

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.314 of 2013

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The Branch Manager, National Insurance Co. Ltd. Nawada represented through its Chief Regional Manager and the constituted Attorney, Regional Office, National Insurance Co.Ltd. 4th Floor, Sone Bhawan, B.C. Patel, Path, P.S- Sachivalaya, Distt- Patna.

... .. Appellant/s

Versus

1. Indu Kumari W/O Late Ajay Kumar Resident Of Village- Simridih, P.S- Warsaliganj, Distt- Nawadah.
2. Anahu Kumari D/O Late Ajay Kumar, Minor Represented Through Her Legal Guardian And Mother Indu Kumari Resident Of Village- Simridih, P.S- Warsaliganj, Distt- Nawadah
3. Nunuwati Devi W/O Suraj Prasad Singh Resident Of Village- Simridih, P.S- Warsaliganj, Distt- Nawadah.Claimant/Respondent 1st set.
4. Md. Naseem Khan S/O Md. Nasir Resident Of Village- Bhadauni, P.S- Nawadah, Distt- Nawadah.

... .. Owner/ Respondent 2nd set.

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Appearance :

For the Appellant/s :	Mr.Raj Kumar Singh Vikram, Adv
For the Respondent No.4:	Mr.Rajesh Kumar, Adv
For Respondent Nos.1 to 3:	Mr.Rajeev Nayan, Adv

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 30-01-2019

Heard learned counsel for the parties.

2. The insurer has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the award dated 29.01.2013 passed in Claim Case No.7 of 2007 by the learned Adhoc Addl. District Judge IV-cum-Motor Accident Claim Tribunal,Nawada, whereby the claimants were awarded compensation of Rs. 4,41,500/- and the appellant was made to pay the same within sixty days alongwith 6% interest from the date of order.



3. The challenge is on the ground that the deceased was sitting at the roof of a goods carrier (tracker). As such, the deceased was not a bonafide passenger rather a gratuitous passenger on the goods carrying vehicle. Therefore, he cannot claim compensation. Moreover, from the insurer. Further submission is that this is a case of contributory negligence of the deceased.

4. I fail to understand that since the deceased was sitting on the roof of the vehicle, the accident was caused. The cause of accident was that the offending vehicle was rash and negligent and it dashed against a Thela loaded with kerosene oil, as a result whereof, it caught fire and more than 12 persons died. Apparently, this is not a case of contributory negligence of the deceased. Hence, the judgment of this Court in ***Kalpana Devi and Ors Vs. Jhagru Pandit & Ors*** reported in ***2011 (2) PLJR 124*** and relied on by the learned counsel for the appellant is not applicable. Moreover, the law is well settled that the insurer cannot evade this liability to pay the compensation to 3rd party, even if 3rd party was a gratuitous passenger or a pedestrian on the road. Therefore, there is no merit in the submission of learned counsel for the appellant that the impugned award be interfered with on that score alone.



5. Next submission is that the identity of the deceased was not established before the learned Tribunal for the reason that neither the deceased was named in the FIR nor his name appeared on the postmortem report.

6. Learned counsel for the respondents submits that the wife of the deceased identified the deceased from his apparels and other belongings as well as some sign on the body.

7. The record reveals that the claimant-Indu Kumari deposed before the learned Tribunal that in the accident, her husband aged about 38 years had died who was a B.Sc Hon's and teacher in the Gyan Bharti School on the salary of Rs.3,000/- per month. The witness has not been cross-examined as to how she had identified her husband nor it has been suggested to the witness that the deceased was not her husband. Therefore, submission cannot be accepted that husband of the claimant No.1 had not died in the motor accident. In the result, there is no merit in this appeal.

8. However, the interests of 6% awarded by the learned Tribunal shall be payable from the date of application and not from the date of order of the learned Tribunal.

9. The appellant would have liberty to recover from the owner after payment of the compensation amount to the claimants if a case of recovery is made out.



10. Let the statutory amount deposited at the time of filing of this appeal be remitted back to the learned Tribunal through cheque in the name of claimant-Indu Kumari and the amount shall be adjusted against final payment.

11. Accordingly, this appeal stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2019.
Transmission Date	NA

