

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.127 of 2012

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BRANCH MANAGER, National Insurance Co. Ltd., Branch Office,
Rajendra Nagar, Nawada (Insurer of Tractor No. B.R. 27A/0346) appearing
through Mr. Anjani Kumar, son of Sri Shyama Prasad, at present posted as
Administrative Officer, Regional Office, 4th Floor, Sone Bhawan, R-Block,
Patna & Authorized signatory of M/s National Insurance Company Limited.

... Opposite party no.3 ... Appellant/s

Versus

- 1) Basanti Devi, W/o late Ramashish Prasad
- 2) Rinki Kumari, minor, D/o late Ramashish Yadav
- 3) Sonu Kumar, minor, S/o late Ramashish Pd. Under the legal & natural guardianship of their mother namely Basanti Devi (applicant No.1) , Al;l residents of village- Jagatpur, P.S. Akbarpur, District, Nawada
- 4) Sibea Devi, W/o late Baru Yadav, R/o village- Jagatpur, P.S. Akbarpur, District, Nawada

.....(Applicants)-Respondent 1st set

- 5) Bishwanath Prasad, S/o Dhakho Prasad, resident of village, Bhikampur, P.S. Narhat, District, Nawada (Owner of Tractor No. B.R. 27/A/0346)

.....Opposite party no.1- Respondent 2nd set

- 6) Nago Singh, S/o Jhumak Singh, resident of Kokar, P.S. Ranchi, District, Ranchi, Jharkhand (Driver of Tractor No. B.R. 27A/0346)

.....Opposite party no.2 – Respondent 3rd set

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Appearance :

For the Appellant/s	:	M/s Harendra Kumar Kanchan Mala, Advocates
For the Respondent/s	:	Mr. Rajeiv Nayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-10-2019

Heard parties.

This is appeal under Section 173 of M.V. Act, 1988

on behalf of the National National Insurance Company Limited



against the judgment and Award dated 29.04.2011 / 17.10.2011 by which the learned Additional District Judge- I-cum- MACT, Nawada in claim case No.36/2005 has directed the appellant- Insurance Company to pay a compensation of Rs.4,17,500/- to the claimants/respondents.

Claimants who are widow and minor children of deceased have filed claim application under Section 166 of M.V. Act for grant of compensation on account of death of Ramashish Prasad on 31.12.2002 in a Motor accident caused by tractor bearing registration No. BR-27 A- 0346 which was being driven in a rash and negligent manner by the driver of the said vehicle.

Opposite party no.1 is the owner of offending vehicle. Opposite party no.2 is the driver of the offending vehicle whereas opposite party no.3 is the insurer-appellant of the offending vehicle.

It has been stated in claim petition that on 31.12.2002 at 7.30 p.m. Ramashish Prasad was returning from local market after selling milk when he was dashed by the offending tractor which was being driven in a rash and negligent manner as a result of which he died on the spot.

F.I.R. was instituted giving rise to Akbarpur P.S.



Case No.2/03 registered under Sections 279 and 304A of the Indian Penal Code against the driver of the offending tractor. Postmortem was conducted on the dead body of deceased in Sadar Hospital, Nawada.

According to the claimants, age of the deceased was 30 years and his monthly income was Rs.3,000/- per month at the time of accident and the claimants were dependant upon the deceased and have claimed a compensation of rupees three lacs.

On notice, opposite party no.1, the owner of the offending tractor, appeared but did not file any written statement. Opposite party no.2, Nago Singh, the driver of the offending vehicle did not appear and case proceeded ex parte against him. Opposite party no.3/appellant/Insurance Company appeared and filed their written statement and contested the claim of claimants and denied their liability to pay any compensation to the claimants. They have admitted that offending tractor was insured at the time of occurrence but tractor was not registered by DTO office as such without registration number, vehicle is not permitted to ply on the road and same being in violation of terms and conditions of insurance policy and M.V. Act and rules as such appellant/Insurance Company is not liable to indemnify the



owner of the offending vehicle from making the payment of compensation amount.

On the basis of rival pleadings of the parties, the Tribunal framed four issues for its determination. Insurance Company/appellant has challenged the award passed by the Claims Tribunal solely on the ground that since the offending tractor was not registered having any registration number as such was not authorized to ply on a public road and same being in violation of terms and conditions of policy of insurance, and M.V. Act and rules the Insurance Company is not liable to pay any compensation to the claimants.

After hearing the counsel for the appellant/insurance company as well as counsel appearing on behalf of the claimants and even after valid service of notice, the owner of the offending tractor has not chosen to appear to contest the appeal filed by the Insurance Company, it is admitted fact that on the date of occurrence, the offending tractor was insured by the Insurance Company and the compensation is being denied on the ground that same was being plied on a public road in violation of terms and conditions of policy of insurance as the offending tractor was not having any registration number. It has been submitted that since the same being in violation of Section



39 of the Motor Vehicle Act, they are not liable to pay the compensation. Deceased is a third party who died in an accident arising out of said offending tractor which was insured on the date of occurrence with the Insurance Company and even there is any violation of terms and conditions then it is a dispute between the insurer and insured and for which the claimants cannot be made to suffer otherwise the very purpose of enacting this beneficial legislation will be frustrated.

As such, the order passed by the Tribunal is modified to the extent that the Insurance Company at first shall pay the compensation amount to the claimants with a liberty to realize the same from the owner of the vehicle. The award passed by the Tribunal is modified to the said extent.

The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company at the time of filing of appeal, be remitted to the claimants through electronic mode upon furnishing the details in the format to be provided by the Office to the learned counsel for the claimants, who shall fill the format and submit same in the Office so that amount could be transferred in the bank accounts of the claimants which shall be adjustable in the compensation amount.

This miscellaneous appeal stands disposed of.



Let the LCR be returned forthwith to the court
concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2019
Transmission Date	NA

