IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.629 of 2010

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Oriental Insurance Company, Gaya through Sri Anil Kumar Biswas, Dy Manager-cum-Duly Constituted Attorney the Oriental Insurance Company Ltd., Regional Office Pir Mohani Kadam Kuan, Patna

... ... Appellant/s

Versus

1. Mr. Jai Shankar Prasad son of late Baijnath Prasad R/o. Mohalla Shahganj, Aurangabad, P.O. Aurangabad and P.S. Kotwali, District- Aurangabad
2. Sita Devi wife of Balmukund Prasad @ Tunnu Prasad, Claimant No.1
3. Balmukund Prasad @ Tunnu Prasad S/o. Shiv Mahto, Claimant No.2,

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ashok Priyadarshi, Advocate
For Respondent No.1	:	Mr. Rajeev Kumar Singh, Advocate Mr. Priyaranjan Singh, Advocate Mr. Anjani Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 24-01-2019

Heard learned counsel for the parties.

2. The Oriental Insurance Company, Gaya, has challenged the judgment and award dated 12.05.2010 passed by the 2nd Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Gaya, in M.A.C.T. Case No.28 of 2010/125 of 2008 awarding compensation to the tune of Rs.2,69,380/- (Two lacs sixty-nine thousand three hundred and eighty) along with interest of 8% from the date of filing of the claim petition till the date of realization of the amount.

3. Contention of the learned counsel for the appellant is that the deceased was a gratuitous passenger on the offending tractor. Therefore, he was not a bona fide passenger

on a goods carriage vehicle. Hence, insurer is not liable to pay as held by the tribunal.

4. Learned counsel appearing for the owner of the vehicle submits that in para-7 of the judgment the Tribunal has clearly held that the deceased was a labourer employed on the said tractor. Hence, it cannot be said that he was a gratuitous passenger.

5. I do not find any substance in the submission of the learned counsel for the owner for the reason that there is no law to permit the labourers to travel on goods carriage vehicle. They are simply to load the goods on the carriage and thereafter the same shall be unloaded at the destination by whomsoever may be.

6. However, facts and circumstances of this case is squarely covered by well settled law that in such a situation the insurer is bound to pay compensation to the victim of the third party and thereafter recover the same from the owner of the insured vehicle according to law. Reference may be made to the case of **Manuara Khatun and Others V. Rajesh Kumar Singh and Others** reported in **AIR 2017 SC 1204** wherein the Hon'ble Supreme Court observed in paragraph-22 as follows:

> *"In view of the foregoing discussion, we are of the view that the direction*

to United India Insurance Company (respondent No.3) they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in para-26 of Saju P. Paul's case (AIR 2013 SC 1064) quoted supra."

7. In view of the settled principle, this appeal stands disposed of with direction to the appellant to comply the award of the Tribunal and thereafter to take step for recovery of the same according to law.

8. The registry is directed to remit back the statutory amount deposited at the time of filing of the claim case in the name of the claimant through cheque and the said amount would be adjusted against the final award.

9. With the aforesaid observation, this appeal stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2019
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