IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.361 of 2012

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Rajni Singh Widow of Late Abhishek Singh R/O Mohalla- Narialghat, Danapur, Patna-12, At Present Ambika Cold Storage, Nayagaon, P.S.- Nayagaon, District- Saran.

... ... Appellant/s

Versus

1. The Manager, Oriental insurance Company Ltd. Branch Office No. 6, CBO, South Of Gandhi Maidan, Patna, At Present Municipal Chowk, Chapra, Policy No. 8972, Cover Note No. 275192, Validity 30.12.2006 To 29.12.2007
2. Sri Subodh Kumar Singh S/O Randhir Prasad Singh R/O Road No. 6, Indrapuri, Patna, At Present Dumari Bujurg Via Sonepur, Saran, Pin-841217, Owner Of Br-1ap-5240 Sumo Victa.

... ... Respondent/s

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with

Miscellaneous Appeal No. 403 of 2012

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Sri Subodh Kumar Singh S/O Randhir Prasad Singh R/O Road No.6, Indrapuri, Patna , At Present Dumari Bujurg Via Sonepur, Saran, Pin-841217.

... ... Appellant/s

Versus

1. Rajni Singh Widow Of Late Abhishek Singh R/O Mohalla-Narialghat, Danapur, Patna-12, At Ambika Cold Storage, Nayagaon, P.S.-Nayagaon, Distt-Saran.
2. The Manager, Oriental Insurance Company Ltd. Branch Office No.6, CBO, South Of Gandhi Maidan, Patna, At Present Municipal Chowk, Chapra, Policy No. 8972, Cover Note No. 275192 validity 30.12.2006 to 29.12.2007.

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 361 of 2012)

For the Appellant/s	:	Mr.Mukesh Prasad Singh, Adv.
For the Respondent No. 2	:	Mr. Shambhu Sharan Singh, Adv
For the Respondent No. 1	:	Mr. Ashok Priyadarshi, Adv.

(In Miscellaneous Appeal No. 403 of 2012)

For the Appellant/s	:	Mr. Shambhu Sharan Singh, Adv.
For the Respondent No.1	:	Mr. Mukesh Prasad Singh, Adv.
For the Respondent No. 2	:	Mr. Ashok Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 24.09.2019

Heard the parties.

2. M.A. No. 361 of 2012 has been filed on behalf of claimant Rajni Singh against the judgment/Award dated 09.02.2012/ 23.02.2012 passed by 1st Additional District Judge cum-Motor Vehicle Accident Claim Tribunal, Saran in Claim Case No. 70 of 2008 by which the claims tribunal has absolved the Insurance Company to pay the compensation amount and has fastened the liability to pay the compensation amount on the owner of the offending vehicle whereas M.A. No. 403 of 2012 has been filed on behalf of owner of the offending vehicle to absolve him from payment of compensation amount as the vehicle was having a valid insurance on the date of accident and Insurance Company is liable to indemnify the owner from payment of compensation amount.

3. The claimant is widow of deceased Abhishek Singh who in her claim petition has stated that her husband Abhishek Singh alongwith his friends were going from Patna to Nayagaon riding on his Tata Safari and when the vehicle reached near the village Bharpura another vehicle Tata Sumo Victa bearing registration No. BR-1AP-5240 being driven in a rash and negligent manner by the driver of said vehicle dashed against the vehicle of husband of claimant, as a result of which he lost balance and collided with a pick up van and sustained

multiple injuries. He was taken to Rajeshwari nursing home at Patna where he was declared dead.

4. FIR was instituted on farbeyan of Praveen Kumar Singh giving rise to Sonepur P.S. Case No. 265 of 2007 instituted against the driver of Tata Sumo Victa BR-1AP-5240 and after investigation police found the allegation of rash and negligent driving by the driver of the vehicle to be true and submitted charge sheet against him.

5. Claimant claimed compensation of Rs. 39,80,832/- on the ground that deceased Abhishek Singh was having monthly income of Rs. 20,650/- and he was aged 29 years and the offending vehicle was insured by the Insurance Company.

6. On notice, opposite party No. 1 Oriental Insurance Company appeared and filed their written statement and has stated that deceased was also responsible for the accident. The deceased also contributed in the accident and at the time of accident, the driver was not possessing a valid and effective driving licence.

7. Opposite party No. 2 the owner of the offending vehicle also appeared and stated that the driver was possessing a valid driving licence at the time of accident and the offending

vehicle was under valid and effective Insurance policy, as such Oriental Insurance Company Ltd. is liable to pay the compensation amount.

8. On the rival pleadings, the claims tribunal framed five issues for its determination.

9. Altogether five witnesses have been examined in support of the claim case and documentary evidence were also produced which were marked as Exhibits by the claims tribunal. Exhibit-1 is income tax return, Exhibit-2 to 2/1 is photocopy of Audit reports, Exhibit-3 is balance sheet, Exhibit-4 is the certificate issued by Jagdamba oil mill, Exhibit-5 is Bank receipt of Union Bank of India, Exhibit-6 to 6/1 are photocopy of Challan, Exhibit-7 is the photocopy of Pan Card, Exhibit-8 is FIR, Exhibit-9 is charge sheet, Exhibit-10 is photocopy of Insurance Policy, Exhibit-11 is photocopy of postmortem report, Exhibit-12 is partnership deed, Exhibit-12/A is dealership application, Exhibit-13 is specimen signature, Exhibit-14 is partnership deed, Exhibit-15 is appointment letter.

