IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 441 of 2014

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The Divisional Manager, New India Assurance Company Ltd. Samastipur through the Chief Regional Manager, New India Assurance Comp. Ltd., 6th Floor, BSFC Building, Frazer Road, Patna - 1

... ... O.P. No. 2/Appellant

Versus

1. Munni Devi, Wife of Late Dilip Kumar
2. Parwati Devi, Wife of Late Daya Ram Sah
3. Soni Kumari (Minor), D/o Late Dilip Kumar
4. Amrita Kumari (Minor), D/o Late Dilip Kumar
5. Suraj Prakash (Minor), Son of Late Dilip Kumar
6. Chandra Prakash (Minor), Son of Late Dilip Kumar

3, 4, 5 and 6 are minors and represented through their legal and natural Guardian Mother Munni Devi, 1 to 6 are Resident of Vill. - Rahimabad, Thagane Chowk, P.S. Bangra, Dist. - Samastipur presently residing C/o A. Sah, Gobar Sahi, P.S. Sadar, Dist. - Muzaffarpur

… … Appellant/Respondents 1st Set

7. Md. Jawed Ahmad (owner of the Vehicle), Son of Md. Taslim, Resident of Village Sahpur Baghauni, P.S. Vaini (Tajpur), District Samastipur

... ...O.P. No. 1/Respondent 2nd Set

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Appearance :

For the Appellants	:	Mr. Raj Kumar Singh Vikram, Advocate
For the Claimants	:	Mr. Dhaunjay Kumar No. 2, Advocate
For the Owner	:	Mr. Bipin Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 20-02-2019

Heard learned counsel for the parties.

2. This appeal has been preferred, under Section 173 of the Motor Vehicles Act, 1988, against the judgment dated 31.03.2014 and award dated 17.04.2014 passed by the learned 6th

Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 103 of 2008.

3. New India Assurance Company Ltd. has challenged the award only on the ground that the Tribunal has not allowed liberty to the appellant to recover the compensation amount from the owner of the vehicle after payment to the claimants.

4. Submission is that before making of the award, the appellant had filed a petition on 30.09.2010 before the Claim Tribunal stating therein that on verification, the driving licence of the driver of offending vehicle was found to be a fake licence. Hence, apparently, the offending vehicle was being driven by not a driver having valid driving licence. Therefore, there is violation of the terms of policy. In the circumstance, the appellant is entitled to recover the compensation amount from the owner of the vehicle.

5. Learned counsel for the respondent no. 6 the owner of the vehicle submits that the driver was not a party before the Claim Tribunal nor he is party herein. Hence, without hearing the driver such prayer cannot be allowed.

6. It is well settled that the main responsibility is of the owner of the vehicle and owner of the vehicle was party thereat, therefore, owner should have bring all the necessary information in his defence that there is no violation of terms of policy by the owner.

7. The law is well settled that the insurer is entitled to recover the amount of compensation after payment to the claimants in the event of any violation of the terms of policy or other statutory terms and conditions. Hence, the appellant would be at liberty to pay and recover the compensation amount, if a case of recovery is made out.

8. With the aforesaid observations, this appeal stands allowed.

9. The statutory amount be remitted back through cheque in the name of claimants for payment to the claimants and adjustment.

(Birendra Kumar, J)

Kundan/Rajan

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