IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.143 of 2013

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Branch Manager, National Insurance Company Ltd., Rajendra Nagar, Nawadah, represented through Shri Anjani Kumar, working as A.O. and duly constituted attorney of National Insurance Company Ltd., having its Regional Office at 4th Floor, Sone Bhawan, Beer Chand Patel Path, P.S. Sachiwalaya, District, Patna Opposite party no.1... ... Appellant/s

Versus

1. Kusum Devi, wife of late Anil Prasad Alias Karu
2. Deji Kumari, minor, d/o late Anil Prasad alias Karu
3. Gaurav Kumar, minor, s/o late Anil Prasad, alias karu
   Minors under the guardianship of their mother Kusum Devi, the natural guardian
   All residents of village Vijay Nagar, P.O. Kadirganj, P.S. Nawadah, Dist, Nawadah.
   ………..Claimants . Respondent 1st set
4. Awadhesh Kumar, Son of Kishun Mahto, resident of village Vijay Nagar, P.O. Kadirganj, P.S. and Dist, Nawadah, owner and driver of Motor Cycle No. BR-2D/1380
   …………..Opposite party no.2
5. Shanti Devi, wife of Devendra Prasad Yadav, S.D.O. Vidut Department Jhumari Tilaiya, P.S. Jhumari Tilaiya, Dist, Kodarma Owner of the jeep bearing No.BRA/7808
   O.P. No.3
6. Chakradhar Prasad Singh, s/o Mangli Pd. Singh, resident of Manoharpur Tola, Jaiyagar, P.S. and District Hazaribagh Driver of jeep bearing No.BRA 7808
   ...Opposite party no.3, 4 ... Respondent 2nd set

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar
For the Respondent/s : Mr. Mathura Nath Rai

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 03-09-2019

I.A. No. 3967 of 2015:

Heard.

This interlocutory application has been filed for condoning the delay in preferring the present appeal.

For the reasons mentioned in this interlocutory application, this Court is satisfied that the appellant was prevented from sufficient reasons from preferring this miscellaneous appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this miscellaneous appeal is hereby condoned.

M.A. No.143/13:

Heard.

This miscellaneous appeal under Section 173 of the M.V. Act has been filed on behalf of the appellant- National Insurance Company Limited for setting aside the judgment and Award dated 31.03.2011 passed in claim case No.6/07 passed by Additional District & Sessions Judge-II-cum- Motor Accident Claims Tribunal Nawada awarding compensation of Rs.5,33,000/- to the claimants.

The claim case was filed by the claimant who is the widow of the deceased Anil Kumar @ Karu under Section 166 of the Motor Vehicle Act for granting compensation. It has been stated in the claim petition that on 20.05.2004 at about 6.15 p.m. in the evening Anil Kumar was going to Biharsharif from Nawada by Hero Honda Splender motorcycle bearing No.BR-2D-1308 along with his brother Awadhesh Kumar who was riding the motorcycle and a jeep bearing No.BR-A-7808 was coming from opposite sides and same collided with the motorcycle upon which Anil Kumar who was a pillion rider sustained grievous injuries and died on the spot. Deceased used to sell vegetables and his monthly income was Rs.4,000/- and his age at the time of death was 27 years.

Opposite party nos.1, 2, 3 and 4 have appeared and filed their written statement.

On pleadings of the parties, six issues were framed by the Tribunal for its determination.

In support of claim case, two witnesses have been examined and eight documents were produced which have been marked as exhibits by the Tribunal. Ext. 1 is certified copy of F.I.R. of Giriyak P.S. Case NO.52/04 which was registered against the driver of the jeep. Ext.2 is photocopy of registration of motorcycle. Ext.2/1 is photocopy of registration of jeep. Ext.5 is photocopy of tax token of jeep. Ext.3 is the photocopy of the insurance policy of motorcycle. Ext.4 is the photocopy of driving licence of Awadhesh Kumar. Ext.4/1 is the photocopy of driving licence of driver of jeep. Ext.6 is the photocopy of accident report. Ext.7 is photocopy of inquest report of deceased. Ext. 8 is the photocopy of postmortem report of deceased.

Deceased Anil Kumar was going to Biharsharif from

Nawada by Hero Honda motorcycle bearing No.BR-2D-1308 and the alleged accident took place near Giriyak Bazar due to rash and negligent riding by the rider of the motorcycle which collided with the jeep bearing No. BR-A-7808 and Karu was thrown out from the motorcycle and he sustained serious injuries and died on the spot.

Opposite parties have neither examined any witness nor produced any documentary evidence.

Claimants are claiming compensation from the owner /insurer of the motorcycle which was insured by the National Insurance Company Limited - present appellant. They are not claiming any compensation from jeep owner from which motorcycle collided resulting into death of pillion rider. The only point raised by the Insurance Company- appellant is that Insurance Company is not liable to pay any compensation to pillion rider as the claimants have stated in their claim petition as well as in their evidence that the motorcycle was being driven in a rash and negligent manner. In order to claim compensation, the claimants have to establish that the vehicle from which accident took place was being driven in a rash and negligent manner and claimants can claim compensation from the owner/insurer of the offending jeep for which deceased was a third party but claimants have not claimed from owner /insurer of the Jeep but they have claimed compensation against owner/insurer of the Motorcycle on which deceased was a pillion rider and Motorcycle was ridden by owner in a rash and negligent manner resulting in death of pillion rider. Deceased cannot be said to be a third party for the motorcycle. Owner cannot claim that for his fault and negligence, Insurance Company should pay the compensation amount to the deceased-pillion rider. As such, the claim petition was misconceived and the order for grant of compensation to the claimants by the Tribunal is not sustainable.

However, if the policy of the motorcycle was not Act Policy but a comprehensive /package policy then under such policy, the risk of the owner and pillion rider of the motorcycle is also covered and claimants become entitle for grant of compensation. However, claims tribunal has not dealt with the issue whether the insurance policy of motorcycle was an Act Policy or a comprehensive policy as such, the matter is remanded to the claims tribunal to decide the issue whether the insurance policy was an Act Policy or a comprehensive/package policy. Claimants are entitled for grant of compensation under the comprehensive package policy and as stated earlier, they are not entitled for any compensation under the act policy as deceased was a pillion rider and death of such pillion riders are not covered under the act policy.

This issue has been extensively dealt and deliberated in a judgment and order of Apex Court reported in case of National Insurance Company Limited Vs. Balakrishnan and Ors. since reported in AIR 2013 Supreme Court 473. The relevant paragraphs are quoted as under:-

> "21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive / package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive / Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive / Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive / Package Policy", the liability would be covered. These aspects were not noticed in the case of **Bhagyalakshmi** (supra) and, therefore, the matter was

referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

"22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive / Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

With aforesaid directions and observations, the claim case is remitted to the Tribunal to decide the same within six months from date of receipt/production of copy of the order passed by this Court.

The statutory amount of Rs.25,000/- which was deposited by the appellant - Insurance Company for which a cheque be prepared in the name of appellant – insurance company and handed over to the counsel appearing on behalf of Insurance Company by the office.

Miscellaneous appeal is disposed of.

Let the L.C.R. be returned forthwith to the court concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	30.07.2019
Uploading Date	03.09.2019
Transmission Date	NA