IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.358 of 2012

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Divisional Manager, United India Insurance Company Ltd. Marwari Pathshala Road, Bhagalpur, Appeal and Appellant Through The Manager and Constituted Attorney, Regional Office, United India Insurance Company Limited, Chanakya Commercial Complex, R' Block, Patna.... ... Appellant/s

Versus

1. Neelam Devi W/O Lt. Bilash Kumar Mandal @ Bilash Mandal Resident of Jai Mangal Tola, P.S.- Parwata, Dist.- Bhagalpur.
2. Sajani Devi W/O Wakil Mandal Resident of Jai Mangal Tola, P.S.- Parwata, Dist.- Bhagalpur.
3. Binit Kumar S/o Lt. Bilash Kumar Mandal @ Bilash Mandal Resident of Jai Mangal Tola, P.S.- Parwata, Dist.- Bhagalpur.
4. Amit Kumar S/o Lt. Bilash Kumar Mandal @ Bilash Mandal, Resident of Jai Mangal Tola, P.S.- Parwata, Dist.- Bhagalpur.
5. Sumit Kumar S/o Lt. Bilash Kumar Mandal @ Bilash Mandal, Resident of Jai Mangal Tola, P.S.- Parwata, Dist.- Bhagalpur.
6. Md. Safi Alam S/o Shere Alam, Resident of Khiribandh, P.S.- Jagdishpur, Dist. Bhagalpur (Driver of the Vehicle)
7. Md. Nasim S/o Salim, Resident of Vikramshila Nagar, Kahalgaon, Bhagalpur, At Present Khiribandh, P.S.- Jagdishpur, Dist. Bhagalpur (Owner of the Vehicle).
8. Md. Khalik S/o Salauddin, Resident of Vikramshila Nagar, P.S.- Kahalgaon, Bhagalpur, At Present Village- Khiribandh, P.S.- Jagdishpur, Dist. Bhagalpur (Owner of Vehicle Partner No. 2).
9. Sanjeev Kumar Sharma S/O Jugal Kishor Sharma, M/S Timber Mill And Timber Seller Atn Marufchak, Bounsi Road, P.S.- Musahidpur, Dist.- Bhagalpur (Earlier Owner).

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Adv.
For the Respondent/s	:	Mr. Rajiv Ranjan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 24-09-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of appellant United India Insurance Company Ltd. against the judgment and Award dated 23.03.2012 passed by Vth Additional District Judge-cum-Motor Vehicle Accident

Claim Tribunal, Bhagalpur, in Claim Case No. 47 of 2006/Trial No. 49 of 2012 by which the claims Tribunal has awarded a sum of Rs. 8,91,416/-.

3. Claimants are widow and minor sons of deceased Bilash Kumar Mandal who had gone to withdraw the money from A.T.M. by his motorcycle on 13.02.2006 at about 9.30 AM and while he was returning, one truck bearing registration No. B.R.-85151 dashed against motorcycle of Bilash Kumar Mandal, as a result, he sustained grievous injury and he was rushed to Mayaganj Hospital, Bhagalpur, but he succumbed to his injuries in the said hospital. Deceased was police constable and was posted at Kishanganj district.

4. FIR was instituted giving rise to Kotwali (Barari) P.S. Case No. 108 of 2006 under Sections 279, 304A of I.P.C. against the driver of the offending vehicle namely, Md. Safi Alam and after investigation, police found the case to be true and submitted charge sheet against the driver of offending vehicle.

5. Claim case was filed on behalf of widow and children of deceased being his dependents with a prayer to grant compensation of Rs. 17,60,000/-.

6. Opposite party No. 1 was driver of the

offending vehicle whereas opposite party Nos. 2 and 3 were owner of the offending vehicle. They appeared on notice and filed their written statement in which they have stated that offending truck was insured with the United India Insurance Company Ltd. which has been arrayed as opposite party No. 4. It was further stated that driver was having valid driving licence on the date of accident. Opposite party No. 4, the present appellant United India Insurance company separately filed its written statement in which it has been admitted that the vehicle was insured but have further stated in the written statement that the vehicle was being driven by the driver who had not a valid and effective driving licence on the date of accident. Claimants and owner of of the vehicle were in collusion.

