IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.545 of 2016

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The Branch Manager The New India Assurance Company Ltd, Purnia Branch, Purnia. Represented By- The Chief Regional Manager, The New India Assurance Company, Regional Office, BSFC Building, Fraser Road, Patna-800001.

... ... Appellant/s

Versus

1. Kalikant Jha @ Kari Jha S/o Late Shihan Jha.
2. Nirmala Devi W/o Mr. Kalikant Jha alias Kari Jha, Both of Resident of Village- Shahpur, PS- Sonbarsa, District- Saharsa.
3. Sudhanshu Shekhar Singh Resident of Khanjarpur, near DTO Office Barari, District- Bhagalpur, At present Mission Area, Kaisth Tola, Near Chitra Gupta School, Saharsa, PS and District- Saharsa.

... ... Respondent/s

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with

Miscellaneous Appeal No. 273 of 2016

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Sudhansu Shekhar Singh @ Sudhanshu Shekhar Singh, son of Late Ramesh Prasad Singh, resident of village- Khanjarpur, near D.T.O. Office, Barari, District- Bhagalpur at present Mission Area, Kaisth tola, near Chitragupta School, Saharsa, P.S. & District- Saharsa.

... ... Appellant/s

Versus

1.Kalikant Jha @ Kari Jha , son of Late Shiban Jha.
2. Nirmala Devi, wife of Kali Kant Jha @ Kari Jha, Both resident of village- Shahpur, P.S. Sonbarsa, District- Saharsa.

……..Claimant….. Respondents.

3. Md. Sahzad, son of Md. Azmir, resident of village- Saharsa, Basti, Ward No. 20, Saharsa, P.S. & District- Saharsa.

…...Opposite party No. 2… Respondents.

4. The New India Assurance company Limited, Chandralok Complex, Ghanta Ghar Chowk, Bhagalpur, P.O., P.S. & District- Bhagalpur.

…. Opposite party No. 3.. Respondents.

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 545 of 2016)
For the Appellant/s : Mr.Bimlesh Kumar Jha, Adv
For the respondent No. 1 & 2 : Mr. Arvind Kumar Sinha, Adv.
: Mr. Pankaj Kumar Singh, Adv.

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For the opposite party No. 3	: Mr. Randhir Kumar Singh, Adv.
	:Mr. Sanjay Kumar Pandey, Adv.
(In Miscellaneous Appeal No. 273 of 2016)	
For the Appellant/s	: Mr. Randhir Kumar Singh, Adv
	: Mr. Sanjay Kumar Pandey, Adv
For the Respondent Nos. 1 & 2	: Mr.Arvind Kumar Sinha, Adv.
For the Respondent No. 4	: Bimlesh Kumar Jha, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 08-07-2019

Heard the parties.

2. Miscellaneous Appeal No. 545 of 2016 has been filed on behalf of appellant New India Assurance Company Limited against the judgment dated 31.03.2015 and award dated 13.12.2015 passed by learned A.D.J.-1st cum Accident Claims Tribunal, Saharsa by which claimant has been awarded compensation of Rs. 3,91,000/- with 6% simple interest to be paid by the appellant Insurance Company whereas miscellaneous appeal No. 273 of 2016 has been filed on behalf of owner of the vehicle against the same judgment and order by which right of recovery has been granted by the Tribunal to the Insurance Company to pay and recover the amount of compensation from owner of the vehicle as no premium was paid with respect to Insurance of co-driver (Khalasi) of the bus.

3. Briefly stated, the facts of the case as disclosed in claim petition is that on 23.07.2007 deceased Randhir Kumar Jha was serving as cleaner in the offending bus which was going

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to Bhagalpur from Bihariganj when at about 12 'O' clock noon due to rash and negligent act of the driver he fell down from the bus and was seriously injured and was carried to the hospital, where he died during treatment.

4. FIR was instituted being Sonbarsa P.S. Case No. 177 of 2005 under Sections 279, 338 and 304A of IPC against the driver of the offending bus and thereafter inquest report was prepared and postmortem was performed in the hospital. After investigation, the police found the case to be true against the opposite party No. 2 driver of the offending bus and submitted charge sheet against him for rash and negligent driving of the bus leading to accidental death of deceased.

5. The age of the deceased at the time of accident was 19 years and according to claimants he was paid salary of 3,900/- per month and apart from it Rs. 130/- was being paid as daily allowances to him. The bus was insured by the New India Assurance company which was opposite party No. 3 before the Tribunal.

6. Written statement was filed on behalf of opposite party No. 1 the owner and opposite party No. 2 the driver of the offending vehicle in which it was stated that the offending vehicle was insured and insurance premium was paid and as

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such it is the liability of the insurance company to pay the compensation amount. The owner has also produced the insurance policy, road permit, fitness certificate, tax token and stated that bus was plying with valid permit and driver had valid licence to drive the vehicle. It was further submitted that deceased was never appointed or worked as cleaner in the bus.

