

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.428 of 2009

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Branch Manager, National Insurance Company Ltd., Chapra, through Sri Anjani Kumar, A.O. cum and Duly constituted Attorney National Insurance Company Ltd. Regionl Office 4th Floor Sone Bhawan, B.C. Patel Road, P.O. G.P.O., P.S.- Sachiwalaya, Patna, District-Patna (Opp. Party No.3)

.... Appellant/s

Versus

1. Most.Veena Devi, wife of Late Satyendra Prasad Chaurasia.
2. Reena Kumari, daughter of Late Satyendra Prasad Chaurasia.
3. Pooja Kumari, daughter of Late Satyendra Prasad Chaurasia.
4. Arti Kumari, daughter of Late Satyendra Prasad Chaurasia.
5. Sintu Kumar, Son of Late Satyendra Prasad Chaurasia.
All the minors under the guardianship of their mother respondent no.1, All residents of village and P.O. Basantpur, P.S.-Dighwara, District-Saran.
6. Baiju Bhagat, Son of Kedar Bhagat, Resident of village and P.O.-Basantpur, P.S.- Dighwara, District-Saran – Opposite party no.1.
7. Pintu Kumar, Son of Late Satyendra Prasad Chaurasia, Resident of village and P.O.-Basantpur, P.S.-Dighwara, District-Saran (Opposite party no.3).

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate.
Mr. Sanjay Sinha, Advocate
For the Respondent/s : Mr. Narendra Kumar, Advocate.
Mr. Tej Narayan Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 08-05-2018

Heard learned counsel for the appellant and learned counsel for the respondents on this Miscellaneous Appeal.

2. This Miscellaneous Appeal has been preferred against the judgment dated 09.04.2009 and award dated 23.04.2009 passed by 1st Additional District Judge, Saran cum Motor Accident Claim Tribunal in Claim Case No. 15 of 2006 whereby the learned Tribunal allowing the claim petition directed the opposite party no.2-National



Insurance Company Limited to make payment of compensation to the tune of Rs. 3,30,000/- along with the interest at the rate of 6% per annum from the date of filing claim case to the claimants with liberty to recover aforesaid amount from its owner in case of finding any violation of terms and conditions of policy by filing separate case.

3. Factual Matrix of the case is that respondent nos. 1 to 5 have filed claim case No. 15 of 2006 for awarding compensation on account of death of Satyendra Prasad Chaurasia who happens to be husband of respondent no.1 and father of respondent nos. 2 to 5 in the motor vehicle accident with the case in succinct that on 28.02.2006, the deceased along with Lalu Chaurasia and Ram Babu Chaurasia was regressing from Chapra after fetching betel leaves by tempo bearing Registration No. BR 31C 0378. When the said tempo arrived near the Daftarpur line hotel on NH-19 at around 2 AM, an unknown truck coming from the eastern side dashed the said tempo and made good its escape. Said Satyendra Prasad Chaurasia was seriously injured in the accident and he succumbed to his injuries on the way to PHC, Dighwara. Regarding the aforesaid accident, Doriganj P.S. Case No. 13 of 2006 was instituted under Sections 279, 337, 338 and 304A of the Indian Penal Code against the unknown truck driver. Further case of the claimants is that the deceased was aged about 34 years at the time of accident and he used to do



wholesale business of Pan, zarda and supari and also running Pooja General Store at Dighwara market. He used to earn Rs. 4000/- per month from the said vocation. Opposite parties of the case put their appearance in the case. Opposite party no.1 who happens to be the owner of the tempo and opposite party no.2 National Insurance Company Limited insurer of the said tempo filed their written statement. In ocular evidence, claimant no.1 examined herself as AW-1 and filed some documents in buttress of their case.

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

5. Being aggrieved and dissatisfied with the aforesaid judgment and award, opposite party no.2-National Insurance Company Limited has preferred this miscellaneous appeal.

