driver was not having valid licence rather it was fake, hence, the appellants are not liable to pay any compensation to the claimants-respondents.

**11.** From perusal of record, it further appears that though the learned Tribunal had taken cognizance of supplementary written statement filed by the appellants vide order dated 08.02.2005, but the same does not appear to have been admitted and made part of the record by the learned Tribunal. More so, the said supplementary written statement has not been verified by the appellant. Moreover though by filing supplementary written statement, the appellants have submitted that as per surveyor report the driving licence issued in the name of Pradeep Kumar Yadav was fake as reported by D.T.O. Bhagalpur on 14.08.2004 but the appellants have not filed either any surveyor report or alleged letter of the D.T.O.



Bhagalpur in substantiation of their case. Thus, the aforesaid case of the appellants remain unsubstantiated by any convincing and cogent evidence and for want of substantiation, this Court fails to hold that the driving licence possessed by the driver of offending vehicle at the relevant time of accident was fake one. Moreso, learned Tribunal in its judgment has given finding that the driving licence issued in the name of Pradeep Kumar Yadav was renewed from 13.02.2003 to 12.02.2006, on the basis of xerox copy of driving licence filed by the O.P. nos. 1 and 2, which means that the driver of the offending vehicle was having valid driving licence at the relevant time of accident i.e. on 06.05.2003. In the aforesaid facts and circumstances, I find and hold that the driver of the offending vehicle, namely, Pradeep Kumar Yadav was having valid licence at the relevant time of accident. As admittedly the offending vehicle was insured by the appellant during the aforesaid period, hence, appellant are squarely liable to pay the aforesaid amount of compensation and interest thereon as per provision made by learned Tribunal to the claimants to be payable within two months from the date of this judgment.

**12.** Accordingly, the impugned judgment and award passed by learned Tribunal is upheld and this



Miscellaneous Appeal is dismissed.

**13.** Let the statutory amount deposited by the appellants be sent down to the court below in the name of claimant-respondent no. 1 (Mola Devi) through cheque towards adjustment in the payment of compensation amount.

**(Prakash Chandra Jaiswal, J)**

rohit/-

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