

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.17 of 2012

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Branch Manager, United India Insurance Company Limited, Kapasia Chowk, P.O. Refinery Township, District-Begusarai through the Manager and Constituted Attorney, Regional Office, United India Insurance Company Limited, Chanakya Commercial Complex, R. Block, Patna Appellant.

Versus

1. Smt. Parwati Devi, W/o Tej Narain Jha, R/o Village - Kiul, P.S. Garhara (Barauni), Distt. - Begusarai
2. Tej Narain Jha, S/o (Not Mentioned in Claim Application Or Award) R/O Village - Kiul, P.S. Garhara (Barauni), Distt. – Begusarai.
3. Jitendra Kumar @ Jitendra Kumar Singh, S/o Ram Narain Singh, R/O Village - Kiul, P.S. Garhara (Barauni), Distt. – Begusarai.

.... Respondents.

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Appearance :

For the Appellant : Mr. Durgesh Kumar Singh, Advocate.

For the Respondent No.1 : Mr. Ram Sumiran Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 11-05-2018

Heard learned counsel for the appellant and
learned counsel for the claimant-respondent no.1 on this
miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 26.08.2011 and award dated 08.09.2011 passed by the learned 1st Additional District Judge-cum-Motor Accident Claim Tribunal, Begusarai (hereinafter in short referred to as the ‘Tribunal’) in M.A.C.T. Case No.67 of 2005, whereby the learned Tribunal allowing the claim petition directed the appellant-United India Insurance Company Limited (hereinafter in short referred to as the ‘Insurance Company’) to pay compensation to the tune of Rs.2,56,000/- along with the



interest at the rate of 9% per annum from the date of filing of claim case to the claimant respondent no.1.

3. The factual matrix of the case is that claimant-respondent no.1 filed M.A.C.T. Case No.67 of 2005 under Section 166 of the M.V. Act for awarding compensation on account of death of her son, Mukesh Jha alias Mukesh Kumar Jha with the case in succinct that the said Mukesh Jha alias Mukesh Kumar Jha was authorized representative of M.R. Trading Company. On 18.10.2010 he was proceeding from Garhara Railway Station to Simaria Railway Station by loading wire of the company on the tractor bearing registration no.BRI-7568 and trailer bearing registration no. BRI 7569. The driver of the said vehicle was driving the vehicle very rashly and negligently. As soon as the said tractor arrived at around 2:30 PM near Garhara ground water tank, where the road was damaged, due to rash and negligent driving of the tractor by its driver it turned turtle and the said Mukesh Kumar Jha sustained serious injury in the accident. He was rushed to the Nursing Home of Dr. M.N. Rai, Bishnupur, Begusarai to accord him medical aid but he succumbed to his injury during the course of treatment. Further case of the claimant is that the deceased was aged about 22 years at the time of accident and he was



unmarried. He was a contract labourer and used to earn Rs.3000/- per month as wages-cum-salary.

4. Both the opposite parties put their appearance in the case but only the appellant filed the written statement and contested the case. The claimant-respondent adduced ocular as well as documentary evidence in buttress of her case.

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

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

7. It is submitted by learned counsel for the appellant-Insurance Company that the offending vehicle was insured under Act only policy and the deceased Mukesh Kumar Jha was traveling on the trailer of the tractor. Hence, the risk of the deceased was not covered under the policy and hence the Insurance Company is not liable to pay any compensation to the claimant indemnifying the owner of the vehicle. It is further submitted that as the deceased happens to be son of the owner of the vehicle (respondent no.2) and was traveling in the said vehicle, hence he stepped into the shoe of the owner of the



vehicle and this way he has become owner of the vehicle and not third party and the Insurance Company is not liable to pay compensation in case of death of owner of the vehicle. It is further submitted that the claimant, being the mother of the deceased and wife of the owner of the offending vehicle, she is claimant and recipient both and she is not entitled to get any compensation from the Insurance Company.

