

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.645 of 2012

Branch Manager United India Insurance Company Ltd.24 White Road,
Chennai, Pin 600014, Appeal And Appellant Through The Manager &
Constituted Attorney Regional Office, United India Insurance Company Ltd.
3rd Floor, Chanakya Towers, R, Block Patna

... .. Appellant/s

Versus

1. Smt. Kalpana Singh W/O Late Pranavendu Sant Nagar, Ward No. 35, Gangjala, P.S. & Distt. Saharsa
2. Anand Magan Lt. Pranavendu (Minor) Sant Nagar, Ward No. 35, Gangjala, P.S. & Distt. Saharsa
3. Somya Anandita D/O Late Pranavendu (Minor) Sant Nagar, Ward No. 35, Gangjala, P.S. & Distt. Saharsa
4. Atma Anand D/O Late Pranavendu (Minor) Sant Nagar, Ward No. 35, Gangjala, P.S. & Distt. Saharsa
5. Manorma Devi W/O Devendra Narayan Sant Nagar, Ward No. 35, Gangjala, P.S. & Distt. Saharsa
6. Devendra Narayan Late Chandeshwari Pd. Singh Sant Nagar, Ward No. 35, Gangjala, P.S. & Distt. Saharsa
7. Harjinder Singh Jagjit Singh (Owner), Prop. Jagjit Oil Tank, Plat No. 131,Transport Nagar Ludhiana, Punjab
8. Unknown Driver

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh
For the Respondent nos.1 to 6 : Mr. Diwakar Prasad Singh

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 06-09-2018

Heard learned counsel for the appellant and learned counsel for the respondent nos. 1 to 6 on this miscellaneous appeal. Respondent no.7 did not turn up despite service of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 25.11.2011 and award dated 01.03.2012 passed by the Additional District Judge (F.T.C.-III)



cum Motor Vehicle Accident Claim Tribunal, Saharsa in MACT Case No. 6 of 2009 whereby the learned Tribunal allowing the claim petition directed the opposite party no.1-United India Insurance Company Limited to pay compensation to the tune of Rs. 10,39,100/- along with the interest at the rate of 6% per annum from the date of filing claim application till its payment to the claimants.

3. Factual matrix of the case is that claimants filed MACT Case No. 6 of 2009 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 15,50,500/- on account of death of Pravendu Singh in the Motor Vehicle Accident with the case in succinct that on 10.12.2008 said Pravendu Singh was proceeding from his residence Saharsa to Kunauli on his motorcycle. When he reached near village Haripur at around 11 AM, a truck bearing registration no. PB-10BV-7053 being rashly and negligently driven by its driver crushed the aforesaid motorcycle and resultantly said Pravendu Singh sustained grievous injury and he fell senseless. He was rushed to Supaul Hospital by the locals, but he succumbed to injury in the said hospital. Aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Aforesaid vehicle was hailing to



Opposite party no.2 and insured by opposite party no.1. Pravendu Singh was aged about 38 years at the time of accident. He was a field volunteer in W.H.O. (N.P.S.P.) at Unit Supaul.

4. Opposite party no.1 – United India Insurance Company Limited put its appearance in the case and filed written statement while opposite party no.2 did not turn up in the case despite service of notice, hence the case proceeded ex-parte against him. Claimants 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.1-United India Insurance Company Limited has preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that the claimants have not filed any vehicular documents such as permit, driving license, owner book, etc. along with the claim petition which are required to be appended with it. It is further submitted that the driver of the offending vehicle was not having valid driving license at the time of



accident and the owner of the offending vehicle was also not having valid permit for plying the vehicle at the relevant time, hence there is utter violation of terms and conditions of the police so the Insurance Company is not liable to pay any compensation to the claimants rather owner is liable for the same. The appellant has candidly and specifically taken the aforesaid case in its written statement, but learned Tribunal has not framed any specific issue regarding aforesaid point in controversy and has passed the impugned judgment without considering the aforesaid material aspect of the case which is liable to be set aside.

8. On the other hand, learned counsel for the respondent nos. 1 to 6 submitted that the claimants have filed insurance papers, F.I.R., post mortem report, etc. along with the claim case. Aforesaid insurance paper reflects the name of the owner of the offending vehicle as well and learned Tribunal considering the facts of the case and materials available on record has rightly passed the aforesaid judgment and award finding the appellant liable to pay the amount of compensation to the claimants.

9. As per the Provision of Section 226 (5) of the Bihar Motor Vehicles Rules, 1992, every claim petition shall be



appended with First Information Report in respect of accident, medical certificates of injuries or post mortem report or death certificate and a certificate regarding ownership and insurance particulars of vehicles involved in accident from the Regional Transport Officer or the Police Station, concerned. From perusal of the record, it appears that the claimants have only filed the insurance particulars, first information report, post mortem report, etc. along with the claim petition. They have not filed any certificate regarding ownership, though the name of the owner is reflected in the policy paper filed by the claimants issued by the appellant itself. Certificate regarding ownership is required to be furnished by the claimants along with the claim petition to enable the Insurance Company to make investigation regarding the authenticity of the ownership of the offending vehicle as claimed by the claimants. As the name of the owner of the offending vehicle is well within the knowledge of the Insurance Company as vindicated by the aforesaid policy paper issued by it, hence non-compliance of the aforesaid formality by the claimants, in my considered opinion, does not appear to be fatal and is not going to affect the merit of the case.

10. From perusal of the record, it appears that the appellant has taken the specific case by filing written statement



that the driver of the offending vehicle was not having valid driving license at the relevant time of accident and the owner of the offending vehicle was also not having valid permit for plying the vehicle at the relevant time, hence there is utter violation of terms and conditions of the policy so the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle. But the learned Tribunal has not framed any issue regarding aforesaid point in controversy raised by the appellant.

Though he has framed issue no.2 as follows:-

“Whether the claimant is entitled for the amount of compensation as claimed?”

But the learned Tribunal has not framed any issue to the effect that in the case of entitlement of claimants for compensation, who would be liable to pay the same?

11. In the facts and circumstances, the aforesaid judgment and award is set aside and the case is remitted back to the learned Tribunal to decide it afresh in the light of the observation made by me hereinabove after affording opportunity of adducing evidence if any and of hearing to both the parties to the case.

12. However, learned Tribunal is directed to dispose of the case within four months from the date of



receipt/production of a copy of this judgment. Both the parties are directed to appear before the learned Tribunal and extend all sorts of cooperation in disposal of the case within the stipulated period.

13. Let the lower court records be sent down to the learned Tribunal forthwith and let the statutory amount deposited by the appellant be returned to it through cheque.

14. This appeal stands disposed of accordingly.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	11.09.2018
Transmission Date	11.09.2018

