

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.273 of 2006

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M/S National Insurance Company Limited Branch Darbhanga, District Darbhanga, represented through its Administrative Officer Regional Office at Sone Bhawan (4th Floor), Birchand Patel Marg, Patna-800001.

.... (Opposite Party No.2)/Insurer of the Truck (BR-31A 1882)/Appellant.
Versus

1. Indu Devi, wife of Vireshwar Prasad Dev, resident of village Barheta, P.O. Kurva Barheta, P.S. Kalyanpur, District Samastipur, at present C/o-Sri Sanjay Kumar Dev Kanhaiya (Education Department) School Inspector Mohalla, Balbhadrapur, Darbhanga. Claimant/Respondent 1st Set.
2. Zubair Ahmad, son of Md. Kallil, resident of Kabadaha Patepur, District Vaishali. (Opposite Party no.1) (Insurer of Truck BR-31A-1882)
3. Smt. Rasila Sinha, wife of Anil Kumar Singh, resident of New Colony, Dharampur, Samastipur, at present Mohalla and P.S. Mithanpura, P.O. Ramna, District Muzaffarpur.
... .. Opposite Party No.1A (Owner of the Bus BR 06P 9439)
4. The Branch Manager, the new India Assurance Company Limited, Branch Darbhanga, District Darbhanga.
... .. (Opposite Party No.2A) (Insurer of Bus BR 06P 9439)
.... Respondent 2nd Set.

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Appearance :

For the Appellant : Mr. Sanjay Kumar-I, Advocate.
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 08-08-2018

Heard learned counsel for the appellant. None turned up on behalf of respondent no.1 despite service of notice while the appeal stood dismissed against respondent nos.2 to 4.

This miscellaneous appeal has been preferred against the order dated 28.04.2006 and the award dated 11.05.2006 passed by the learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Darbhanga (hereinafter in short referred to as the 'Tribunal') in Claim Case No.19 of 2004, whereby the learned Tribunal allowing the



application of the claimant filed under Section 140 M.V. Act, directed the owner of both the bus and truck to pay Rs.25,000/- each as ad interim compensation to the claimant and it also found liability of insurer of the truck co-extensive with that of its owner.

The factual matrix of the case is that claimant filed Claim Case No.19 of 2004 under Section 140 of the M.V. Act for awarding compensation on account of death of Amritesh Kumar @ Deepak in a motor vehicle accident with the case in succinct that on 10.11.2003 at 5:15 PM the deceased was proceeding from Laheriasarai to his village by bus bearing registration no. BR-06P-9439. When the bus arrived at Darbhanga-Samastipur Pakki Road near the village Ojhaur a truck, bearing registration no.BR-31-A-1882, being rashly and negligently driven by its driver, dashed the aforesaid bus from rear side and resultantly the aforesaid bus lost its balance and plunged into a pond. The aforesaid bus was submerged into the water and the deceased, who was travelling in the said bus, died. The aforesaid bus was insured by the New India Assurance Company Limited while the truck was insured by the National Insurance Company Limited at the relevant time of accident.

Opposite parties put their appearance in the case. Both the Insurance Company filed their respective rejoinders in the case. After hearing the parties and perusing the record learned Tribunal finding



composite liability of both the vehicle in the accident directed the owner of both the vehicle to pay Rs.25,000/- each to the claimant as ad interim compensation and also found the liability of insurer of truck as co-extensive with the liability of owner of the said vehicle.

Being aggrieved and dissatisfied with the order of the learned Tribunal, the appellant-National Insurance Company Limited who happens to be insurer of the aforesaid truck has preferred this appeal.

It is submitted by learned counsel for the appellant that the aforesaid truck was not insured by the appellant at the relevant time of accident and it has taken specific case by filing rejoinder in this regard but the learned Tribunal without considering the same in right perspective wrongly and illegally hold the liability of the appellant co-extensive to that of the owner of truck and directed it to pay Rs.25,000/- to the claimant. Hence, the impugned order is liable to be set aside.

From perusal of the record, it appears that there were two vehicles involved in the accident and finding the composite liability of both the vehicles in the accident, the owner of both the vehicles i.e. owner of the bus and truck were directed to pay Rs.25,000/- each by way of ad interim compensation to the claimant. As the appellant happens to be insurer of the aforesaid truck, its liability was found co-extensive with that of owner of truck. From perusal of the record, it



further appears that the appellant has taken the specific case that the offending truck was not insured by it at the relevant time of accident though it has not filed any document in buttress of its case before the learned Tribunal. But the learned Tribunal, without considering the aforesaid aspect of the case and the aforesaid plea of the appellant, has held the liability of the appellant co-extensive with that of the owner of the offending truck without any basis and perversely.

In the facts and circumstances of the case, the order passed by the learned Tribunal is hereby set aside and the case is remitted back to the learned Tribunal to decide it afresh after according opportunity to both the parties to adduce the evidence in buttress of their respective case.

Let the statutory amount deposited by the appellant be returned to it through cheque.

Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.08.2018
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