

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.577 of 2011

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Branch Manager, the New India Assurance Company Ltd. Dispur Branch, Nilgiri Mansion, G.S. Road, Guwahati 781005, Represented Through Sri Prabhakar Pradhan, Deputy Manager, and Constituted Attorney of The New India Assurance Company Ltd. Having its Regional Office at 6th And 7th Floor, B.S.F.C. Building, Frazer Road, P.S. Kotwali, District Patna. Appellant.

Versus

1. Sabita Devi W/o Late Bharat Kurmi Resident Of Near Mirganj Station, P.S. And P.O. Mirganj. District Gopalganj.
2. Prithivi Kumari, minor D/o Late Bharat Kurmi Minor under the guardianship of her mother Sabita Devi, Respondent No. 1. Resident of Near Mirganj Station, P.S. and P.O. Mirganj. District Gopalganj.
3. (a) Saraswati Devi, wife of Late Binda Lal Bhagat.
(b) Champa Devi, daughter of Late Binda Lal Bhagat.
(c) Baghmani Devi, daughter of Late Binda Lal Bhagat.
All resident of Village Triloki, P.S. Lakari Dargan, Distt. Siwan.
4. Rajesh Choubey S/o Ram Ji Choubey Resident of Village Chhap, P.S. Mirganj, Distt. Gopalganj.

.... Respondents.

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar, Adv.
For the Respondent/s : Mr. Dhananjay Kumar Tiwary, Adv.
Mr. Baban Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 24-04-2018

Heard learned counsel for the appellant and learned
counsel for the respondents on this miscellaneous appeal.

This miscellaneous appeal has been preferred against
the judgment date 30.12.2010 and award dated 31.05.2012 passed
by the District Judge-cum-Motor Accident Claim Tribunal,
Gopalganj in M.A.C.T.(M.V) Case No. 1 of 2003, whereby the
learned Tribunal allowing the claim petition directed the New
India Assurance Company Limited (hereinafter referred to as the



‘Assurance Company’) to pay compensation to the tune of Rs.7,73,000/- along with interest at the rate of 9% per annum from the date of filing the claim case till its realization.

The appellant has assailed the aforesaid judgment and award only on the ground that the driver, who was driving the offending vehicle at the time of accident, was not having valid driving licence and hence the liberty to the appellant must be given to realize the compensation amount from its owner after its payment.

Learned counsel for the respondents raised no objection against the aforesaid assertion of the appellant and submitted that the learned lower Court has already made provisions in this regard in the impugned judgment.

From perusal of the record, it appears that the Assurance Company has taken the case that the driver of the offending vehicle was not having valid driving licence at the time of accident and the driving licence was fake. In buttress of its case, he has filed the report of the D.T.O., Giridih (Jharkhand) marked as Ext.A to the effect that licence bearing No.GRD 2805/1034/94 has not been issued in the name of the driver, namely, Rajesh Chaubey from his office. The aforesaid aspect of the case is also find mentioned in the impugned judgment which



indicates that the aforesaid driver was not having valid driving licence at the time of accident. As the driver was not holding valid driving licence, hence the Assurance Company is not liable to pay any compensation to the claimant as there is violation of terms and conditions of the policy. But as the Motor Vehicles Act is a beneficial legislation and the claimant happens to be third party to agreement of insurance made between the Assurance Company and the owner, hence in the interest of justice, the provision for recovery of the compensation amount from the owner after its payment to the claimant is requires to be made.

From perusal of the impugned judgment, it appears that the learned lower Court is also of the view that for the want of valid driving licence the Assurance Company has liberty to realize its loss from its owner after its payment to the claimant but there is no such order passed by the learned lower Court in this regard.

In the facts and circumstances of the case, the Assurance Company is given liberty to realize the amount of compensation from its owner after payment of the same to the claimant. The appellant-Assurance Company is directed to make the payment of the aforesaid amount within a period of two months from the date of receipt/production of a copy of this order.



Accordingly, the impugned judgment and award passed by the learned lower Court is modified to the extent as indicated above and this appeal stands disposed of.

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

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2018
Transmission Date	30.04.2018

