

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.255 of 2012

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1. The National Insurance Company Ltd. represented through its Manager at Municipal Chowk Chapra & through its Chief Regional Manager and the Constituted Attorney having its Regional Office at 4th Floor, Sone Bhawan, Birchand Patel Path, P.S. Sachivalaya, Distt. – Patna. Appellant.

Versus

1. Musmat Singasan Devi W/O Late Vijay Kumar Rai R/O Village - Fursatpur, P.O. & P.S. Garkha, Distt. - Saran
2. Dhruv Kumar Minor Son of Late Vijay Kumar Rai under the Guardianship of Musmat Singasan Devi R/O Village - Fursatpur, P.O. & P.S. Garkha, Distt. - Saran
3. Niraj Kumar Minor Son of Late Vijay Kumar Rai under the Guardianship of Musmat Singasan Devi R/O Village - Fursatpur, P.O. & P.S. Garkha, Distt. - Saran
4. Amit Kumar Yadav S/O Sri Bhagwan Sahai Yadav R/O Village - Fursatpur, P.O. & P.S. Garkha, Distt. - Saran
5. Savar Lal S/O Sri Anga Ram R/O Village - Bharai, P.S. Gegata Ajmer (Rajsthan) Respondents.

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Appearance :

For the Appellant : Mr. Raj Kumar Singh Vikram, Advocate.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 19-07-2018

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

This appeal has been preferred against the judgment dated 21.12.2010 and award dated 05.01.2011 passed by the learned 3rd Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Saran at Chapra (hereinafter in short referred to as the 'Tribunal') in Claim Case No.20 of 2008, whereby the learned Tribunal allowing the claim petition directed the opposite party no.1-



the National Insurance Company Limited (hereinafter in short referred to as the 'Insurance Company') of the aforesaid claim case to pay compensation to the tune of Rs.2,21,000/- along with simple interest at the rate of 6 % per annum from the date of filing of the claim petition till its realisation to the claimants.

The factual matrix of the case is that the claimants filed Claim Case No.20 of 2008 under Section 166 of the Motor Vehicles Act for awarding compensation to the tune of Rs.4,00,000/- on account of death of Vijay Kumar Rai with the case in succinct that the said Vijay Kumar Rai was driver of the Bolero bearing registration no.UP 94C-8082. On 20.08.2007 at 8:30 PM when the said Bolero arrived near Jaswant Nagar, District Itawa (U.P.), and reached near highway of Mithapur Kasba the aforesaid vehicle disbalanced due to strewing of stone chips on the road and in the meanwhile a truck bearing registration no. RJ 01 GA 1256 being rashly and negligently driven by its driver arrived there and dashed the Bolero resulting into death of driver, Vijay Kumar Rai on the spot. The aforesaid accident took place due to rash and negligent driving of truck by its driver. Regarding the aforesaid accident Karhal P.S. Case No.122 of 2007 was instituted. The aforesaid truck was insured by opposite party no.1, the Insurance Company. The deceased Vijay Kumar Rai was aged about 40 years at the time of death and was earning Rs.3300/- per



month from the aforesaid vocation.

Opposite party no.1-the Insurance Company put its appearance in the case and filed its written statement. Claimants adduced ocular as well as documentary evidence in buttress of their case.

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

Being aggrieved and dissatisfied with the impugned judgment and award, the Insurance Company has preferred this miscellaneous appeal.

It is submitted by learned counsel for the appellant that the deceased Vijay Kumar Rai was not having valid driving licence at the relevant time of accident and the aforesaid Bolero was not having route permit for plying the vehicle on the road hence there is contributory negligence on the part of the owner and driver of the Bolero. Hence, the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the offending vehicle.

From perusal of the record, it appears that the deceased was the driver of the Bolero bearing registration no. UP 94C-8082 while the appellant is the insurer of the truck bearing registration no. RJ 01



GA 1256. As the appellant happens to be insurer of the truck he cannot take the plea of not having the valid driving licence by the driver of the Bolero and not having valid permit by the aforesaid Bolero. The said plea can be taken by the insurer of the Bolero only. As in case of not having valid driving licence by the driver of the Bolero and not having valid route permit by the said Bolero, the insurer of the said vehicle would not be liable to pay any compensation indemnifying the owner of the said Bolero. But, as the appellant happens to be insurer of the offending vehicle i.e. truck and the learned Tribunal has found the liability of the driver of the offending vehicle i.e. truck in the accident and there is no case of the appellant that the driver of the truck was not having valid driving licence and the said truck was not having valid permit for plying, it cannot take benefit of not having valid driving licence by the driver of the Bolero and valid permit by the said Bolero.

Moreover, from perusal of the impugned judgment, it appears that the learned Tribunal has found contributory negligence of the deceased towards the aforesaid accident to the extent of 40% finding that the deceased was driving the Bolero rashly and negligently on the road on which the stone chips was strewn and resultantly the Bolero was disbalanced and crossed the path way and met the accident and has deducted 40% of the aforesaid amount of compensation due to



contributory negligence of the deceased in the accident and finally awarded 60% of the compensation to the tune of Rs.2,21,000/- to the claimants. Learned counsel for the appellant has submitted that he has already paid award amount to the claimants.

In the facts and circumstances of the case, I do not find any merit and substance in the aforesaid argument of learned counsel for the appellant hence the judgment and award passed by the learned Tribunal is hereby upheld. Accordingly, this appeal is dismissed.

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

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.07.2018
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