IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.338 of 2015

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The New India Assurance Company Ltd, Pali Road Dehri-on-sone, District Rohtas (Sasaram) through its Chief Regional Manager, Regoinal Office, New India Assurance Co. Ltd. 6th Floor, B.S.F.C. Buildin, Fraser Road, Patna -1

... ... Appellant/s

Versus

1. Janardan Sharma son of Late Dhaneshwar Mistri
2. Dhanraj Devi wife of Sri Janardan Sharma Both residents of village - Tetariya, P.O. - Araura, P.S. - Deo, Dist. - Aurangabad.

Claimants/Respondent 1st Set

3. Sri Mundrika Prasad son of Sri Keshab Sah Resident of village - Shahpur Tikari Road, Aurangabad, P.O. P.S. and District - Aurangabad Bihar. Owner of the vehicle no. BR 26A/9516

Owner of the vehicle NO. BR26A/9516

4. Sri Birendra Prasad son of Sri Shiv Nandan Mahto Resident of Budhan Bigha, P.S. Daudnagar, Dist. - Aurangabad Bihar.

O.Ps No. 2 &3/Respondent 2nd Set

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Raj Kumar Singh Vikram, Advocate
For the Respondent/s	:	Mr. Ashok Kumar Singh, Advocate
		Mr. Abhishek Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 13-12-2022

Heard learned counsel for the appellant and the respondents.

I.A. No. 7830 of 2015

The aforesaid interlocutory application has been filed for condoning the delay of 93 days in filing the appeal.

2. Considering the averments made in the interlocutory application, the delay of 93 days in filing the appeal stands condoned.

3. The Interlocutory Application No. 7830 of 2016 is allowed.

M.A. No. 338 of 2015

1. The New India Assurance Company Limited (henceforth for short 'the New India') through its representative has challenged the order dated 11.11.2014 passed in M.V. Claim Case No. 35 of 2009/01/2014 passed by the Additional District Judge-Vth cum Motor Vehicle Accident Claim Tribunal, Aurangabad (henceforth for short 'the Tribunal') by which after holding that the claim is maintainable and Govind Sharma died on account of rash and negligent driving of the driver of the Vehicle No. No. 26A/9516 on 04.05.2009 on G.T. Road, which was insured with 'the New India' passed the following order :-

> *"The claim petition be and the same is allowed on contest against the opposite-parties, the New India Assurance Company Limited is directed to pay compensation amount of Rs. 4,43,300/- with simple interest @ 6% per annum from the date of filing of the claim petition. The payment shall be made by issuing A/C payee cheque payable in joint account of the Claimants and out of the compensation amount of Rs. 4,43,300/-, Rs. 3,00,000/- will*

> *be fixed deposited for three years in the joint name of both the claimants in the bank in which the claimants have their joint account and rest amount in the saving joint account of the claimants. However, if the claimants have any urgent need of money they can withdrew the amount of the fixed deposit within three years with the permission of the court, the insurance company is directed to pay the compensation amount within 60 days from the date of order, failing which the claimants would entitled to realise the amount through process of the court at the cost of insurance company".*

2. Aggrieved, the present appeal has been filed.

3. Learned counsel for the appellant fairly submits that it is not challenging the findings of 'the Tribunal'. Further, it is an admitted fact that although the vehicle was insured in the name of Mundrika Prasad, the road permit of the said bus was in the name of Amit Kumar Singh and as such, there was complete violation of the Insurance Policy for which the owner was liable to compensate.

4. Thus, learned counsel for the appellant submits that 'the New India' be given liberty to take steps for recovery of the amount from the owner of the vehicle for the alleged

violation of the Insurance Policy.

5. It goes without saying that when it is found that there has been clear violation of the Insurance policy by the owner of the vehicle concerned, the Insurance Company has every right to seek recovery of the amount which it has to pay to the victim.

6. With the aforesaid observation, this Court holds that the order dated 11.11.2014 passed in M.V. Claim Case No. 35 of 2009/01/2014 passed by the Additional District Judge-Vth cum Motor Vehicle Accident Claim Tribunal, Aurangabad needs no interference.

7. Learned counsel for the respondents submits that save and except Rs. 50,000, no further amount has been released.

8. 'The New India' is directed to release the entire amount to the Respondent-1st Set, namely, Janardan Sharma and Dhanraj Devi as directed by 'the Tribunal' within a period of 60 days (after deducting the *ad interim* amount of Rs. 50,000/-) into their bank account through RTGS process.

9. The appellant has all the right to take recourse under law of the land for recovery of the amount from the owner of the vehicle concerned, if there has been violation of the

Insurance policy.

10. The Statutory amount of Rs. 25,000/- deposited shall be returned to “the New India”.

11. With the aforesaid observation, the appeal stands disposed of.

(Rajiv Roy, J)

Jagdish/Neha-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	15.12.2022
Transmission Date	