IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.78 of 2013

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The Divisional Manager, The Oriental Insurance Company Ltd., Gaya

... ... Appellant/s

Versus

1. Sanjay Kumar and Ors. S/O Narayan Mistry Husband Of Sita Devi R/O
2. Madhumala Kumari D/O Sanjay Kumar
3. Purushotam Kumar S/O Sanjay Kumar
4. Chitu Kumar S/O Sanjay Kumar
5. Gopal Singh S/O Late Brahmdeo Singh R/O Village - Khetalbura, P.S. Sare, District - Nalanda At Present C/O Mr. Devendra Kumar, Raja Bazar Dhanbad, Owner Of Janki Bus Rath
6. Ramanuj Mahto S/O Basudeo Mahto R/O Premnagar, P.S. and District - Hisar, Haryana Driver Of Janaki Bus Rath.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Bimlesh Kumar Jha, Adv
For the Respondent no.1 to 4	:	Mr.Rajesh Kumar, Adv, Bhavesh Kumar, Adv & Jitendra Kumar, Adv
For the Respondent No.5	:	Mr. Bipin Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 25-06-2019

Heard the parties.

2. This miscellaneous appeal has been filed by the appellant-Oriental Insurance Company Ltd. for setting aside the judgment dated 23.11.2012 and Award dated 08.03.2013 passed by Additional Motor Accident Claims Tribunal, Nawada in Claim Case No. 46 /10-11, by which Tribunal has

directed the appellant-Insurance Company to pay the compensation amount to the claimant although the offending vehicle was not insured by the appellant-Insurance Company on the date of accident.

3. Briefly stated, the facts of the case as disclosed in the claim petition is that on 15.03.2010 at about 7:30 am claimant and his wife Sita Devi were going on motorcycle to Warsaliganj and in the way Claimant Sanjay Kumar stopped the motorcycle when a Bus bearing No. BR-25/0411P dashed against the motorcycle as a result of which Sita Devi died on the spot. The Bus was being driven in a rash and negligent manner. Claimants are husband and minor children of deceased and have claimed compensation of Rs. 5,51,000/- .

4. FIR was instituted on the fardbeyan of Upendra Mistri brother of Claimant Sanjay Kumar giving rise to Warsaliganj PS. Case NO. 36 of 2010 dated 15.03.2010 under Sections 279, 337, 338, 304 of IPC registered against the driver of offending Bus. After investigation the police found the case to be true and submitted chargesheet against the driver of the offending Bus under Sections 279, 338, 304A and 427 of the IPC. FIR has been marked as Exhibit-1 and chargesheet has been marked as Exhibit-2.

5. Notices were issued to all the respondents. Respondents nos. 1 to 4 are claimants and have appeared. Respondent NO. 5 is the owner of the offending vehicle and has appeared. However, notices could not be served upon respondent no. 6 Driver of the offending vehicle, however, subsequently notices upon him has been waived as he could not be traced and was not a necessary party.

6. Before the Claims Tribunal the claim proceeded ex parte against the owner and Driver of the offending vehicle who were opposite party no. 1 and opposite party no. 2 before the Tribunal. The Claim Case was contested by the appellant-Insurance Company which was Opposite Party No. 3 before the Tribunal.

7. The appellant-Oriental Insurance company Ltd contested the case before the Tribunal and filed written statement. In their written statement they stated that insurance policy of the offending vehicle was not valid on the date of accident and its validity had expired on the date of accident, as such Insurance Company is not liable to indemnify the owner of the offending vehicle as on the date of accident the offending vehicle was not insured.

8. On the basis of pleading of parties the Tribunal

framed five issues.

9. In support of claim case three witnesses were examined on behalf of Claimant and documents were also produced which were marked as Exhibits by the Tribunal. Exhibit-1 is certified copy of FIR, Exhibit-2 is chargesheet, Exhibit-4 fitness certificate of Bus, Exhibit-5 is Tax Token, Exhibit-6 is Insurance Certificate, Exhibit-7 is Driving Licence, Exhibit-8 is petition dated 02.06.2010 filed by owner of the offending Bus, Exhibit-9 is certified copy of order dated 16.06.2010 and 16.06.2010 of CJM, Nawada in Warsaliganj P.S. Case No. 36 of 2010, Exhibit-10 is post mortem report, Exhibit-12 is photocopy of certificate of Amway business of deceased, Exhibit-13 is photocopy of heirship certificate of deceased.

10. On the basis of oral and documentary evidence, the Tribunal has held that the driver of the offending Bus was driving the vehicle in a rash and negligent manner as a result of which accident took place and wife of the Claimant died on the spot. The driver of the vehicle was having a valid driving licence.

11. The Tribunal has further held that Exhibit-6 is the Insurance Certificate of the offending vehicle BR-25/0411-P,

which bears insurance policy no. 332404/31/2011/875 and the insurance policy was effective from 12.06.2010 to 11.06.2011 and as such the offending vehicle was not insured with the insurance company on the date of accident and same is also proved on the basis of investigation report submitted by the Insurance Company and Tribunal held that on the alleged date of accident, the insurance policy of the offending Bus was not valid. The Tribunal also held that there was no contributory negligence of deceased and it was the rash and negligent act of the driver of the offending Bus which resulted into accident and death of wife of Claimant No. 1.

12. The Tribunal has found the age of deceased to be 33 Years and monthly income to be Rs. 3000/- and has ascertained Rs. 36,000/- to be annual income and 1/3rd of which has been deducted as personal expenses and has found Rs. 24,000/-to be loss of dependency and applied 17 as a multiplier and assessed Rs. 4,08,000/- as amount of compensation. The Tribunal has further granted additional compensation in conventional heads, Rs. 5000/- towards loss of love and affection, Rs. 5000/- towards pain and suffering and Rs. 3000/- for funeral expenses and has found Claimants to be entitled for total compensation of amount of Rs.

4,21,000/-.

13. The Tribunal has although held that on the date of accident the vehicle was not insured with the insurance company still fastened the liability to pay the compensation amount on the Insurance Company, which is not sustainable. The primary liability to pay the compensation is on the owner of the offending vehicle and if the vehicle is insured the Insurance Company indemnifies the owner of the vehicle by paying the compensation amount. However, if the offending vehicle itself was not insured then Insurance Company cannot be directed to indemnify the owner of the offending vehicle and pay the compensation amount. Had the offending vehicle insured by the appellant-Insurance Company and there had been violation of terms and conditions of the insurance policy by the Insured then Court/Tribunal can direct insurance company to pay the compensation amount and realize the same from the insured owner but if the vehicle itself was not insured on the date of accident no such direction can be passed by Court/Tribunal.

14. In the result, the miscellaneous appeal filed on behalf of insurance company is allowed and the judgment and award passed by the Tribunal is modified to the extent that the

compensation amount as determined by the claims tribunal is to be paid by the owner of the offending vehicle. The owner of the offending vehicle is directed to pay the compensation amount of Rs. 4,21,000/- as directed by the Claims Tribunal with interest @ 8 per cent per annum from the date of filing of claim petition till its realization within two months from the date of production/receipt of a copy of the order passed by this Court.

15. 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 appellant-Insurance Company and be handed over to the learned counsel for the Insurance Company.

16. The miscellaneous appeal is allowed.

Let L.C.R. be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2019
Transmission Date	NA