IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1183 of 2016

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The Branch Manager, The New India Assurance Company Ltd., Motihari through the Chief Regional Manager Regional Office Ne, India Assurance Company Ltd, 6th Floor, B.S.F.C. Building, Frazer Road, Patna-1.

... ... Appellant/s

Versus

1. Manju Devi, W/o Late Tunna Mahto
2. Vikash Kumar, S/o Late Tunna Mahto
3. Annant Kumar, S/o Late Tunna Mahto
4. Saheb Kumar, S/o Late Tunna Mahto,
5. Shanti Devi, D/o late Nobel Mahto, All are resident of village Fatua, Nawada, P.S.-Kotwa, District- East Champaran
6. Mahanth Sah, and Nageshwar Sah, both Sons of Suraj Sah, Resident of Village- Bhatwaliya, PS- Sangrampur, District East Champran (owner of the vehicle)
7. Mahanth Sah, Son of Suraj Sah, Resident of Village- Bhatwaliya, PS-Sangrampur, District East Champran (Driver of the vehicle)

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Raj Kumar Singh Vikram, Adv.
For the Respondent nos. 1 to 5 : Mr.Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 26-08-2019

Heard the parties.

2. This appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of appellant The New India Assurance Company Ltd. against the judgment and award dated 30.01.2016/11.03.2016 passed by learned 7th Additional District Judge-cum-Claims Tribunal, Motihari in Claim Case No. 111 of 2013/27 of 2015 by which compensation of Rs. 4,62,000/- (four lacs sixty-two thousand) has been awarded to the claimants with 8 per cent simple interest from

the date of filing of the claim application till its realization.

3. Claimants are widow, children and mother of deceased Tunna Mahto who died in a motor accident on 20.03.2008 at 7:00 P.M. while going to Sarotar from Kotwa Chowk with his wife by a Tempo bearing registered No. BR-05P-2004, which was being driven in a rash and negligent manner by its driver and turned turtle in which Tunna Mahto received grievous injury and he was brought to Kotwa hospital and thereafter to Puraina hospital and was referred to Motihari but he died on his way to Motihari.

4. F.I.R. was instituted giving rise to Kotwa P.S. Case No. 35 of 2008 under Sections 337, 338 and 304-A of the Indian Penal Code and on completion of investigation the investigation officer found the case to be true against the driver of the offending vehicle and submitted chargesheet against him.

5. Notices were issued to all the parties and they filed their written statement. In the written statement filed on behalf of opposite party nos. 1 and 2 they have stated that driver had a valid and effective driving license and the vehicle was insured with New India Assurance Company and as such insurance company is liable to pay compensation.

6. Written statement was filed on behalf of

opposite party no.3 Insurance company in which they have admitted that the vehicle was insured from said company and permit and driving license is subject to verification by the company.

7. On the basis of pleadings of the parties the Tribunal framed seven issues for its determination.

8. Four witnesses were examined on behalf of claimants in support of their claim case and documentary evidences were also produced which were marked as Exhibits by the Tribunal. Exhibit-1 is certified copy of F.I.R., Exhibit-2 is certified copy of chargesheet, Exhibit-3 is certified copy of postmortem report, Exhibit- 4 is photocopy of insurance policy and Exhibit- 5 is photo copy of driving license.

9. On behalf of opposite party nos. 1 and 2 Mahanath Sah has been examined whereas on behalf of opposite party no.3 Insurance company, Sujeet Kumar has been examined who has proved the investigator report which has been marked as Exhibit-A

10. On consideration and appreciation of documentary as well as oral evidence the tribunal has found that the deceased Tunna Mahto died in a motor accident on 20.03.2008 due to rash and negligent driving of the offending

vehicle by the driver. The tribunal has held that on the date of accident the offending vehicle was insured with New India Assurance Company and as such the insurance company is liable to pay the compensation amount to the claimants.

11. The deceased was a Rajmistri (mason) and tribunal has assessed his income to be Rs. 36,000/- per annum. The age of the deceased has been assessed to be 35 years according to post mortem and tribunal has found 16 to be the appropriate multiplier and after deducting 1/4 towards his personal and living expenses has assessed Rs. 4,32,000/- as compensation amount and after adding conventional heads has quantified Rs. 4,62,000/- to be a just and proper compensation with 8% interest from the date of filing of the case till its realization.

12. It has been submitted on behalf of counsel appearing for the appellant/insurance company that the offending vehicle was plying without any valid permit and which is in violation of terms and conditions of insurance policy and same being fundamental in nature, the insurance company is not liable to indemnify the owner. However, the permit has neither been produced by any of the parties nor it has been verified by the investigator that the offending vehicle was plying

without any valid permit and considering the said circumstances the tribunal has given liberty to the insurance company that if there is any violation of terms and conditions of insurance policy and the offending vehicle was plying without any permit, it may recover compensation amount from the owner of the offending vehicle. The insurance company is granted liberty to realise the compensation amount from owner of the offending vehicle after making payment of the compensation amount to the claimant as directed by the tribunal.

13. The statutory amount Rs. 25,000/- (Rupees twenty five thousand) deposited by the insurance company at the time of filing of Appeal for which a cheque of Rs. 25,000/- (Rupees twenty five thousand) is directed to be prepared in the name of claimant no.1 and sent to the Tribunal for its payment to the claimant no.1 which shall be subject to adjustment in compensation amount.

14. This miscellaneous appeal is disposed of.

(S. Kumar, J)

Rajiv/-

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