7. It has been further stated in their written statement that according to police, final report and case diary, Md. Safi Alam was driving the truck having no driving licence and he was chargesheeted by the police.

8. Offending vehicle was plying on the road without permit, fitness certificate and road tax, as such, the owner and driver of the offending vehicle were plying the vehicle in contravention of the terms and conditions of Insurance Policy, as such, they are not liable to indemnify the

owner of the offending vehicle. In their written statement, they have also made a statement that the claimant and owner of the offending vehicle are in collusion, as such, they filed an application under Section 170 of the M.V. Act to take all defence available other than under Sections 147 and 149(2) of the M.V. Act. In para 12 of the written statement they have admitted that the offending vehicle was insured with the Insurance Company. It was also stated that claimants have not filed the required papers under Section 226 (III) of Bihar Motor Vehicles Rules, 1992.

9. On the basis of pleading of the parties, the tribunal framed eight issues for its determination and adjudication.

10. In support of claim case, seven witnesses were examined and documentary evidences were also produced which were marked as exhibits by the tribunal. Exhibit- 1 is the certified copy of FIR of Kotwali P.S. Case No. 108/06, Exhibit-2 is the photocopy of Insurance Company, Exhibit-3 is postmortem report of deceased, Exhibit-4 is the genealogical table, Exhibit-5 is the pay slip of deceased, Exhibit-6 is matriculation certificate of deceased and Exhibit-7 is the charge sheet.

11. On behalf of appellant, one witness, namely, Sridhar Choubey was examined, who has proved the investigation report which has been marked as Exhibit-A by the tribunal.

12. On the basis of oral and documentary evidence, the tribunal has held that due to rash and negligent driving by the driver of offending vehicle accident took place, resulting into death of deceased, as such claimants are entitled for compensation.

13. The tribunal has held that the offending vehicle was insured with the Insurance Company in the name of Sanjeev Kumar Sharma which was subsequently transferred in the name of Md. Nasim. The tribunal has further held that on the date of accident, the driver was not having a valid and effective driving licence, as such, they have violated the terms and conditions of Insurance Policy. However, it has further been held that under Section 149(1) of M.V. Act, the Insurance Company has to deposit the compensation award and thereafter it can recover the same from the owner of the vehicle and has also held that in view of Motor Vehicles Act the breach of contract of Insurance is established and has finally directed that the Insurance Company to pay the compensation amount to the

claimants with a right of recovery from the owner of the vehicle.

14. Tribunal has assessed monthly income of deceased to be Rs. 6,489/- per month and annual income to be Rs. 77,868/- and thereafter has reduced 1/3rd towards his personal expenses and has assessed loss of dependency to be Rs. 51,912/- per annum. The age of deceased was 28 years and has found 18 to be the appropriate multiplier and has ascertained total compensation amount to be Rs. 9,41,416/- and thereafter has awarded additional compensation under conventional heads as Rs. 5,000/- for loss of consortium. Rs. 2,000/- for funeral expenses and has quantified the compensation amount as Rs. 9,41,416/- which is just and proper compensation for which the claimants are entitled. Since Rs. 50,000/- was already paid as interim compensation, the tribunal has directed the Insurance Company to make payment of Rs. 8,91,416/- to the claimants with 6% interest per annum from the date of filing of application till its payment.

15. Aggrieved by which the present appeal has been filed on behalf of appellant Insurance Company. It has been submitted on behalf of counsel for the appellant that they had taken a specific plea in their W.S. that vehicle was being plied by the owner and driver without any permit, driving

licence and fitness certificate which are fundamental breach of terms and conditions of Insurance Policy and without any issue being framed the tribunal has directed the Insurance Company to pay the compensation amount, although in absence of permit and fitness certificate there was no liability of the Insurance Company to indemnify the owner who was plying the vehicle in breach of Insurance Policy which were fundamental in nature.

16. In their written statement filed on behalf of appellant Insurance Company, they have stated that claimants have not filed required papers under Section 226(III) of the Bihar Motor Vehicle Rules 1992. The offending vehicle was driven by the driver without driving licence as per police report in which the driver of the offending vehicle was charge sheeted. The offending vehicle was plying on the road without permit, fitness certificate and road tax which is fundamental statutory infraction of the terms and conditions of Insurance Policy, as such, Insurance Company is not liable to indemnify the owner of the vehicle.

