

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.679 of 2011

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Divisional Manager, National Insurance Company Ltd., Mohalla Motijheel, P.S. Town, Dist – Muzaffarpur, represented through Sri Anjani Kumar, working as A.O. and duly constituted attorney of National Insurance Company Ltd, having its Regional Office at 4th Floor, Sone Bhawan, P.S.-Sachiwalaya, District-Patna.

.... Appellant

Versus

1. Leena Devi, Wife of Late Binay Kumar Thakur
2. Mona Kumari, D/o Late Binay Kumar Thakur
3. Sona Kumari, D/o Late Binay Kumar Thakur
4. Maya Shankar, Son of Late Binay Kumar Thakur
Minors under the guardianship of their mother Leena Devi
All resident of Dwarikapur, P.S.-Sakra, Dist-Muzaffarpur.
5. Manoj Kumar, S/o Late Narain Thakur, Resident of Dwarikapur, P.S.-Sakra, District-Muzaffarpur, Owner of vehicle bearing its registration no. BR-06F/9229, Hero Honda Motorcycle

.... Respondents

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Appearance:

For the Appellant/s : Mr. Shailendra Kumar, Advocate
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 14-08-2018

Heard learned counsel for the appellant on this miscellaneous appeal. None turned up on behalf of the respondents to advance argument in this appeal despite service of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 19.05.2011 and award dated 02.06.2011 passed by the 4th Additional District Judge cum Motor Vehicle Accident Claims Tribunal, Muzaffarpur in Claim Case No. 102 of 2006 whereby the learned Tribunal allowing the claim case directed the opposite party no.2-National Insurance Company Limited to pay compensation to the tune of Rs. 5,71,500/- along with the interest at



the rate of 4% per annum from the date of filing claim case till its realization to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case No. 102 of 2006 under Section 166 of the M.V. Act for awarding compensation on account of death of one Binay Kumar Thakur @ Guddu in Motor Vehicle Accident with the case in succinct that on 10.09.2004, said Binay Kumar Thakur was regressing to his home from Pusha by motorcycle bearing registration no. BR-06F-9229. When he reached near Baluya Sareh, due to bad road condition and water logging, the motorcycle was slipped and plunged into ditch and resultantly he died on the spot. Regarding the aforesaid incident, UD Case No. 07 of 2004 was registered at Sakara P.S. The deceased was having valid driving license at the relevant time of accident and the motorcycle was hailing to his cousin Manoj Kumar. The deceased was aged about 33 years at the time of accident and he used to run a dairy farm and was also an agent in Sahara India and used to earn Rs. 4500/- per month from the said vocation.

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

5. After hearing the parties and perusing the record, the



learned Tribunal passed the aforesaid judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award, Opposite party no.2-National Insurance Company Limited has preferred this appeal.

7. Appellant has filed this appeal only on the ground that the deceased was driving the motorcycle of his cousin namely Manoj Kumar who happens to be the owner of the said motorcycle. Hence the deceased stepped into the shoes of said Manoj Kumar and became owner of the said motorcycle. He does not happen to be third party to the contract of insurance rather owner (insured) of the said motorcycle. Hence, the Insurance Company is not liable to pay any amount of compensation to the claimants on account of the death of the deceased.

8. From perusal of the record, it appears that as per the case of the claimants, motorcycle in question was hailing to one Manoj Kumar who happens to be cousin of the deceased and the deceased was driving the aforesaid motorcycle at the relevant time of accident taking it from his cousin. As the deceased happens to be cousin of Manoj Kumar, hence he does not happen to be family member of Manoj Kumar and in my considered opinion, the deceased cannot step into the shoes of Manoj Kumar i.e. owner of the vehicle and cannot be branded as owner rather third party to the



contract of insurance and as per the terms and conditions of the policy, the appellant is liable to pay compensation to the claimants in case of death of deceased in accident.

9. In the facts and circumstances of the case, I do not find any illegality and impropriety in the impugned judgment and award passed by the learned Tribunal. Hence the judgment and award passed by the learned Tribunal is upheld. Accordingly, this appeal stands dismissed.

10. Appellant is directed to pay aforesaid amount of compensation to the claimants within two months from the date of this judgment after deducting the amount already paid/deposited by it.

11. Let the statutory amount deposited by the appellant be sent down to the learned Tribunal through cheque in the name of respondent no.1 who happens to be mother and natural guardian of respondent nos. 2 to 4 for adjustment in the amount of compensation.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	16.08.2018
Transmission Date	16.08.2018

