

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.321 of 2013

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The Manager, New India Assurance Co. Ltd., Bhagalpur represented through the Chief Regional Manager, Regional Office, New India Assurance Co. Ltd., 6th Floor, BSFC Building, Frazer Road, Patna-1

... .. Appellant/s

Versus

1. Mostt. Usha Devi, W/O Late Shankar Mishra
2. Sajan Mishra, Minor S/O Late Shankar Mishra represented through their Legal and Natural Guardian Mostt. Usha Devi.
3. Rohit Mishra, Minor S/O Late Shankar Mishra represented through their Legal and Natural Guardian Mostt. Usha Devi
4. Pratima Kumari, D/O Late Shankar Mishra. All residents Of Village-Madhopur, P.O.- Masumganj, P.S.- Asarganj, District- Munger.

.... Claimants Respondents.

5. Smt. Sharda Devi W/O Dineshanand Jha. Resident Of Village- Bilasi Town, P.O., P.S, and District- Deoghar, Jharkhand.
6. Ajit Chand, S/O Sri Mundra Chand. Resident Of Dumka Bazar, P.O., P.S. and District- Dumka, Jharkhand.

Owner and Driver... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Raj Kumar Singh Vikram, Advocate
For the Owner	:	Mr. Randhir Kumar Singh, Advocate
For the Claimants	:	Mr. Ambrish Kumar Jha, Advocate
		Mr. Shashi Priya Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 29-01-2019

This appeal has been preferred, under Section 173 of the Motor Vehicle Act, 1988, against the judgment and award dated 29.08.2012/07.12.2012 passed by the learned Adhoc Additional District Judge, Special Court-cum-Motor Vehicle Accidental Claim Tribunal, Munger in Claim Case No.69 of 2007.

2. The insurer i.e. the New India Assurance Company Limited, Bhagalpur has challenged the award of the Tribunal



fixing liability of the insurer to pay to the dependents of the victim of a motor vehicle accident.

3. The accident was caused by a Bus bearing registration No.JH12B-9440 owned by opposite party No.5.

4. Learned counsel for the respondents-claimaints i.e. opposite party Nos.1 to 4 submits that two persons had died in the same accident. The legal heirs of one of the deceased had brought Claim Case No.70 of 2007. The claim was allowed. The insurer challenged the claim in Miscellaneous Appeal No.320 of 2013 and this Court had allowed liberty to the insurer to recover the amount from the driver and owner of the vehicle.

5. Learned counsel for the respondent No.5 i.e. the owner of the vehicle submits that the claim case was decided ex parte against the owner. The owner has documentary evidence to prove that the vehicle was insured one and the driver had valid driving license. However, he could not file those documents in the claim case and that is why I.A. No.5426 of 2017 has been filed in this Court under Order XLI Rule 27(A) of the Code of Civil Procedure.

6. The law is well settled that the insurer is to pay to the claimant and recover the same from the owner, if a case of recovery is made out in the execution proceeding.



7. In the circumstances, this appeal stands disposed of with direction to the appellant to pay to the claimants first and thereafter, initiate appropriate proceeding for recovery of the same from the owner.

8. The liberty is allowed to the owner of the vehicle also to resist the claim of the insurer by producing the relevant evidence in that proceeding.

9. With the aforesaid observation, this appeal stands disposed of and accordingly, I.A. aforesaid also stands disposed of.

10. The Registry is directed to return the statutory amount through cheque in the name of the claimant no. 1 along with lower court records, if available and the Tribunal shall ensure that the amount of compensation be paid to the claimants within sixty days from this order.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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