

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.447 of 2013

United India Insurance Company Limited, Bhagalpur, Appeal and appellant through the Manager & Constituted Attorney, Regional Office, United India Insurance Company Limited, 3rd floor, Chanakya towers, 'R' Block, Patna

... .. Appellant/s

Versus

1. Kum Kum Devi and Ors. W/o Lt. Sada Nand Sharma
2. Rohit Kumar S/o Lt. Sada Nand Sharma
3. Chottu Kumar S/o Lt. Sada Nand Sharma
Respondent nos. 2 & 3 are minor and are under the natural guardian Mother, Respondent no.1). All the above are resident of village Nagar, P.O. Ramchandrapur, P.S. Pipariya, District- Lakhisarai, Bihar.
4. Sashi Bhushan Singh, S/o Narendra Narain Singh Resident of Station Road, Fatuha, P.O./P.S. Fatuha, District Patna Owner of Bus BPP-9783. (since deceased)
5. Tulee Prasad S/o Hari Charan Prasad, Resident Of Village Mahuli, P.S. Arrah, District Bhojpur, Driver of Bus BPP.9783.
6. Shyam Prakash Shahi S/o Lt. Shiv Kumar Prasad Shahi, Resident of Krishnapuri, Naya Tola, P.S. Kazi Mohammadpur, District Muzaffarpur (Owner of Bus BR.31A-8119P).
7. Nagendra Sao S/o Tapeswar Sao, Resident Of Raghupur, P.S. Paro, District Muzaffarpur (Driver of Bus BR.31A-8119P).
8. The New India Assurance Company Limited, Patna (Insurer of Bus BR.31A.8119).
9. Parmanand Rai, S/o Lt. Dewas Rai, Resident Of Adalat Ghat, P.O. District Patna, Owner of Bus BPQ-4615, (since deceased)
10. Harendra Singh, S/o Bindeshwari Singh, Resident Of Village Balba Kwairi, P.S. Hazipur, District- Vaishali (Driver Of Bus BPQ-4615).
11. The Oriental Insurance Co. Ltd., Bhagalpur (Insurer of Bus BPQ-4615).
12. The Oriental Insurance Co. Ltd. Hazipur (Insurer of Bus BPQ.4615).
13. The Oriental Insurance Company Limited, Munger.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr.Durgesh Kumar Singh, Adv.
For Respondent no. 8	:	Mr. Sanjay Singh, Adv.
For the Respondent nos. 11-13	:	Mr. Durgesh Kumar Singh Adv.
For the Respondent nos. 1-3	:	Mr. Ambrish Kumar Jha, Adv.
For the respondent no.6.	:	Mr. Sanjay Kumar @ S.K., Adv.



CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 01-05-2019

Aggrieved by the judgment dated 25.01.2010 and Award dated 15.04.2010 passed by learned Additional District & Sessions Judge, Lakhisarai in Claim Case No. 28 of 2001 “Kum Kum Devi & Ors Vs. Sashi Bhushan Singh & Ors”. Present Appeal has been filed by United India Insurance Company Ltd.

Claim petition was filed by the widow of deceased Sada Nand Sharma and her minor children on the ground that husband of claimant Sada Nand Sharma was conductor of Bus No. BPP-9783 which met an accident at about 12:30 A.M. on 06.07.1996 with another Bus due to rash and negligent act by the driver of the Bus. He was rushed to the Kodarma Sub-Hospital having sustained grievous injury and died in course of treatment on 06.07.1996. Postmortem was performed by Civil Surgeon on the same day. Criminal case was also instituted against the vehicle involved in the accident under Sections 279 and 304(A) of the Indian Penal Code and after investigation the police submitted chargesheet against the driver. The claim of the claimant was contested by all the three Insurance Company and the liability was fastened by the Tribunal against all the three Insurance Companies and it has been stated that two



Insurance Companies have paid the compensation amount who were directed to pay the compensation amount as on the date of accident of offending vehicles were insured by insurance companies. Two insurance companies have paid compensation amount to the claimants. However, present appeal has been filed by the United India Insurance Company for the reasons that on the date and time of accident the offending vehicle was not insured with the appellant company and insurance policy produced were found to be fake and forged after enquiry.

The counsel appearing for the appellant has brought to the notice of this Court, the written statement filed on behalf of the appellant company in which in para nos. 4, 11A and 11B which has not been controverted by the counsel appearing on behalf of claimant that vehicle was not insured on the date of accident.

In spite of valid service of notice the owner and the driver have not chosen to contest this appeal even before the Tribunal, the owner and the driver of the offending vehicle, although notices were valid served upon them, did not contest the claim case of the claimant. It has been stated on behalf of appellant that the insurance policy number given in the claim case petition filed by the petitioner who are the widow and



minor sons of deceased Sada Nand Sharam on inquiry was found to be forged and fabricated as such it has been submitted that the appellant insurance company is not liable to indemnify the owner of the offending vehicle.

After considering the rival submissions made by parties and going through the Records of Tribunal, this court finds that the offending vehicle was not insured with the insurance company of the appellant on the date the Bus met with an accident resulting death of deceased as such the order of the Tribunal by which it has directed payment of compensation to the appellant Insurance Company cannot be sustained and is accordingly set aside.

However, from the records and the materials produced before the Tribunal the accident has been admitted by all the parties and it has also come that police after investigation found the case under Section 279 and 304(A) of the Indian Penal Code of negligent and rash driving by the driver of the offending Bus to be true as such claimants-opposite party is entitled for compensation from the owner of the vehicle.

The order of Tribunal is modified to the extent that the compensation granted by the Tribunal to the complainant-opposite party liability to pay the compensation amount is with



the owner of the Bus and direction of the Tribunal that the appellant insurance company should indemnify the vehicle owner is set aside and liability to pay the compensation amount is fastened upon the respondent no. 4 who is the owner of offending vehicle. The claimant may approach the Executing Court to realise the compensation amount from respondent no. 4 who is the owner of offending vehicle. The judgment and Award of the Tribunal is modified to the extent as indicated above.

The statutory amount deposited by the appellant-insurance company may be refunded to the appellant-insurance company by way of cheque prepared in the name of the company.

Accordingly, this Miscellaneous Appeal is disposed of.

Let the Lower Court Record be returned to the concerned Tribunal forthwith.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.05.19
Transmission Date	N.A.