8. On the other hand, it is submitted on behalf of learned counsel for the claimant-respondent that there has been partition between the father and son preceding to the death of accident and the deceased was traveling on the said vehicle in his separate status and entity as a labourer of M.R. Trading Company so he had not stepped into the shoe of the owner of the vehicle rather is a third party. It is further submitted that as the offending vehicle was insured and the insurance policy was valid and enforceable at the time of accident, hence the Insurance Company is liable to pay compensation to the claimant.

9. From perusal of the record, it appears that the deceased happens to be son of the insured of the offending vehicle (respondent no.2) and was traveling in the trailer attached to the tractor at the time of accident and sustained



injury, which proved fatal in the course of traveling on the said vehicle. Though the claimant-respondent has taken the case that there has been partition between the deceased and the father of the deceased i.e. insured of the vehicle preceding to the date of death of the deceased, so by virtue of the aforesaid partition the entity of the deceased was different from that of the insured of the vehicle and he had not stepped into the shoe of the owner of the vehicle while travelling in the said vehicle. In buttress of her case, she has filed some rent receipts and the report of the Amin on the mutation petition marked as Ext.5 series. From perusal of the report of the Amin on the mutation petition, it appears that the Amin has reported that there has been partition amongst the sons of raiyat of the land in question and raiyat of the said land is the insured Tej Narayan Jha and rent receipts filed by the claimant-respondent indicates that the rent receipts are issued in the name of the insured and his sons separately.

10. From perusal of the aforesaid documents filed by the claimant-respondent, it appears that firstly there has been partition amongst the sons of the insured and not between the insured and his sons though rent receipts are issued in the name of insured and his sons separately. Moreover, the claimant-respondent has not brought on record any evidence



regarding any partition amongst the deceased and the insured by metes and bounds either through the Court or by way of deed of partition. Mere issuance of rents receipts separately in the name of the deceased and the insured, in my considered opinion, is not sufficient to establish the partition between the deceased and the insured. It is mainly for the revenue purposes and it does not decide the right and title of the parties over the property in question. As there has been no partition between the deceased and the insured and the offending vehicle was hailing to the insured and the deceased was travelling in the said vehicle at the time of accident, the deceased had stepped into the shoe of the owner of the vehicle i.e. insured and became owner of the vehicle. Hence, the appellant-Insurance Company is not liable to pay any compensation in case of death of the owner of the vehicle.

11. From perusal of Ext.13 filed by the claimant-respondent, it appears that the aforesaid tractor and trailer was insured by the appellant under Act only policy. As the vehicle was insured only under the Act only policy it has not covered the risk of the owner so the Insurance Company is not liable to pay any compensation to the claimant in the case of death of owner of the vehicle. There is nothing in the policy to indicate



that the policy covered any risk for injury or death to the owner himself and owner of the vehicle can only claim provided a personal accident insurance has been taken out but there is no such insurance in the case under hand.

12. The object of the Insurance is to compulsorily cover liability relating to the person and property of the third parties and not the owner of the vehicle. The Insurance Company is not liable to indemnify the owner of the vehicle. Son of the owner of the vehicle does not come within the purview of the term person within Section 147 of the Motor Vehicles Act, Insurer would be liable to cover all the risk of the third party and not others who would not otherwise come within purview thereof. It is the settled principle of law that if insured cannot be fastened with any liability under the provision of Motor Vehicles Act, the question of insurer being liable to indemnify the insured, therefore, does not arise.

13. The Hon'ble Apex Court in **Oriental Insurance Company Limited Vs. Ranji Devi and others** reported in **(2008) 0 Supreme (SC) 682** has been pleased to rule that the liability under Section 163-A of the Act is on the owner of the vehicle as the person cannot be both a claimant and a recipient.



14. In the facts and circumstances and in view of the discussions made by me hereinabove, I find and hold that the appellant United Indian Insurance Company Limited is not liable to pay any compensation to the claimant indemnifying the owner of the vehicle. Hence, the impugned judgment and award passed by the learned Tribunal is set aside and the appeal is allowed. Let the statutory amount deposited by the appellant- Insurance Company be returned to it by way of cheque.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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