IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.642 of 2011

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BRANCH MANAGER NATIONAL INSURANCE COMPANY LIMITED, MATHURIA MOHALLA, GAURI NIWAS, BIHARSHARIF, AT NALANDA, REPRESENTED THROUGH SHRI ANJANI KUMAR WORKING AS AO AND DULY CONSTITUTED ATTORNEY OF NATIONAL INSURANCE CO. LTD., HAVIG ITS REGIONAL OFFICE AT 4TH FLOOR, SONE BHAWAN, BIRCHAND PATEL PATH, PS SACHIWALAYA, DISTRICT PATNA.

... ... Appellant/s

Versus

1.MOSTT URMILA DEVI @ URSHILA DEVI W/O LATE ANIL KUMAR,
2.SANJAY KUMAR
3.BHOLA PRASAD.
4. DILIP KUMAR, ALL MINOR SONS OF LATE ANIL KUMAR, ALL MINOR SONS UNDER THE GUARDIANSHIP OF THEIR MOTHER MOSTT. URMILA DEVI ALIAS URSHILA DEVI. ALL RESIDENT OF VILLAGE LOKSHANPUR, PO CHANDI, PS BAKTIYARPUR, DISTRICT PATNA AT PRESENT C/O RAM NANDAN PRASAD S/O SRI RAMASHRAY PRASAD OF VILLAGE DODA BIGHA PO BHUA PS SILAO, DISTRICT NALANDA.

…..CLAIMANTS…… RESPONDENT NO. 1ST SET.

5.KANHAIYA PRASAD SINGH S/O BINDESHWARI PRASAD SING R/O LANGARPUR, BARH, PO AND PS BARH , DISTRICT PATNA.

…….OPPOSITE PARTY NO. 1

6.SHYAM KUMAR ALIAS SHYAM PRASAD S/O BAHADUR RAM OF VILLAGE MOHAMMADPUR, PS BAKHTIYARPUR, DISTRICT PATNA.

….. DRIVER OF TRUCK ITS REGISTRATION NO. BR 1D 9487….
OPPOSITE PARTY NO. 2……. RESPONDENT 2ND SET.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Shailendra Kumar, Adv
For the Respondent/s	:	Mr.Chandra Bhushan Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
Date : 24-09-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed under section 173 of the Motor Vehicle Act on behalf of National Insurance Company Limited., against the judgment/Award dated 24.05.2011/10.06.2011 passed by the learned Additional District Judge-cum-Motor Accident Claims Tribunal, FTC-I, Nalanda at Biharsharif in Claim Case No. 143 of 1999, by which the claims Tribunal has awarded compensation of Rs. 1,80,000/- along with interest @ 6 per cent per annum from the date of filing of the claim application till its realization.

3. The claimant had filed a claim application for grant of compensation of Rs. 2 Lacs on account of death of husband of Claimant in a motor accident on 08.03.1997 by rash and negligent driving by the driver of offending truck bearing registration no. BR 1D 9487.

4. FIR was instituted giving rise to Bakhtiyarpur P.S. Case No. 35 of 1997 under Sections 279 and 304A of the IPC and after investigation police found allegation of rash and negligent driving by the driver of the offending vehicle to be true and submitted chargesheet against him.

5. The deceased was 30 years old at the time of

accident and was having monthly income of Rs. 3400/-. The offending vehicle was insured with O.P. No. 3-appellant insurance company, as such Tribunal has held insurance company liable to pay the compensation amount.

6. In spite of valid service of notice O.P. Nos. 1 and 2 i.e. the owner and the driver of the offending vehicle did not appear and case proceeded *ex parte* against them.

7. Opposite Party No. 3-appellant insurance company appeared and filed its written statement and contested the claim of claimant on the ground that the driver had no valid driving licence at the time of accident as such insurance company is not liable to indemnify the owner from payment of compensation amount although the vehicle was insured on the date of accident but the owner of the offending vehicle had violated the terms and conditions particularly section 149(2) of the M.V. Act.

8. On the basis of rival pleading of the parties, the Tribunal has framed 8 issues for its determination.

9. The Claims Tribunal on consideration of evidence adduced before it held that the deceased died due to rash and negligent act of the driver of the offending vehicle, as such the claimants are entitled for compensation. It has further held that since the offending vehicle was insured with the insurance

company on the date of accident, as such insurance company is liable to pay the compensation amount.

10. The Tribunal has assessed the age of deceased to be 30 years and has applied the multiplier of 17 and since there was no documentary evidence with regard to monthly income of deceased, has taken Rs. 15,000/- as notional income and thereafter has deducted 1/3rd towards his personal expenses and has found Claimants to be entitled for compensation of Rs. 1,70,000/- and has further awarded Rs. 10,000/- under the conventional heads and has quantified the compensation amount as Rs. 1,80,000/-. Since Rs. 50,000/- has already been paid as interim compensation the Tribunal has directed the insurance company to pay the remaining amount of compensation of Rs. 1,30,000/- with 6 per cent from the date of filing of claim application till its realization.

11. It has been argued by learned counsel for the appellant insurance company that there was specific case of the appellant insurance company in their written statement supported by 3 exhibits, which were marked as Exhibit-A, B and C in support of the fact that the driving licence which was produced on behalf of the claimants of the driver of the offending vehicle was fake driving licence.

12. Learned counsel for the appellant insurance company submits that liberty be granted to the insurance company to recover the amount for violation of the terms and conditions of Section 149(2) of the Motor Vehicle Act from the owner of the offending vehicle, if it is established that the driver had no valid and effective driving licence, and same was within the knowledge of owner of the vehicle.

13. After hearing the parties, this Court does not find any illegality, irregularity, infirmity or error in the judgment and Award passed by the Tribunal, accordingly, the miscellaneous appeal is disposed of with a direction to the insurance company to pay the compensation amount to the Claimants as determined by the Claims Tribunal within one month from the date of production/receipt of a copy of the order passed by this court, with liberty that if it is established in an appropriate legal proceeding that fake licence of the driver was within the knowledge of the owner of the offending vehicle, the insurance company would be at liberty to recover the compensation amount from the owner of the offending vehicle.

14. Learned counsel for the other side is unable to provide the bank account details of the Claimant, as such the statutory amount of Rs. 25,000/- deposited by the appellant-

insurance company at the time of filing of appeal, be transferred in the account of the appellant insurance company through electronic mode, after submitting the duly filled up details of bank account of the company by learned counsel for the appellant insurance company, for its onward payment to the claimant which is adjustable in the compensation amount.

LCR of this case be returned to the court concerned forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2019
Transmission Date	NA