IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.180 of 2016

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The Branch Manager, Oriental Insurance Company Ltd. having it's branch office at Raj Lakhan Complex, G.T. Road Sasaram, P.O. & P.S. Sasaram District, Rohtas, represented through Sri Nirij Kumar, working as Assistant Manager and duly constituted attorney of the oriental Insurance Co. Ltd. having its Regional Office at Pirmohani, P.S.- Kadam Kuan, Distt- Patna

... ... Appellant/s

Versus

1. Guddi Kuer w/o Late Harendra Singh
2. Aman Kumar S/o Late Harendra Singh
3. Anish Kumar S/o Late Harendra Singh
   both are sons are minor and are under the guardianship of Guddi Devi their mother and natural guardian all are resident of village Samahuta, P.O. and P.S.- Kargahar, District- Rohtas

   …………Claimants – Respondent 1st set
4. Rajesh Singh Yadav, S/o Surya Nath Yadav, R/o Village- Rajdepur Dehati Rauja P.S. Kotwali Ghazipur, Distt- Ghazipur
5. Raju Yadav, S/o D.N. Yadav, Village- Masiha Fatepur, Tal Nirja, P.S.- Kopaganj, District- Mau U.P.

O.P. No. 3 ... ... Respondent 3rd Set

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Appearance :

For the Appellant/s	:	Mr.Rana Randhir Singh
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 01-07-2019

Heard.

This miscellaneous appeal has been filed on behalf of the appellant – Oriental Insurance Company for setting aside the judgment dated 14.8.2015 and award dated 1.10.2015 passed by learned ADJ 1 -cum- Motor Accident Claims Tribunal, Sasaram in claim case No.20/2011 by which learned Tribunal has awarded Rs. 9,62,500/- compensation to the claimant and appellant Insurance Company has been directed to pay the compensation amount.

Claim application was filed by Guddi Kuer and her two minor sons under Sections 166 of M.V. Act for grant of compensation on account of death of her husband, Harender Singh on 21.8.2010 at about 7 p.m. in a motor accident caused by truck bearing registration No. U.P. 61-E 5121. Deceased was a shopkeeper who used to run a Kiryana shop in his village. The driver of offending vehicle was driving the truck in a rash and negligent manner and dashed his truck against the motorcycle of Harender Singh, as a result of which he died on the spot.

Appellant – Oriental Insurance Company filed their written statement denying the claim of the applicant, however, they have admitted that offending truck was insured with the insurance company on the date of occurrence.

On the basis of pleading of the parties the claim Tribunals framed four issues for its determination.

Two witnesses were examined on behalf of claimants. Witness no.1 is Guddi Kuer - claimant no.1 and witness no.2 is Ashok Singh who have supported the claim case. Claimants have also produced documentary evidence before the claim Tribunal which has been marked as exhibits. Ext. 1 is certificated copy of FIR. Ext. 2 is certified copy of charge-sheet.

Ext. 3 is photocopy of postmortem report. Ext. 4 is photocopy of owner book. Ext. 5 is photocopy of driving licence and Ext. 7 is photocopy of permit. Opposite party has examined one witness Kapildeo Singh and has also produced documentary evidence Ext. A is photocopy of accident information report. Ext. B is photocopy of letter dated 30.12.2011 and Ext. C is certified copy of insurance paper.

The tribunal has held that deceased died on 21.8.2010 at 7 p.m. in a motor accident caused by the offending truck which was being driven in a rash and negligent manner causing death of deceased. The age of deceased was 30 years and Tribunal has assessed his monthly income as Rs.7,000/- per month and annual income to be Rs.84,000/- and has applied 18 as multiplier and total amount comes to Rs.15,12,000/- and, thereafter, has deducted 1/3rd amount as his personal and living expenses and loss of dependency will be Rs.10,08,000/-. In addition to this amount, under conventional heads additional compensation has been granted as Rs.2,000/- for funeral expenses, Rs.2,500/- as loss of estate and has assessed just compensation to be Rs.10,12,500/- and since Rs.50,000/- has already been paid as interim compensation, the Tribunal has directed the Insurance Company to pay a sum of

Rs.9,62,5000/- to the claimants within two months.

It has been submitted on behalf of appellant that the offending truck was plying on the road without permit and same being in violation of terms and conditions of Insurance Policy, the Tribunal ought not to have directed Insurance Company to pay the compensation amount. Claims Tribunal did not take note of permit verification report which was marked as Ext. A being a public document as well as investigation report related to said permit verification which has been marked as Ext. B. Plying a vehicle without permit is a fundamental breach of terms and conditions of the insurance policy by the owner of the offending vehicle as such, under such circumstances, insurance company is not liable to indemnify the owner of the vehicle.

Accordingly, the judgment and award is modified to the extent that if the vehicle was being plied on the road without valid permit and same being violation of terms and conditions of insurance policy which is fundamental in nature, the insurance company is entitled to recover the amount form the owner of the vehicle after making payment of the compensation amount to the claimants.

The insurance company is directed to make the payment of compensation amount to the claimants within three months from the date of receipt/production of a copy of order passed by this Court with liberty to recover the amount from the owner of the offending vehicle.

Statutory amount of Rs. 25,000/- which has been deposited at the time of filing of appeal, a cheque of which be prepared in the name of claimant no.1 and sent to the concerned Tribunal for its payment to claimant no.1 which shall be adjustable in the compensation amount.

Miscellaneous appeal is allowed to the extent as indicated above.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.08.2019
Transmission Date	NA