

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.285 of 2013

Against the order dated 02.02.2013 passed by the learned 2nd
Adhoc Additional Sessions Judge (FTC), Bhojpur at Ara in Claim
Case No. 40 of 2000

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1. The United India Insurance Company Ltd., through the Divisional Manager,
Frazar Road, Patna
 2. Branch Manager, The United India Insurance Company Ltd. K.G. Road,
Nawada, Ara.

... .. Appellant/s

Versus

1. Dukhani Devi, W/O Late Jinanan Thakur, R/O Piro, P.S. - Piro, District
Bhojpur.
2. Anil Kumar Singh, S/O
R/O Plot No. 50, Mauza - Manpura, District - Patna.
3. Driver of the Newly Unregistered Vehicle No. Mh - 02 A/TR 183, Name of
Driver is not Known.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ramchandra Lal Das, Advocate
For the Respondent/s	:	Mr. Satish Kumar Sinha, Advocate
		Mr. Dharmesh Kumar Srivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 29-01-2019

Heard learned counsel for the parties.

2. This appeal has been preferred, under Section
173 of the Motor Vehicles Act, 1988 against the order dated
02.02.2013 passed by the learned 2nd Adhoc Additional Sessions
Judge (FTC), Bhojpur at Ara in Claim Case No. 40 of 2000.

3. By the impugned order, the Additional Motor
Accident Claim Tribunal, Ara has allowed ad interim
compensation of Rs.50,000/- (Fifty Thousand) on 02.02.2013 in
Motor Vehicle Accident Claim Case No. 40 of 2000 in favour of



claimant-respondent Dukhani Devi for death of her husband Jinanan Thakur, who died in a motor vehicle accident as the Mahindra Jeep bearing registration no. MH-02A-TR183, due to rash and negligent driving, met with an accident at the referred over-bridge.

4. The insurer has challenged the interim award on the ground that the offending vehicle was insured for transit purpose only to be carried from the factory to the referred showroom of Mahindra and Mahindra Ltd. but it was used for carrying passengers, which would be evident from the recitals in the FIR, which has been lodged by one of the passengers, who met with the accident. Hence, there is violation of terms of policy. Therefore, the appellant is not liable to pay the compensation. His further contention is that the owner of the vehicle i.e. M/s Mahindra and Mahindra Ltd. was not a party before the Claim Tribunal. For that reason also liability of the insurer can not be there.

5. From the temporary certificate of registration, it appears that Mahindra and Mahindra Ltd., C/O Mr. Anil Kumar Singh, resident of Plot No. 50, Mauza Manpura, District and Town Patna is entered into column of name of owner. Mr. Anil Kumar Singh is Opposite Party No. 3 before the Tribunal



and respondent no. 3 herein with same address. Therefore, it can not be argued that owner is not a party for simple reason that Mahindra and Mahindra Ltd. is represented by Mr. Anil Kumar Singh.

6. Since, the present claim is by way of ad interim compensation payable to the 3rd party based on no fault principle and the claim of the appellant is based on violation of the terms of the policy of insurance inasmuch as the vehicle was being used at the time of accident, for carrying passenger, instead of being carried to the show room.

7. The appellant can not avoid its responsibility to pay the awarded amount. However, the appellant would be at liberty to raise the aforesaid questions before the Tribunal at the time of final adjudication and if the Tribunal comes to the conclusion otherwise, the appellant would be entitled to recover the same from the owner of the vehicle.

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

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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