IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.472 of 2015

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1. Niranjan Thakur, son of Late Sundarlal Thakur
2. Asha Devi, wife of Niranjan Thakur
   both residents of village Mahanu, P.S. Rajoun and District Bhagalpur.

... Claimants ... Appellant/s

Versus

1. Dharamdeo Singh, Son of Shiv Narayan Singh, resident of Jawaripur, Tilkamanjhi, District Bhagalpur. ….Owner of the vehicle
2. Gauri Shankar Yadav, son of R.A. Yadav, resident of village, Chandanpur Hirambi, P.O. Hirambi and District Banka.
   …….Driver of the vehicle
3. Divisional Manager, The New India Assurance Co. Ltd, Red Cross Building, North of Gandhi Maidan, Patna
4. The Branch Manager, The New India Insurance Co. Ltd, Chandralok Complex, Radha Rani Sinha Road, Bha

...Opposite parties / ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Madan Mohan, Adv
For the Respondent/s : Mr. Sanjay Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 09-07-2019

Heard parties.

2. This miscellaneous appeal has been filed on behalf of the claimants/appellants for partly setting aside the judgment and award dated 18.12.2014 and 2.2.2015 passed in claim case no.115 of 2001 / Trial No. 29 of 2014 passed by 2nd Additional District Judge-cum-Motor Accident Claims Tribunal, Bhagalpur by which the claims tribunal has directed owner of the offending vehicle to pay compensation amount of Rs.2,60,500/- with 6% interest from the date of filing of claim application till its

payment and exonerating Insurance Company from liability of payment.

3. Claimants who are parents of deceased have claimed compensation on account of death of their son, Onkar Nath Thakur who died in a motor accident on 2.6.2001. Onkar Nath Thakur on 2.6.2001 was going to Bounsi from Tunsiaya Chauk by mini bus bearing registration no. BR 10A - 5329 and due to rash and negligent driving by the driver of the bus, the bus turned turtle near Nema More as a result of which, Onkar Nath Thakur sustained grievous injury and died on the spot.

4. F.I.R. was instituted giving rise to Banka Barahat P.S. Case No.162 of 01 dated 3.6.2001 instituted under Sections 279, 337 and 304 A of IPC and after investigation, police found the allegation of rash and negligent driving by the driver to be true and submitted charge-sheet against the driver. In their claim petition, it was averred that deceased was doing business of paddy and his monthly income was Rs.2,000/- and he was 22 years old and was unmarried. The vehicle was insured with New India Assurance Company Limited and was valid on the date and time of accident. Claimants had filed claim case for grant of compensation of Rs.2,69,700/-.

5. Upon issuance of notices, opposite party

no.1(owner of the offending vehicle) and opposite party nos.3 and 4 (New India Assurance Company Limited) appeared, however, opposite party no.2 (driver of the offending vehicle) in spite of valid service of notice, did not appear and case proceeded *ex parte* against him.

6. Opposite party no.1(owner of the offending vehicle) filed his written statement in which he stated that the driver of the offending vehicle had a valid and effective driving licence at the time of accident and offending vehicle was insured by the New India Assurance Company Limited and policy was valid from 28.7.2000 to 27.7.2001 and as such on the date and time of accident the offending vehicle had valid insurance policy.

7. Opposite party nos.3 and 4 (New India Assurance Company Limited) filed their written statement in which it was stated that the offending vehicle was plying without fitness certificate, road permit, route permit and owner of the vehicle had violated the terms and conditions of policy of insurance as such, insurance company is not liable to indemnify the owner from payment of compensation amount. However, they admitted that on the date of accident, the offending vehicle was insured with them.

8. On the rival pleadings of the parties, the tribunal framed six issues for its consideration and determination.

9. In support of claim case, three witnesses have been examined on behalf of claimants among them witness no.2 and witness no.3 are eye witness of occurrence. Documentary evidences have also been produced which have been marked as exhibits by the tribunal. Ext. 1 is the genealogical table. Ext. 2 is certified copy of FIR. Ext. 3 is photocopy of postmortem report. Ext. 4 is photo copy of insurance policy.

10. Opposite party nos.3 and 4 (New India Insurance Company Limited) have not examined any witness but produced original investigator report which has been marked as Ext. A.

11. The claims tribunal has found that deceased died due to rash and negligent driving by the driver of the bus as such, claimants are entitled for compensation and has found the age of the deceased to be 22 years and on the date of accident, offending vehicle was having valid insurance policy.

12. The tribunal had further held that claimants have not produced and proved driving licence of opposite party no.2, road and route permit of offending vehicle but have only proved the insurance policy of offending vehicle. Insurance company has produced investigator's report as Ext. A dated 13.11.2007

from which it appears that the driving licence of driver was found to be fake but insurance of the vehicle is genuine and as such the claim tribunal has absolved opposite party nos.3 and 4 from payment of compensation amount and has found owner of the vehicle liable to pay the compensation amount.

13. The tribunal has assessed the monthly income of deceased as Rs.2,000/- per month and Rs.24,000/- to be annual income and has deducted 50% towards his personal and living expenses as deceased was unmarried and has given 50% of income for future prospect and has applied 17 as multiplier and under conventional heads has granted Rs.2,000/- for funeral expenses, Rs.25,000/- for loss of estate and has quantified the total compensation amount Rs.3,10,500/- and as Rs.50,000/- has already been paid as interim compensation from the insurance company, the claims tribunal has directed the owner of the offending vehicle to pay the compensation of Rs.2,60,500/- to the claimants with 6% rate of interest per annum from the date of filing of claim application till its realization.

14. Claimants / appellants have filed this case against the direction of claims tribunal for payment of compensation amount from the owner and not from the insurance company although the offending vehicle was insured at the time of

accident by the New India Assurance Company Limited on the ground that claimants have not able to prove that offending vehicle was plying with route permit, fitness certificate. Driving Licence was also found to be fake in the investigator's report marked as Ext. A produced on behalf of Insurance Company.

15. After hearing the counsel for the claimants, owner and insurance company, it is an admitted fact that on the date of accident the offending vehicle had a valid and effective insurance cover. The claims tribunal has absolved the insurance company from payment of compensation amount as it was not proved that offending vehicle was plying with valid permit and fitness certificate, being in violation of terms and conditions of insurance policy. The violation of terms and conditions of insurance policy is required to be proved before the tribunal after framing of such issues by the tribunal in which all the parties have opportunity to lead the evidence. The violation of terms and conditions of insurance policy is dispute between the insurer and insured, for which dependants of third party, who was killed in the accident, cannot be made to suffer otherwise it will defeat the very purpose and objective of enacting this beneficial legislation enacted to protect the interest of dependents of third party who died in motor accident and for

quick payment of compensation amount.

16. For the reasons as stated above, insurance company, opposite party nos.3 and 4 are directed to pay the compensation amount as directed by the tribunal with a liberty to realize it from the owner of offending vehicle.

17. Miscellaneous appeal is disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2019.
Transmission Date	NA