17. The Insurance Company has accepted that the vehicle was insured with the Insurance Company. The owner and claimants are in collusion as such opposite party Insurance Company sought permission of the claims tribunal under

Section 170 of M.V. Act, 1988 to take all defences other than under Sections 147 and 149(II) of M.V. Act.

18. On behalf of Insurance Company one witness Sridhar Choubey was examined, who in his examination-in-chief in form of affidavit has stated that he was appointed as Investigator by the Union of India Insurance Company, Bhagalpur and he conducted the investigation and submitted his report which has been marked as Exhibits by the tribunal.

19. During investigation, he found that the offending vehicle was being driven by Md. Safi Alam who has been charge sheeted by the police. He had no driving licence as per police report. During investigation he sent a notice to the owner of the offending vehicle by registered post regarding permit of the offending vehicle but he did not receive any reply by the owner of the offending vehicle.

20. The Insurance Company had taken a plea in their written statement that offending vehicle was being driven by the driver of the offending vehicle who had no valid driving licence and also offending vehicle was plying without permit. The investigator who has deposed before the claims tribunal has stated that in the enquiry made he found that the driver of the offending vehicle had no driving licence as per investigation

made by police and also the owner of the offending vehicle did not produce the permit of the offending vehicle.

21. The owner of the offending vehicle had appeared and had stated in his W.S. that driver had a valid licence and the offending vehicle was insured by the Insurance Company, as such, Insurance Company is liable to pay the compensation amount.

22. The claimant cannot be asked to produce the papers of the offending vehicle which is in custody of the owner of the offending vehicle or the papers with respect to insurance as same is in possession of the insurance company. However, if the papers are available in the police station or concerned court, petitioner can produce those documents alongwith claim application. In the present case, although no such issue was framed that the vehicle was driven being without any permit and the driver had no driving licence and same was required to be produced on behalf of owner of the vehicle and same being not produced by the owner of the vehicle adverse inference can be drawn against him that said documents were available with the owner of the vehicle and it can be inferred that offending vehicle was plying without any permit or the driver had no valid driving licence. However, it is an admitted fact that the

offending vehicle was insured against the 3rd party and for which premium was paid by the owner of the vehicle and same was accepted by the Insurance Company and policy was also issued in which the risk of 3rd party was covered which is mandatory under the Act, as such, tribunal has rightly passed an order directing the Insurance Company to pay the compensation to the claimant with right to recover it from the owner of the vehicle.

23. The dispute concerning the violation of terms and conditions of Insurance Policy is a dispute between the insurer and the insured and for which the dependents of deceased 3rd party who was killed in the accident cannot be made to suffer, any contrary view will frustrate the very objective of enactment of this beneficial legislation which has been enacted for immediate relief to the dependents of 3rd party who suffered death in motor accident.

24. The Apex Court also in a case of Amrit Paul Singh & Anr. Vs Tata AIG General Co. Ltd. & Ors. reported in 2018 AIR (SC) 2662 in a similar situation when the offending vehicle was plying without permit has upheld the orders of Award of claims tribunal as affirmed by the High Court directing the Insurance Company to pay the compensation

amount to the claimant with right to recover from the owner of the offending vehicle.

25. This Court does not find any error or infirmity in the order passed by the tribunal, accordingly, the present appeal filed on behalf of Insurance Company is disposed of with liberty to the Insurance Company to pay the compensation amount as determined by the claim tribunal within 60 days from date of receipt/production of copy of this order passed by this Court with right to recover from the owner of offending vehicle.

26. The statutory amount of Rs. 25,000/- (Rupees twenty five thousand) which was deposited by the Insurance company at the time of filing of this appeal, same may be refunded in the account of claimant No. 1 through R.T.G.S. Details of which shall be furnished by the counsel for the claimant, which shall be adjustable in the compensation amount.

27. Let the L.C.R. be returned to the court below forthwith.

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(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.12.2019
Transmission Date	N.A.