

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.396 of 2010

1. Branch Manager, National Insurance Company Ltd., Gujrati Bazar Sagar (MP)-470002 through Branch Manager National Insurance Company Ltd. Municipal Chowk Chapra P.S.-Chapra Town, District-Saran, Chapra 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.

... .. Appellant/s

Versus

1. Prabhabati Devi W/o Late Ashok Ram.
2. Phul Kumari.
3. Rinku Kumari.
4. Phulijari Kumari.
5. Pawan Kumar.
6. Sarawan Kumar 2 to 6 minor sons and daughters of deceased Ashok Ram and they are represented through their Natural Guardian mother namely, Prabhabati Devi all R/o Vill-Manjhi West, P.S. Manjhi, Distt-Saran.
7. Harindra Kumar Singh, S/o Shri Nathuni Singh R/o Vill-Baria, P.S. Baria, Distt-Ballia, U.P. Owner of the offending vehicle bearing its Reg. No. UP60E/4923.
8. Gulab Ram, R/o Village-Manjhi, District-Chapra, Saran.
9. Gita Devi W/o Vishwanath Ram R/o Vill-Sitabdiara P.S. Rivil Ganj, Distt-Saran.
10. Usha Devi W/o Santhos Ram R/o Vill-Sitabdiara, P.S. Rivil Ganj, Distt-Saran.
11. Gayatri Devi W/o Metan Ram R/o Vill-Lal Ganj Murapati, P.S. Lal Ganj, Distt-Ballia, U.P.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailendra Kumar
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 13-12-2018

Seen the office note.

Respondent no. 7 happens to be owner of the offending vehicle. Earlier, steps have been taken on several occasions for service of notice upon the respondent no. 7, but in



vain. From perusal of impugned judgment, it appears that the said respondent had also not turned up before the learned Tribunal and the case proceeded *ex parte* against him. Hence, the appellant is exempted from taking steps for fresh service of notice upon the respondent no. 7

Heard learned counsel for the appellant on this Miscellaneous Appeal. None turned up on behalf of the respondent nos. 2 to 6 despite service of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 16.10.2009 and award dated 31.10.2009 passed by learned Additional District Judge-I-cum-Motor Vehicle Accident Claim Tribunal, Saran in Claim Case no. 41 of 2005 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 1 National Insurance Co. Ltd. to pay compensation to the tune of Rs. 2,76,880/- along with interest @ 6% per annum from the presentation of the case till its realization to the claimants with observation that if the Insurance Company finds any breach of terms and condition of policy, it will be at liberty to realize the entire amount of compensation from the O.P. no. 2 owner of the offending motorcycle.

3. Being aggrieved and dissatisfied with the



aforesaid judgment and award, the O.P. no. 1 National Insurance Company Ltd. has preferred the present appeal.

4. It is submitted by learned counsel for the appellant that learned Tribunal has given liberty to the appellant to recover the entire amount from the owner of the offending motorcycle, if it finds any breach of terms and condition of policy and the appellant is ready to pay the aforesaid amount of compensation to the claimants with liberty to recover the same from its owner after its payment in case of finding any breach of terms and condition of policy.

5. In the facts and circumstances and in view of the submission of the appellant, the appellant is directed to make payment of the aforesaid amount of compensation and interest thereon to the claimants-respondents no. 2 to 6 as awarded by the learned Tribunal after deducting the amount if any paid by it within two months from the date of this judgment. However, the appellant will be at liberty to recover the aforesaid amount of compensation and interest from the owner of the offending motorcycle after its payment to the claimants in case of finding any breach of terms and condition of policy. Accordingly, this miscellaneous appeal is disposed of.



6. Let the statutory amount deposited by the appellant be sent down to the learned Tribunal in the name of respondent no. 1 through cheque for its adjustment towards payment of compensation.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15-12-2018
Transmission Date	15-12-2018

