**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Miscellaneous Appeal No.122 of 2015**

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United India Insurance Company Ltd. Gaya through Pranay Kumar, Manager-cum-and Duly Constituted Attorney United India Insurance Company Ltd. Regional Office 3rd Floor Chanakya Complex B.C. Patel Road, P.O.- G.P.O., P.S.- Sachiwalaya, District- Patna.

... ... Appellant/s

Versus

1a. Sanjeev Kumar Singh Son of late Shyam Kishore Singh.

1b. Nitu Kumari D/o of late Shyam Kishore Singh.

1c. Neha Kumari D/o late Shyam Kishore Singh.

2. Sri Dhirendra Kumar Singh S/o Nageshwar Prasad Singh. All Resident of -058/19 Sigra, Varanasi (U.P.)

... ... Respondent/s

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**Appearance :**
For the Appellant/s : Mr. Ashok Priyadarshi, Advocate
For the Respondent/s : Mr. Rajeev Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**
**ORAL JUDGMENT**
**Date : 26-03-2019**

Heard learned counsel for the parties.

**2.** This miscellaneous appeal has been preferred, under Section 173 of the Motor Vehicles Act, 1988, against the judgment dated 29.01.2015 and award dated 11.02.2015, respectively, passed by the learned Motor Vehicle Accident Claim Tribunal-cum-Adhoc Additional District Judge-II, Gaya in M.A.C. Case No.90 of 2011/M.A.C. Case No.170 of 2011(D.J.).

**3.** One *Shyam Kishore Singh*, original respondent No.1 had brought Motor Accident Claim Case No.90 of 2011/170 of 2011, under Section 166 of the Motor Vehicles Act before the Motor Accident Claim Tribunal, Gaya, claiming compensation in respect of death of his son, namely, *Deepak Kumar Singh*, who died in a motor vehicle accident. During pendency of this appeal, *Shyam Kishore Singh* also died. Thereafter, son and daughters of *Shyam Kishore Singh* filed a petition for their substitution in place of *Shyam Kishore Singh*. Though, prayer for substitution was resisted by appellant on the ground that the son and daughters of *Shyam Kishore Singh* were not dependents on deceased, *Deepak Kumar Singh*, hence, no order for compensation can be passed in their favour. However, since they were in the category of legal representatives of the deceased, they were allowed substitution, by order dated 11.02.2019, to contest this matter.

**4.** It is not disputed that *Deepak Kumar Singh* at the time of accident was driving *Indica Car* bearing registration No.*UP65AS/5499*. One of the wheels of the car went stray, which resulted in accident of the car and death of *Deepak Kumar Singh*.

**5.** Learned counsel for the appellant-United India Insurance Company Limited has challenged the award on the ground that since the deceased was driving a private vehicle registered in the name of *Dhirendra Kumar Singh*, he was not a third party on a passenger carrying vehicle, rather gratuitous passenger on a private vehicle or at the worst a paid driver of the private vehicle, for which liability of the insurer is limited to the extent of premium paid for personal accident. Reliance has been placed in the case of ***Ningamma and Another Vs. United Insurance Company Limited***, reported in ***AIR 2009 Supreme Court 3056*** and on ***National Insurance Company Limited Vs. Ashalata Bhowmik and Others***, reported in ***2018 (9) SCC 801*** for submission that in such cases the deceased enters into the shoes of the owner of the vehicle. Hence, his dependents cannot claim compensation under Section 163-A or under Section 166 of the Motor Vehicles Act, rather they would be entitled to compensation to the extent of premium paid for personal accident, which the appellant is always ready to pay.

**6.** No evidence has been brought on the record, as to whether the deceased was a paid driver on the said vehicle or a gratuitous user. Even if it is assumed for the argument sake that he was the owner or a paid driver on the said vehicle, the entitlement is to the extent mentioned in the insurance policy.

**7.** Learned counsel for the claimants submits that while awarding the compensation of Rs.23,36,285/- (Rupees Twenty Three Lacs Thirty Six Thousand and Two Hundred Eighty Five), the Tribunal has considered the material brought on the record to sustain the claim, including the policy papers.

**8.** There is no dispute that the vehicle which resulted in accident was a private motor vehicle. There is no evidence on the record that the deceased was a paid driver. Hence, it would be assumed that he was a gratuitous passenger. Even if it is assumed for the argument sake that he was a paid driver, his status was that he entered into the shoes of the owner of the vehicle and owner of the vehicle is entitled to the extent of premium paid as mentioned in the policy of insurance brought on the record. Hence, the award of the Tribunal is not sustainable in law. Accordingly, the same is ***set aside*** and this appeal stands ***allowed***.

**9.** Since the substituted heirs are not dependents on the deceased, hence, they are not entitled for anything for loss of dependency.

**10.** Let the statutory amount deposited by the appellant be returned through cheque.

**(Birendra Kumar, J)**

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