IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.692 of 2008

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The New India Assurance Co. Ltd. through its Divisional Manager, Divisional Office No.1, Red Cross Building, Near Gandhi Maidan, Police Station-Gandhi Maidan, District-Patna (opposite party No.1 in the court below).

... ... Appellant/s

Versus

1. Rubi Devi, wife of Late Anandi Roy @ Anandi Yadav (Claimant No.1 in the court below).
2. Sri Sone Lal Roy, Son of Not known as not mentioned in the petition, father of the deceased (claimant No.2 in the court below).
3. Chandani Kumari, daughter of Late Anandi Roy @ Anandi Yadav (minor) under the guardianship of the mother Rubi Devi (claimant No.3 in the court below).

All are resident of village and post office-Mekra, P.S.-Mokama, District-Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Arun Kumar Singh, Adv
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 14-03-2019

Heard learned counsel for the appellant. No one appears on behalf of the claimants-respondents.

2. By the impugned order dated 08.09.2008 passed in Claim Case No.392 of 2007, the Motor Accident Claims Tribunal, Patna has allowed payment of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 to the claimants by the appellant New India Assurance Co.Ltd for death of Anandi Roy @ Anandi Yadav, husband of claimant-Rubi Devi.

3. The impugned order reveals that the case of the claimant was that Anandi Roy @ Anandi Yadav was driving jeep

bearing Registration No.BR-IAP-2505 (which has been wrongly typed as Bus in the impugned order) for Khagaria which met with an accident causing death of Anandi Roy @ Anandi Yadav, Sahebpur Kamal P.S.Case No.144 of 2007 was registered for the aforesaid accident.

4. The appellant had opposed the prayer before the Tribunal on the ground that to cover liability of the owner, separate premium is required to be paid. Normally, the insurance policy covers the liability in respect of 3rd party only. Further submission is that in fact driver of the jeep was himself the owner of the vehicle.

5. The learned Tribunal observed that liability for the death of driver is upon the insurance company as it is covered by the terms of policy. The Tribunal further noted that it is not for the court to examine who was driving the vehicle. If the owner was driving the vehicle his status was of a driver when the accident took place.

6. Considering the claim of the appellant that the insurance policy was not for personal accident claim, the court directed the appellant to produce the certificate of insurance policy alongwith supplementary affidavit which has already been

produced. The same would show that compulsory P.A. to owner-cum-driver was separately paid as Rs.100/-.

7. Submission before this Court is that there is no provision in the Motor Vehicles Act to cover liability of the owner or driver of the vehicle. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **New India Assurance Company Ltd. Vs. Sadanand Mukhi & Ors**, reported in **AIR 2009 SC 1788.** The policy was issued in the name of Anandi Roy @ Anandi Yadav, hence, apparently the owner was driving the vehicle.

8. Section 147 of the Motor Vehicles Act, 1988 provides for requirement of policies and limits of liability which reads as follows:

> ***147. Requirements of policies and limits of liability.*** *—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—*
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—*

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect

of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and

different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

9. Sub-section 5 of Section 147 above provides that the insurer issuing a policy of insurance under the said section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in case of that person or those class of persons. In the present case, the policy covers liability of the owner-cum-driver in view of payment compulsory premium for personal accident. Therefore, there is no merit in the submission of learned counsel for the appellant that the Motor Vehicles Act, 1988 does not provide for covering the liability of the owner or driver of the vehicle if a separate premium has been paid therefor.

10. In **New India Assurance Company Ltd. Vs. Sadanand Mukhi & Ors (Supra)** the vehicle was being driven by the son of the owner who met with that accident and accidental death. The Hon'ble Supreme Court held that son was neither 3rd party nor the owner of the vehicle.

11. In the case of **The New India Assurance Company Ltd. Vs. Rajendra Kumar Soncheti & Ors ,** reported in **2019 (1)PLJR 887,** there was no extra premium paid to cover the personal accidental claim of the owner. Hence, this Court held that in respect of personal injury to the owner-cum-driver, no liability is made out against the insurer. Hence, in my view, both

the cases are not applicable in the facts and circumstances of this case.

12. Accordingly, this appeal has got no merit and it is dismissed.

13. Let the statutory amount be sent back in the name of claimant-Rubi Devi.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2019
Transmission Date	NA