

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.165 of 2013

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Divisional Manager, National Insurance Company Ltd., Division Office at Motijheel, Muzaffarpur, represented through Shri Anjani Kumar, working as A.O. and dully constituted attorney of National Insurance Company Ltd, having its Regional Office at 4th floor, Sone Bhawan, Beer Chand Patel Path, P.S. Sachiwalaya, Distt-Patna

... .. Appellant/s

Versus

1. Subhodh Kumar S/o Sone Lal Mahto
2. Anuradha Kumari, D/o Subodh Kumar
Both resident of village Sundarpur, Ratwara, Distt-P.S. Peer, District-Muzaffarpur.
3. Pushpa Kumari, W/o Pawan Kumar Singh, R/o Vill-Bishwa Nath Nagar, P.O. Bishwa Nath Nagar, Distt-Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar
For the Respondent/s : Mr. Sunil Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 11-12-2018

Seen the office note.

Though in the appeal the respondent no. 2 Anuradha Kumari has been shown major, but from perusal of the impugned judgment and award, it appears that the said respondent is still minor. Hence, power filed by the respondent no. 1 as guardian of the said minor on her behalf is valid.

Heard learned counsel for the appellant and learned counsel for the respondent nos. 1 and 2 on this Miscellaneous Appeal.

2. This miscellaneous appeal has been preferred



against the judgment dated 29.09.2012 and award dated 12.10.2012 passed by learned Additional District Judge-III-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case no. 136 of 2009 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 2 National Insurance Co. Ltd. to pay compensation to the tune of Rs. 3,77,000/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case no. 136 of 2009 under Section 166 of the M.V. Act for awarding compensation on account of death of Sobha Devi in motor vehicle accident with the case in succinct that on 02.04.2009 at around 04:15 PM, said Sobha Devi was proceeding to her parental village located in Ketji Panchayat on foot taking her seven months old daughter in her lap along with her father and when she arrived near Pipri Chowk about 200 meters east at NH-28, a Bus bearing registration no. BR-08-1153 being driven rashly and negligently by its driver coming from Muzaffarpur side dashed Sobha Devi arriving on the left flank of the road inflicting grievous injury to her. She succumbed to her injury on the spot. The aforesaid accident



took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Said Sobha Devi was aged about 22 years at the time of accident and used to earn Rs. 3000/- per month from knitting and sewing work.

4. O.P. no. 2 put its appearance in the case and filed written statement while O.P. no. 1 did not put her appearance in the case despite service of notice, hence, case proceeded *ex-parte* against her. 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 impugned judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the O.P. no. 2 National Insurance Company Ltd. has preferred the present appeal.

7. It is submitted by learned counsel for the appellant that he has taken specific plea before the learned Tribunal by filing written statement that the driver of the offending vehicle was not having valid and effective driving licence at the relevant time of accident. On the basis of said plea, the learned Tribunal has framed issued no. 4, but the



learned Tribunal has not given any specific finding on the said issue deciding the claim case.

8. On the other hand, learned counsel for the respondent nos. 1 and 2 submitted that issue no. 4 has already been decided by the learned Tribunal along with issue no. 1 as evident from the impugned judgment.

9. From perusal of record, it appears that the appellant has taken the specific plea of not possessing the valid and effective driving licence by the driver of the offending vehicle at the time of accident in its written statement and learned Tribunal has framed specific issue in this regard as issue no. 4. But, from perusal of the impugned judgment, it appears that the learned Tribunal has not given any specific finding on the said issue rather the said issue was decided along with issue no. 1 holding that he did not find any infirmity in framing the claim case and it is maintainable in view of the discussion made by him in the earlier paragraph of the judgment, but no discussion has been made by him regarding the aforesaid specific issue of not possessing valid driving licence by the driver of the offending vehicle at the relevant time of accident anywhere in the judgment.

10. In the facts and circumstances, setting aside



the aforesaid judgment and award, the matter is remitted back to the learned Tribunal to decide the aforesaid issue of not possessing valid and effective driving licence by the driver of the offending vehicle at the relevant time of accident only after giving opportunity of adducing evidence and hearing argument on the said issue to both the parties within two months from the date of receipt/production of a copy of this judgment and both parties are expected to extend their cooperation in disposal of the case within the stipulated period. Accordingly, this miscellaneous appeal is disposed of.

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

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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