# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Miscellaneous Appeal No.133 of 2017**

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Branch Manager, The Oriental Insurance Company Ltd., at Singh Kutir, Municipal Chouwk, Chapra, P.O.-Chapra, District-Saran (Chapra), PIN-841301.

... ... Appellant/s

Versus

1. Dharmnath Parvat @ Dharma Parvat and Anr Son of Late Gorakhnath Parvat Resident of Village- Siari Mathia, P.S. Siwan Muff. District- Siwan.
2. Rakesh Parvat Son of Sri Jairam Parvat, Resident of Village- Chhap Mathiya P.O. Chaap Mathia, P.S. Mirganj, District Gopalganj.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr.Barun Kumar Choudhary, Advocate |
| For the Respondent/s | : | Mr. Vijay Bardhan Pandey, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**
**ORAL JUDGMENT**
**Date : 06-12-2022**

**1.** Heard learned counsel for the appellant and the respondent.

**2.** The present appeal is directed against the judgment dated 01.09.2016 and Award dated 28.11.2016 in M.V. Accident Claim Case No.20 of 2011 passed by the learned District Judge-cum-Chairman of Motor Vehicle Claim Tribunal, Siwan (henceforth for short 'the Tribunal') by which the direction was given for payment of Rs.2,06,200/- with 9% within a period of 30 days.

**3.** The matrix of facts giving rise to the present appeal is/are as follows:

**4.** On 25.07.2011, the claimant was riding a tempo and gone from Meerganj to Siwan and due to rash and negligent driving of the driver it hit the tree and turned down causing fracture on his left leg as also injuries on the right leg.

**5.** The tempo was having the registration no.BR-29-G-4660. Accordingly, the Siwan (Muffasil) P.S.240 of 2011 was lodged under Section 279, 337 of the Indian Penal Code.

**6.** The claimant was shifted to the Siwan Hospital whereafter he moved to a private hospital and remained under treatment for next three months and amount to the tune of about Rs.1,00,000/- was spent as medical expenses causing permanent disablement on his left leg.

**7.** The tempo in question was insured with the Oriental Insurance Company Ltd (the Insurance Company). Accordingly, the aforesaid case was preferred before 'the learned Tribunal'.

**8.** The Insurance Company appeared and stated that the case is fit to be dismissed as driver has not been made party. It was the further averment of the Insurance company that for the simple injury that the applicant-claimant has sustained, he is entitled to Rs.1000/- for non grievous injury and Rs.15,000/- for grievous injury.

**9.** The learned Tribunal framed issues:

(I) whether the claim petition has framed is maintainable or not?

(ii) whether the claimant Dharmanath Parwat became injured due to rash and negligent driving by the driver of Vikram Auto bearing Reg. No.Br-29-G-4660?

(iii) whether the claimant has sustained loss due to his accidental injury?

(iv) whether the Oriental Insurance Co. or owner of vehicle of driver of the offending vehicle is liable to pay compensation to claimant?

(v) To what relief, if any, claimant is entitled?

**Issue No.2**

**10.** The claimant put forward witnesses who supported the incident stating that due to rash and negligent driving of the tempo, it hit the tree and turn down resulting into injuries causing fracture on the left leg of the claimant and injuries on the right leg. He was immediately shifted to Sadar Hospital, Siwan and then to the Nursing Home of Dr. Khurshid Alam where he remained bed ridden for one and half year. The respondent Insurance company chose not to cross-examine him.

**11.** CW.2, Rajdeo stated that he was travelling on a bus and when he reached the Chitpur Mission, saw an auto rickshaw turned down and some injured person there. One of them was the claimant herein who was later shifted to Sadar Hospital and went to the Dr. Khursid Alam Nursing Home. He was having fracture and remained bed ridden. This witness was cross-examined by the Insurance company.

**12.** The respondent Insurance company on the other hand chose not to put forward any evidence either oral or documentary and as such ‘the Tribunal’ accepted the view presented by the claimant.

**13.** Accordingly, ‘the Tribunal’ held that the claimant sustained injuries due to the said accident. However, since there was no certificate of permanent disability it brought the same down to 30% disability due to fracture and injuries and further taking into account that being an agriculturist he may be earning three thousand rupees per month and following the Apex Court decision in the case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr.** reported in **2009(6) SCC 121** the amount was brought to Rs.3,24,000/- and after excluding 30% (Rs.97,200/-), it was calculated with further Rs.15,000/- as medical treatment plus Rs.9000/- as three month treatment and Rs.50,000/- as future expenses due to 30% disability.

**14.** Accordingly, the Tribunal held that the claimant is entitled to Rs.2,06,200/- with 9% interest from 15-02-2011 till the final payment is made. ‘The Tribunal’ further held that although the owner claimed that the driver was having valid driving license since no such paper was filed, the Insurance company will have the right to get the same recovered from the offending party.

**15.** Aggrieved by the said order, the present appeal has been filed. Learned counsel for the appellant submits that ‘the Tribunal’ ignored the settled law of medical disablement which can be only decided by a medical team of specialist doctors. It is his further submission that in absence of any medical treatment document, he ought not to have been compensated.

**16.** As such, he submits that the order passed by 'the learned Tribunal' is bad in law and fit to be set aside.

**17.** Learned counsel for the respondent on the other hand submits that although the claimant failed to provide the document, the fact remains that there is permanent disability inasmuch as his left leg still does not function normally and as such the minimum disability (30%) was taken by 'the learned Tribunal' and accordingly, a petty amount along with interest was granted and the Insurance company despite having not cross-examined the witnesses as also providing any document to counter the case has simply filed this appeal only to delay the payment despite the fact that the incident occurred in 2011.

**18.** Having gone through the facts of the case as also the order passed by 'the learned Tribunal', this Court is of the considered view that the fact that the accident took place and the claimant-respondent suffered injuries, was treated in Siwan Hospital as also in the Nursing Home of Dr. Khursid Alam were not countered by the Insurance company. Further, the fact remains that the vehicle was insured with the concerned Insurance company having valid Insurance policy and as such there was liability on his part to compensate the claimant.

**19.** As such, 'the learned Tribunal' rightly held the insurance company liable to make payment with further liberty granted to it to recover the same from the concerned owner in view of the fact that the driving license of the driver was not provided to the insurance company.

**20.** The compensation amount shall be released to the claimant within two months from today directly in the Bank account through RTGS process.

**21.** The M.A. No.133 of 2017 fails and is accordingly dismissed.

**(Rajiv Roy, J)**

Prakash Narayan

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 08.12.2022 |
| **Transmission Date** | NA |