

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.448 of 2010

Branch Manager, National Insurance Co. Ltd., Branch Office, main Raod, Motihari (East Champaran) through B.M., National Insurance Co. Ltd; Municipal Chowk, P.S. Chapra Town, Distt-Saran, Both the above represented through it's Chief Regional Manager and the constituted attorney, R.O., National Insurance Company Ltd. 4th floor, Sone Bhawan, B.C. Patel Marg, P.S. Sachivalaya, Distt-Patna.

... .. Appellant/s

Versus

1. Surendra Rai, S/o Banshi Yadav by caste Hindu, R/o Vill-Parsa Garh Bazar, P.O. Parsa Garh, P.S. Ekma, Distt. Saran, Chapra.
- 2.Swayam Sahayata Samiti through Din Dayal Singh S/o Late Munshi Singh, Vill-Sabadra, P.O. Bangara, P.S. Manjhi, Distt. Saran, Chapra (Owner of BR-04B/4289 (Jeep)..... O.P. no. 2.
3. Adhikari Singh S/o Late Ramdahin Singh, R/o Village-Bangara, P.S. Daudpur, Distt-Saran, Chapra (Owner of Jeep Bearing No. BR-05A/1213).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Kumar Singh Vikram
For the Respondent/s	:	None.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 13-08-2018

Heard learned counsel for the appellant on this appeal. No one turned up on behalf of the respondents despite putting appearance in the case.



2. This miscellaneous appeal has been preferred against the judgment dated 17.11.2009 and award dated 30.11.2009 passed by learned 1st Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Saran in Claim Case no. 107 of 2003 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 1 National Insurance Company Limited to pay compensation to the tune of Rs. 3,20,000/- along with interest @ 6% per annum from the date of presentation of the claim case till its realization to the claimants.

3. Factual matrix of the case is that Claim Case no. 107 of 2003 was filed by the claimant-respondent no. 1 Surendra Rai under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 8,55,000/- on account of death of his wife Sunita Devi in motor vehicle accident with the case in succinct that on 4.08.2003, said Sunita Devi was travelling by jeep bearing registration no. BR-04B/4289, as soon as the said jeep arrived on Chapra-Siwan main road near Gupta Line Hotel in village Baldiha, P.S. Kopa, District-Saran at around 12:30 hours, a jeep bearing registration no. B.R. 05A-1213 arrived there from opposite direction and both the vehicles dashed each other in head on collision. Said Sunita Devi



sustained serious injuries in the accident and resultantly died on the spot. Regarding the aforesaid accident, Kopa P.S. Case no. 55 of 2003 was instituted under Sections 279/304A of I.P.C. The deceased was aged about 26 years at the time of her death.

4. Both the opposite parties put their appearance in the case and filed their written statement. Claimants adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the O.P. no. 1 has preferred the present appeal.

7. It is submitted by learned counsel for the appellant that the jeep bearing registration no. BR-04B/4289 in which the deceased was travelling was not having valid road permit to ply the said vehicle at the relevant time of accident and driver of the jeep bearing registration no. B.R. 05A-1213 was not possessing valid driving licence at the relevant time of accident. Thus, there was utter violation of terms and condition



of policy by the owner of both the aforesaid vehicles. Hence, the appellant, who happens to be insurer of the aforesaid vehicles are not liable to pay any compensation to the claimants. It is further submitted that learned Tribunal in its judgment has found that the Insurance Company will be at liberty to realize the entire amount of compensation from the owner of the jeeps through legal procedure, if it finds any breach in policy condition. But, the learned Tribunal neither framed any issue regarding the aforesaid specific plea taken by the appellant nor decided the same rather left the issue opened to the appellant to decide it itself.

8. On perusal of record, it appears that the appellant Insurance Company by filing written statement has taken plea that no paper of vehicles such as driving licence, road permit, fitness certificate etc. have been filed in the case and in absence of aforesaid documents on the record, no proper and legal order can be passed and court will draw adverse inference against the applicant and owner. On the aforesaid plea of the appellant, learned Tribunal on 13.01.2009 has specifically framed the issue no. 4 as reproduced below:

Whether there is violation of policy condition as contemplated under Section 149(2) of the M.V. Act?



9. But said specific issue is not found figured in the judgment and moreover learned Tribunal has not decided the aforesaid matter rather left the issue opened to the appellant National Insurance Company Ltd. to recover the amount of compensation paid by it to the claimants from its owner in case of finding any breach of terms and conditions of policy. Once, the appellant has made the specific case regarding validity of driving licence and not possessing of rout permit of vehicles and moreover, the learned Tribunal has framed the issue regarding violation of the policy condition as contained under Sections 149(2) of the M.V. Act, it ought to have decided the aforesaid issue and not left it opened to the appellant to decide the same itself and recover the amount paid by it from owner of the vehicles in case of finding breach of terms and conditions of policy.

10. In the facts and circumstances, the aforesaid judgment passed by learned Tribunal is set aside and the case is remitted back to the learned Tribunal to decide the aforesaid issue after giving opportunity to the parties to adduce evidence on the said issue within three months from the date of this judgment. Accordingly, this miscellaneous appeal stands disposed of.



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

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16-08-2018
Transmission Date	N.A.