10. One witness Raghavendra Kumar Singh has been examined on behalf of Oriental Insurance Company who has also produced two documents. Letter No. 559 dated 29.04.2010 of D.T.O. Chapra which has been marked as

Exhibit-A and investigator report of Oriental Insurance Company Ltd. which has been marked as Exhibit-B. No witness has been examined or any document produced on behalf of opposite party No. 2 owner of the offending vehicle.

11. The tribunal has held that due to rash and negligent driving by the driver of the vehicle, accident took place, resulting in death of husband of claimant. The tribunal has assessed the age of deceased as 29 years and annual income as 1,28,802/- and has deducted $1/3^{rd}$ towards his personal and living expenses and assessed annual loss of dependency to be Rs. 88,534/-. The age of deceased was 29 years and applied 16 as multiplier and has assessed the compensation to be Rs. 14,16,544/- and thereafter has granted additional compensation under conventional heads. Rs. 5000/- as funeral expenses, Rs. 5000/- as loss of estate and has quantified amount of compensation as Rs. 14,26,544/-

12. The tribunal has further held that at the time of accident the driver of the offending vehicle was not having a valid driving licence as per report of the investigator. (Exhibit-A) and same is in violation of terms and conditions of Insurance policy under Section 149(2) of the M.V. Act, as such owner is liable to pay the compensation amount and there is no liability

on the Insurance Company to indemnify the owner from payment of compensation amount.

13. After hearing the counsel for the claimant, owner of the offending vehicle and Insurance company and materials available on record, this Court finds that no issue was framed by the tribunal, whether the driver of the offending vehicle was having a valid and effective driving licence on the date and time of accident, as such, no opportunity to lead evidence was granted to the owner of the claimant to adduce evidence on said issue and only on the basis of investigator's report the claims tribunal has fastened the liability on the owner of the offending vehicle which is against the settled proposition of law and in written statement filed by the owner of the offending vehicle he has clearly stated that driver of the offending vehicle had a valid and effective driving licence on the date and time of accident, as such, owner cannot be made liable to pay the compensation amount and since the offending vehicle was insured by the Insurance Company it is liable to indemnify the owner of the offending vehicle from making payment of compensation amount.

14. Even, assuming the driver had no valid and effective licence on the date of accident the Insurance Company

has to establish that same was within the knowledge of owner of the offending vehicle and only then Insurance Company can be given liberty to pay and recover the amount from the owner of the offending vehicle.

15. Raghavendra Kumar Singh has been examined as witness on behalf of Insurance company and in his examination-in-Chief in form of affidavit he has stated that he was appointed by the Insurance Company to verify the driving licence No. 767/68 at present 60/96 and on verification from the D.T.O. office, Patna he found that driving licence No. 60//96 was valid from 20.08.1990 to 19.08.1993, 11.01.1996 to 10.01.1999 and 07.02.2008 to 06.02.2011. However, from the deposition of surveyor or his report it cannot be inferred that on the date of accident, the driver had no valid licence.

16. It has specifically been pleaded by the owner of vehicle that the driver Rajeshwar Pd. Yadav had a valid driving licence No. 767/68. However, the Insurance company has stated nothing in their written statement that on the date and time of accident the driver was not having valid driving licence. Insurance company has further stated in their written statement that driving licence of the driver has not been produced by the owner of the vehicle opposite party No. 2, as such adverse

inference may be drawn against him. However, from the perusal of W.S. filed on behalf of owner of the offending vehicle it appears that name and driving licence number of the driver of the offending vehicle has been given. It has been further stated that the owner of the offending vehicle was required to produce the road permit, fitness certificate, tax token, driving licence, Insurance certificate and registration document failing which it shall be presumed that there is statutory violation of policy condition as contemplated under Sections 147 and 149(2) of the M.V. Act.

17. After hearing the parties and considering the material available on record, it appears that at the time of accident the vehicle was insured with insurance company. However, the claims tribunal has fastened the liability on the owner of the offending vehicle for the reasons that there was violation of terms and conditions of policy as such insurance company is not liable to pay the compensation amount. The violation of terms and conditions is the dispute between the insurer and insured for which claimants cannot be made to suffer as such the order is modified to the extent that the insurance company will pay the compensation amount with liberty to realise same from the owner of the offending vehicle.

18. The Award of claims tribunal is modified to the extent that compensation amount as determined by claims tribunal is to be paid by the Insurance Company to the claimants within 60 days from date of receipt/production of a copy of order passed by this Court with a right of recovery from the owner of offending vehicle in a separate proceeding in which Insurance Company will have to establish that there was violation of terms and conditions of policy of Insurance which are fundamental in nature and same was within the knowledge of owner of the offending vehicle.

19. Let the L.C.R. be returned to the court below forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.12.2019
Transmission Date	N.A.