IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.209 of 2017

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Manager, The Oriental Insurance Company Ltd., Branch V.I.P. Road, Purab Bazar, Saharsa, Insurer of the Tractor No.BR 19A 6619, Opposite Party No.3 in the court below.

... ... Appellant/s/opposite party no.3 in the court below

Versus

1. Masomat Koshalaya Devi, Wife of Late Ramjee Ram, Resident of Village - Dhanseni, Tola Nabtolia, Panchayat Sulindabad, P.S. and District – Saharsa.
…………..claimants in the court below/respondents 1st set
2. Md. Shafique, Son of Md. Abul Hassan, resident of Village - Sulindabad, P.S. Sulindabad, District – Saharsa.
….Opposite party no.1 in the court below..
owner of the vehicle Tractor No. BR19A 6609/ Respondent 2nd set
3. Mohar Ray, Son of Mukho Ray, resident of Village - Amarpur, P.O. - Bhagwanpur, P.S. Sonbarsa Kachahari, District – Saharsa.
…………Opposite party no.2 in the court below
Driver of the vehicle Tractor No. BR 19A 6609/ Respondent 3rd set

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Barun Kumar Choudhary
For the Respondent/s : Mr. Sanjay Kumar
Mr.Rahul Nath

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 22-10-2019

Heard parties.

This appeal under Section 173 of M.V. Act has been filed by the appellant-Insurance Company against the judgment and award dated 18.08.2016/24.10.2016 passed in claim case no.11 of 2010 passed by District Judge, Saharsa-cum- Motor Accident Claim Tribunal, Saharsa by which appellant/insurance company has been directed to pay a compensation of Rs.3,74,500/- with interest @ 6% per annum to the claimants with a liberty to recover the amount from the owner of the offending vehicle.

Claimant who is widow of deceased has filed an application under Section 166 of the M.V. Act for grant of compensation of Rs.3,00,000/- on account of death of her husband in a motor accident. It has been stated in the claim application that on 19.05.2007 deceased Ramjee Ram, Md. Yunus and Biseshwar Sharma were riding on tractor No. BR 19A 6609 and driver of the tractor lost control and tractor turned turtle in which three persons including husband of the claimant sitting on said tractor died on the spot. It has been submitted that due to rash and negligent driving by driver of the offending tractor, the accident took place and deceased died in the said accident.

On the basis of fardebyan, Saharsa P.S. Case No.248/2007 dated 19.05.2007 was instituted under Sections 279 and 304A of Indian Penal Code against the driver of the offending vehicle and after investigation, the police found the allegations to be true and submitted charge-sheet against the driver of the offending vehicle.

The age of deceased was 37 years and he was earning Rs.4,500/- per month and claimants were fully dependant upon the deceased.

Upon notice, opposite party no.1, the owner of the offending vehicle and opposite party no.2, driver of the offending vehicle appeared and filed their joint written statement. Opposite party no.3/appellant / Oriental Insurance Company filed their separate written statement in which they have admitted that on the date of accident, the offending vehicle was insured with them. Opposite party no.1, owner of the offending vehicle in his written statement has stated that he had all the valid relevant paper to ply the vehicle on road and opposite party no.2, driver had valid and effective licence and was authorized to drive the vehicle. In their written statement filed on behalf of the opposite party no.3/appellant/Insurance Company, it has been stated that deceased was travelling on the said tractor as an unauthorized/gratuitous passenger at the material time as such insurance company is not liable to pay the compensation or indemnify the owner of the vehicle.

On the rival pleadings of the parties, the tribunal framed five issues for its determination.

The claims tribunal has held that due to rash and negligent driving by the driver of the offending vehicle, the accident took place as such, claimants are entitled for compensation. The tribunal has further held that driver of the offending vehicle had a valid and effective driving licence and he owned all the relevant papers to ply the tractor on public road. The tribunal has assessed monthly income of deceased to be Rs.3,000/- and his age as 37 years and has ascertained the compensation amount to be Rs.3,74,500/- to be paid by the insurance company to the claimants with interest @ 6% per annum from the date of filing of claim application till its payment.

Counsel for the appellant/insurance company has submitted that deceased was not a third party as such risk of deceased was not covered under the insurance policy as he was a gratuitous passenger on the tractor for which no premium was paid by the owner of the tractor as such it did not cover any risk or any liability with respect to such gratuitous passenger on the tractor.

Counsel for the respondents/claimants has relied upon a judgment of the Apex Court in the case of Shivaraj Versus Rajendra and Anr. reported in 2018 AIR (SC) 4252. Paragraph no.9 and 10 of the aforesaid judgment are extracted as under:-

> 9. The High Court, however, found in favour of Respondent No. 2 (insurer) that the Appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for

> agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the Appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (Respondent No. 2) was not liable for the loss or injuries suffered by the Appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.
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> 10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (Appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. v. Swarna Singh and Ors. (2004) 3 SCC 297, Mangla Ram v. Oriental Insurance Co. Ltd. (2018) 5 SCC 656, Rani and Ors. v. National Insurance Co. Ltd. and Ors. 2018 (9) SCALE 310 and including Manuara Khatun and Ors. v. Rajesh Kumar Singh And Ors. (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by the Respondent No. 2. The Appellant may, therefore, succeed in getting relief of direction to Respondent No. 2 Insurance Company to pay the compensation amount to the Appellant with liberty to recover the same from the tractor owner (Respondent No. 1).

For the reasons as stated above, this Court does not find any illegality or irregularity in the order passed by the claims tribunal as such the insurance company is directed to pay the compensation amount to the claimants as determined by the tribunal within 60 days from the date of receipt/production of a copy of this order passed by this Court with a liberty to recover the same from the owner of the offending vehicle.

Miscellaneous appeal filed on behalf of the insurance company is dismissed.

The statutory amount of Rs. 25,000/- deposited by the appellant- Insurance Company at the time of filing of appeal, be remitted to the claimants through electronic mode upon furnishing the details in the format to be provided by the Office to the learned counsel for the claimants, who shall fill the format and submit same in the Office so that amount could be transferred in the bank accounts of the claimants which shall be adjustable in the compensation amount.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2019
Transmission Date	NA