IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.257 of 2012

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National Insurance Comp. Ltd. through its Divisional Manager, Rajendra Nagar, Nawadah, represented through its Chief Regional Manager and Constituted Attorney having its regional office at 4th Floor, Sone Bhawan, Birchand Patel Path, Patna-800001.

.... Appellant/s

Versus

1. Kamla Devi, wife of Late Dinesh Singh.
2. Rukni Devi, daughter of Late Dinesh Singh.
3. Krishna Kumar, Son of Late Dinesh Singh.
4. Ishwar Singh, son of Late Dinesh Singh.
   All 2 to 4 are minor son and daughter of Late Dinesh Singh under the guardianship of Kamla Devi (Mother) and all resident of village – Kataiya, P.S.-Roh, District-Nawadah.
5. Baleshwar Prasad Singh, Son of Durga Singh, Resident of village – Ratoi, P.S.-Roh, Dist-Nawadah (Owner of the offending vehicle).
6. Birendra Prasad Singh, Son of Alagdeo Singh, Resident of Jhumri Tilayia, Dist-Kodarma, Hazaribag, Jharkhand.

.... Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Raj Kumar Singh Vikram, Advocate.
For respondent nos.1to4	:	Mr. Arjun Prasad, Advocate.
		Mr. Ram Bhushan Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 14-05-2018

Heard learned counsel for the appellant and learned counsel for the respondents-claimant Nos. 1 to 4 on this Miscellaneous Appeal.

2. This Miscellaneous Appeal has been preferred by the National Insurance Company Limited against the judgment dated 27.09.2011 and award dated 10.07.2012 passed by Additional District Judge-II cum Motor Vehicle Accident Claims Tribunal, Nawada in Motor Vehicle Case No. 04 of 2001 whereby the learned Tribunal allowing the claim petition of the respondents-claimants directed the National Insurance Company Limited to pay compensation to the tune of Rs. 3,50,000/- along with interest at the rate of 8% per annum from the date of the order i.e. 27.09.2011 to the claimants-respondents.

3. Factual Matrix of the case is that claimants-respondent nos. 1 to 4 filed Motor Vehicle Claim Case No. 04 of 2001 under Section 166 of the M.V. Act against the appellant for awarding compensation on account of death of Dinesh Singh who happened to be husband of Claimant no.1 and father of the claimant nos. 2 to 4 in the motor vehicle accident with the case in succinct that on 25.05.2000 at around 7 PM, Dinesh Singh was travelling by a tractor bearing registration no. BR-27-1075 from Roh Bazar to village Mahrawa. Driver of the said tractor was driving it very rashly and negligently resultantly when the said tractor arrived near Mahrawa Birdari it turned turtle resulting into the death of the deceased on the spot. Aforesaid accident took place due to rash and negligent driving of the offending tractor by its driver at the relevant time of accident. Further case of the claimants is that the deceased was aged about 40 years at the time of accident. He used to do the business of vegetable and dairy and used to earn Rs. 4000/- per month from the said vocation.

4. Opposite party nos. 1 and 2 appeared in the case, but only opposite party no.1-National Insurance Company Limited filed the written statement. Opposite party no.2 was debarred from filing written statement while the case proceeded ex-parte against opposite party no.3-driver of the offending vehicle. The 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 aforesaid judgment and award as detailed in earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, appellant-National Insurance Company Limited has preferred this miscellaneous appeal.

7. The appellant has preferred this appeal on the ground that the deceased Dinesh Singh was travelling by the aforesaid tractor sitting on the same as a gratuitous passenger and the said tractor was insured under the farming package for use of agricultural purpose only and not for carrying passenger and moreover premium of only driver has been paid and Insurance Company does not cover the risk of gratuitous passenger. As the deceased was travelling on the tractor in question as gratuitous passenger in utter violation of the terms and conditions of the insurance policy, Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle. Appellant has relied upon the judgment passed by this

Court in M.A. No. 453 of 2012 (The United India Insurance Company Limited Versus Biltan Sao and others) in buttress of their argument to the effect that the Insurance Company is not liable to pay any compensation in case of gratuitous passenger as there is violation of the terms and conditions of the insurance policy.

8. On the other hand, it is submitted by learned counsel for the claimants-respondents that the deceased happens to be businessman and was travelling on the said tractor after purchasing vegetables, hence he was not a gratuitous passenger. As the deceased has died due to rash and negligent driving of the offending vehicle by its driver and the said tractor was insured by National Insurance Company Limited, hence the appellant-National Insurance Company Limited is liable to pay compensation to the claimants indemnifying the owner of the vehicle.

9. From perusal of the record, it appears that admittedly the deceased Dinesh Singh was travelling by tractor bearing registration no. BR-27-1075 at the time of accident and the said tractor turned turtle at the place of accident resulting into his death on the spot. As per the case of the claimants-respondents, aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident and learned Tribunal has also found negligence of the driver in the accident. The appellant has not assailed the aforesaid finding of the learned Tribunal. It is also admitted to the parties that the deceased Dinesh Singh does not happen to be either owner or driver of the vehicle in question rather is a stranger. As the deceased was travelling on the said tractor as a stranger to the owner of the offending tractor, he was a gratuitous passenger and as the said tractor was insured under the farming package only for the use for agricultural propose and the deceased was travelling on the said tractor as a gratuitous passenger, there was utter violation of the terms and conditions of the insurance policy. Though Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Bommithi Subbhayamma & Ors. reported in 2005 (12) SCC 343 and New India Assurance Co. Ltd. Vs. Vedwati & Ors. reported in 2007 (3) SCALE 397*** have been pleased to held that the Insurance Company is not liable to pay compensation indemnifying the owner of the vehicle in case of gratuitous passenger, but recently Hon'ble Apex Court in ***Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors. reported in 2017(2) PLJR 110 (SC)*** observing the Motor Vehicles Act happens to be beneficial legislation, directed Insurance Company to pay amount of compensation to the claimants with liberty to recover the same from its owner after its payment.

10. In the aforesaid facts and circumstances of the case, appellant is directed to pay aforesaid amount of compensation and interest thereon as awarded by the learned Tribunal to the claimants indemnifying the owner of the vehicle. However, it may recover the amount paid by it from its owner by filing the execution case. Accordingly, this appeal is disposed of with the aforesaid modification in the judgment and award passed by the learned Tribunal.

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

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.05.2018
Transmission Date	