7. Written statement was filed by the opposite party No. 3 New India Assurance Company that deceased himself was responsible for the accident and there was no negligent or rash act of the driver of the offending vehicle. The claimant has not produced any document that deceased was employed as Cleaner in the offending vehicle, as such, claimant is not entitled for any compensation from the insurance company.

8. On the basis of pleadings of the parties, the tribunal framed seven issues. In support of her claim case, claimant has examined four witnesses. On behalf of opposite party No. 2 two witnesses have been examined. On behalf of opposite party No. 3 one witness Anil Kumar Srivastava has been examined.

9. Apart from the oral evidence, claimants have also adduced documentary evidence Exhibit-1 is FIR, Exhibit-2 is the charge sheet, Exhibit-3 is affidavit of Dr. Srilal Srivastava and Exhibit- 4 is the postmortem report of deceased. Three

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documents have also been exhibited on behalf of Insurance company opposite party No. 3, which includes the Insurance Policy and they have been marked as Exhibit A/1 to Exhibit-A/3.

10. Opposite party No. 1, the owner, has been examined as witness and he has stated that Subhankar Shekhar Singh was appointed as Manager who used to see the management of buses. There was no cleaner named Ranjit Jha employed by him. Opposite party No. 2 Md. Sahjad Ali, who was driver of the offending bus on the date of accident, in his cross-examination has stated that prior to accident he never saw the deceased. He used to deposit the premium of Insurance policy. He does not keep cleaner in his vehicle. On the bus there was driver and conductor. He has not deposited any premium with respect to any cleaner. The offending vehicle was going to Bhagalpur from Bihariganj and accident took place between Soha and Sonbarsa resulting in death of one boy.

11. The bus was seized by Sonbarsa police station and FIR was instituted against the driver of bus giving rise to Sonbarsa P.S. Case No. 77 of 2005 who was released on bail and offending bus was also released. Neither he nor the owner of the offending bus came to see the deceased. Opposite party

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No. 2 Md. Sahjad Ali has been examined before the claims tribunal in which he has admitted that he was the driver of the bus on the date of accident and used to ply the bus of Sudhanshu Shekhar Singh. He has denied that Sudhanshu Shekhar Singh had employed any cleaner on the said bus. There was no Khalasi on the said bus on the date of accident. He has all papers in his bus for plying the bus.

12. The sole witness has been examined on behalf of Insurance Company in which he has admitted that the offending vehicle was insured by the company. However, no premium was paid with respect to cleaner of the bus, as such, the Insurance company is not liable to pay any compensation.

13. It has been submitted on behalf of opposite party Nos. 1 and 2 that claimant has failed to prove that deceased was cleaner in the offending vehicle. The bus was insured with respect to driver and conductor.

13. On the basis of evidences adduced before the Tribunal and considering the materials available on record, the tribunal has held that on 23.07.2005 the driver of the offending vehicle was driving the bus in a rash and negligent manner, as a result of which deceased met with an accident and was seriously injured and died during treatment. The postmortem report

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supports the claim that he died of haemorrhage due to fall from speedy vehicle and the offending vehicle was insured by the opposite party No. 3 on the date of accident. However, the tribunal has held that since no documentary evidence was produced on behalf of claimant regarding monthly income of the deceased nor any certificate with respect to age of deceased has been produced, as such, the tribunal has assessed notional income of deceased as Rs. 3,000/- per month and his age as 19 years on the date of accident on basis of postmortem report.

14. From the evidence on record, the claimant has not been able to establish that deceased was employed as Cleaner in the offending bus. Owner and driver of the bus have led evidence that deceased was not employed as a cleaner in the bus. No documentary evidence has been produced by the claimant that any salary was paid by the bus owner to the deceased. However, the fact remains that deceased died while travelling in the bus and fell down due to rash and negligent act of the bus driver and his status is either of passenger in the bus or third party and in both circumstances, Insurance Company is liable to pay the compensation.

15. Section 147of the M.V. Act 1988 reads as follows:-

> (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to

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> any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

16. For the reasons as stated, the judgment and Award is modified to the extent that compensation amount is to be paid by the Insurance Company to the claimant and since it could not be established that deceased was employed as a cleaner in the bus, as such, owner is absolved from liability to pay any compensation or its realization by Insurance Company after making payment to claimant.

17. These miscellaneous appeals stand disposed of with direction to Insurance Company to pay the compensation amount to the claimants within 30 days from the date of receipt/production of a copy of order passed by this Court.

18. Statutory amount of Rs. 25,000/- which has been deposited at the time of filing of appeal, a cheque of which be prepared in the name of claimant No. 1 and sent to the concerned tribunal for its onward payment to the claimant No. 1 which shall be adjustable with the final compensation amount to be paid within two months from the date of receipt/production

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of copy of order passed by this Court.

19. Let LCR be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.08.2019
Transmission Date	N.A.

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