IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.774 of 2014

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The New India Assurance Company Ltd, through the Chief Regional Manager, The New India Assurance Company Ltd. Regional Office, BSFC Building, Frazer Road, Patna.

... ... Appellant/s

Versus

1. Shahida Khatoon wife of Md. Irshad
2. Md. Irsad, son of Late Abdula Hameed
   Both are resident of Mohalla- Kamra, near Bandh Imambara, P.S. - Town , District - Muzaffarpur.
3. Mahesh Choudhary, resident of Village - Basra Bazar , P.S. - Jaitpur, District - Muzaffarpur (The Owner of Mini Truck Tata-407)

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr.Bimlesh Kumar Jha, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 26-06-2019

This miscellaneous appeal has been filed for setting aside the judgment dated 14.07.2014 and award dated 25.07.2014 passed by 2nd Adhoc A.D.J.-cum-Motor Vehicle Accident Claims Tribunal, Muzaffarpur in Claim Case No. 25 of 1999 by which claims Tribunal has directed appellant – Insurance Company to pay the claim amount of Rs. 1,84, 500/- as compensation with interest @ 3% per annum from the date of filing of claim petition till its payment.

Claimants who are parents of deceased Md. Wakeel who died due to rash and negligent driving of the driver of Tata 407 truck having Registration No. AS-O1C-6496 which was insured with the appellant New India Assurance Company.

Claimant/opposite party in their claim petition have stated that on 30.01.1999 at about 11:15 A.M., deceased son Md. Wakeel was sitting in his house when driver of Tata 407 truck which was coming from West and going towards East being driven in a rash and negligent manner dashed against the son of the applicant and he died on the spot. F.I.R. was instituted in Town P.S. Case No.32 of 1999 under Sections 279 and 304(A) of the Indian Penal Code against driver of offending truck and after investigation, police submitted chargesheet under Sections 279 and 304(A) of the Indian Penal Code against driver of the said truck. The postmortem was conducted on the dead body of deceased in which cause of death has been attributed to motor vehicle accident. It is further submitted that deceased was working as a tailor having an income of Rs. 1500/- per month and have claimed Rs. 2,85,000/- as compensation.

The appellant New India Assurance Co. Ltd. appeared and filed their written statement and have admitted that on the date of accident the vehicle was insured with the insurance company. They have further stated that there was no fault of the driver and it was the fault of deceased resulting in his death in said accident. He has further submitted that there was violation of terms and conditions of the insurance policy by the owner and driver of the vehicle as such insurance company is not liable to indemnify the owner with respect to compensation amount. The vehicle was being driven by the driver without having any valid and proper license.

On the basis of pleadings Tribunal framed six issues and five witnesses were examined on behalf of claimant and in support of their claim case documentary evidence were also produced. Exhibit-1 is certified copy of F.I.R. of Town P.S. Case No. 32 of 1999 along with fardbeyan of Md. Irshad (applicant no.2), Exhibit-2 is certified copy of Final Form, Exhibit- 3 is certified copy of postmortem report of deceased Md. Wakeel.

No witness has been examined on behalf of opposite party-owner and driver of the offending vehicle however, appellant New India Assurance Company has examined investigator as a witness on its behalf.

On the basis of evidences adduced by the parties the Tribunal has held that deceased Md. Wakeel, son of claimants died due to rash and negligent driving by the driver of offending truck and as such owner of the vehicle is liable to pay the compensation amount to the claimant and since the offending truck was insured on the date of accident the appellant insurance company is liable to indemnify the owner with respect to payment of compensation amount. Tribunal has assessed Rs.1,80,000/- as compensation and has added additional compensation of Rs.2,500/- for loss of estate and Rs.2000/- as funeral expenses. The Tribunal has assessed Rs.1,84,500/- as total compensation amount to be paid by the insurance company (Appellant) to the claimant since Rs.50,000/- has already been paid as interim compensation as such Rs.1,34,500/- with 3 % interest has been directed to be paid to claimant by insurance company. Although the compensation and interest appear to be on lower side but since there is no appeal on behalf of claimant as such, no order of enhancement of compensation amount can be passed.

It has been argued on behalf of appellant - New India Assurance Company that there has been violation of terms and conditions of the insurance policy, as such insurance company is not liable to indemnify the owner of the offending vehicle from payment of compensation amount.

In view of the law laid down by the Apex Court, the insurance company is entitled to recover the amount from the owner of the offending vehicle after making payment of compensation amount to the claimant. The insurance company is at liberty to realize the amount of compensation paid by it to the claimant from the owner and driver of the offending vehicle, if there has been any violation of terms and conditions of insurance policy. Insurance company is directed to pay the compensation amount in terms of Award to the claimants within three months from the date of receipt/production of a copy of order passed by this Court.

The statutory amount of Rs. 25,000/- deposited in High Court at the time of filing appeal by the insurance company, a cheque of for which be prepared in the name of respondent no.1 (claimant) and to be sent to the Claim Tribunal for its payment to claimant which is to be adjusted in amount of compensation.

This miscellaneous appeal is disposed of.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2019
Transmission Date	NA