6. The appellant has assailed the aforesaid judgment and award mainly on two grounds. Firstly admittedly the tempo in which the deceased was travelling at the time of accident was dashed by unknown truck and after dashing the vehicle, said truck fled away. Regarding the aforesaid accident, companion of the said tempo, namely, Lalu Chaurasia lodged F.I.R. against the driver of the unknown truck. So it is the case of hit and run. The aforesaid accident did not take place due to rash and negligent driving of the



tempo by its driver, hence the appellant is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle. Secondly, the tempo was being plied on the road without road permit in utter violation of the terms and conditions of the policy, hence the Insurance Company is not liable to pay any compensation to the claimants on this score as well.

7. On the other hand, learned counsel for the respondents-claimants submitted that there has been negligence on the part of the driver of the tempo in the aforesaid accident, hence the Insurance Company cannot be exonerated from its liability of making payment of compensation indemnifying the owner of the vehicle. It is further submitted that the permit for plying tempo is not required and moreover Insurance Company has been given liberty to recover the amount of compensation from its owner after its payment, if there is violation of terms and conditions of the policy by filing separate case.

8. From perusal of the record, it appears that it is the case of the claimants-respondents that while the deceased was travelling in a tempo at the time of accident, an unknown truck dashed the tempo and fled away. The deceased was seriously injured in the accident and he succumbed to his injury on the way to PHC, Dighwara. The claimants have also filed F.I.R. in buttress of their



case. From perusal of the F.I.R., it appears that the aforesaid F.I.R. has been lodged by the companion of the deceased, namely, Lalu Chaurasia against the unknown driver of the truck. But apart from that claimants have also filed chargesheet submitted by the I.O. in the case after investigation of the case marked as Exhbiit-2. From perusal of the aforesaid chargesheet, it appears that the aforesaid case was investigated by the I.O. and after investigation of the case, I.O. finding the driver of the tempo, namely, Amarnath Singh liable for the aforesaid accident has submitted chargesheet under Sections 279, 337, 338 and 304A of the Indian Penal Code against the said driver of the tempo. Though the claimants have not examined the companions of the deceased in buttress of their case rather Claimant No.1 has examined herself in the case, who does not happen to be eye witness of the occurrence as she was not present at the place of accident at the time of accident. But there is documentary evidence filed by the claimants which is the chargesheet and said documentary evidence goes to suggest that the aforesaid accident took place due to negligence of the driver of the tempo. The appellant has also not filed any document in rebuttal of the aforesaid evidence of the claimants.

9. In the aforesaid facts and circumstances, I find and hold that the aforesaid accident took place due to negligence of the driver of the tempo in which the deceased was travelling at the time



of accident.

10. Appellant has taken the plea by filing written statement that the aforesaid tempo was not being plied with valid road permit at the time of accident. For plying any sort of goods carriage or passenger vehicle, permission for plying on the road by way of road permit is required. From perusal of the record, it appears that the owner of the tempo who put his appearance in the case has not filed any road permit of the tempo in question for plying the said tempo on the road while for plying the tempo on the road, road permit is required. Hence there is utter violation of terms and conditions of the policy. Hence, Insurance company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle. But as the Motor Vehicle Act happens to be beneficial legislation and the deceased happens to be third party to the contract of policy entered into between the owner and the Insurance Company, hence to subserve the ends of justice, the appellant-Insurance company may be given liberty to recover the amount of compensation from its owner after its payment.

11. From perusal of the impugned judgment, it appears that the learned Tribunal has given such liberty to the appellant-Insurance Company but by filing separate case. In my considered opinion, filing of separate case for recovery of such amount from its



owner is not required at all. However, Insurance Company may recover aforesaid amount from its owner after its payment by filing execution case.

12. In the aforesaid facts and circumstances of the case, this appeal is hereby disposed of with aforesaid modification in the impugned judgment.

13. Let the statutory amount deposited by the appellant be paid to the claimant no.1 through cheque which is liable to be adjusted from aforesaid amount of compensation.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	10.05.2018
Transmission Date	

