IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.671 of 2021

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Branch Manager National Insurance co. Ltd. Kankarbagh Branch, Patna Through Branch Manager, National Insurance company Ltd. Branch Sasaram, P.O. and P.S.- Sasaram, Distt.- Rohtas (Insurer of offending jeep No.- BR 24P1112) at present represented through Regional Office National Insurance Company Ltd. R- Block, Patna, Bihar.

... ... Appellant/s

Versus

1. Kanchan Kumari @ Kanchan Dubey D/o Late Vishwanath Dubey R/o Village- Dilian Koath, P.S.- Dawath, District- Rohtas.
2. Vijay Kumar Singh S/o Kamala Prasad Singh R/o Village- Noawn, P.S.- Bikramganj, Distt.- Rohtas (Owner of offending Jeep No. BR24P1112).
3. Dadan Singh S/o Kesho Singh R/o Vill. Milki, P.S.- Dawath, Distt.- Rohtas (Owner of offending Jeep No. BR24P1112).

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Sanjay Kumar Bharti, Advocate
For the Respondent/s	:	Mr.Rajesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 05-12-2022

Heard learned counsel for the parties.

2. The case has been preferred against the order dated 25.2.2020 in M.V. Claim Case No. 109 of 2002 passed by learned Additional District Judge-V-cum-Presiding Officer, Motor Accident Claims Tribunal, Rohtas at Sasaram (henceforth for short 'the Tribunal') by which the claim of the Kanchan Kumari was allowed.

3. The facts relating to the case is/are as follows:-

4. The lady, Kanchan Kumari was travelling in a

Jeep bearing Registration no. BR-24-P-1112 from Bikram to Sasaram when it was hit by a truck near village Panar at Arrah-Sasaram Highways.

5. As per the allegation, it was rash and negligent driving on the part of the Jeep driver that led to the accident as a result whereof, two passengers died and the lady was seriously injured. This resulted into institution of Nokha P.S. Case No. 23 of 2021 under sections 279, 337, 338 and 304-A of the Indian Penal Code on 25.1.2021 against both the vehicles i.e. the truck bearing registration no. BR-B-0172 and the Jeep bearing registration no. BR-24P-1112.

6. The lady was taken to Primary Health Centre, Nokha. Thereafter, she was shifted to Mukhopadhaya Orthopaedics Centre, Saiadpur, Patna and heavy cost incurred in her treatment.

7. Later, claim was filed in which she narrated that she was trained in tailoring and embroidery and used to earn between 10,000-15000 thousand and due to accident and having suffered 72-75 disability, she is unable to carry out his work.

8. The Jeep was insured with the National Insurance Company at the time of accident.

9. The matter was contested whereafter 'the learned Tribunal' passed the following reasoned order as follows:

> *31. OP no. -1 is the insurance company which admittedly has issued a valid insurance policy of the offending vehicle. Thee is o evidence on behalf of the respondent No.1 to show that there was any violation of the rules and terms of policy by the OP no.2 and 3. Hence, I am of the opinion that OP No.1 being insurance company is liable to pay the compensation on behalf of OP no.2 and 3. No Interim award was paid to the injured.*
>
> *Since the offending Vehicle was duly insured, the OP no.1 (National Insurance Company Ltd.) is hereby directed to pay the compensation of Rs. 7,80,800/- (Rs Seven Lakh Eighty Thousand and Eight Hundred Only) within two months to the Claimant from*

the date of order, failing which the OP no.1 shall be liable to pay interest @ 9%PA from the date of order till realization. OP no.1 is directed under:-

a) Out of the total award amount of Rs. 7,80,800/- (Rs Seven lakh Eighty Thousand and Eight Hundred Only) OP no.1 is directed to keep the amount of Rs. 4,00,000/- in Fixed Deposit by way of FDR for the maturity period of five year with interest in the name of claimant.

b) The concerned bank is directed to release the remaining amount of Rs. 3,80,800/- along with interest in favour of claimant in her saving bank account after production of passbook of the bank account near the place of the residence with due endorsement that no debit card or *cheque book has been issued or debit card/cheque book has been cancelled (if issued).*

c) Withdrawal from the said Account shall be permitted to the claimant after due verification.

d) All the original FDRs shall be retained by the concerned bank. However, the statement containing the FDRs number, amount, date of maturity and maturity amount shall be furnished by the concerned bank to the claimant/beneficiary. On expiry of period of each FDR, the Bank shall automatically credit the maturity amount in Saving Account of beneficiary. The beneficiary shall intimate regarding her bank and account number for automatic credit of the maturity amount.

e) No loan, advance or premature discharge of the FDRs shall be permitted without permission of this tribunal.

f) The maturity amount of the FDRs alongwith interest thereon be transferred to the saving bank accounts of the beneficiary.

g) The liberty is given to the claimant/injured to approach this tribunal for release of further amount in event of any financial exigency.

10. Heard learned counsel for the appellant as also the other side.

11. Learned counsel for the appellant submits that 'the learned Tribunal' framed the following issues:

(i) whether the claim of compensation as alleged by the petitioner is maintainable?

(ii) whether any accident took place on dated 25.2.2001 by the rash and negligent driving of Jeep driver BR-24P-1112?

(iii) whether the petitioner sustained permanent disablement due to the accident?

(iv) whether the Jeep No. BR-24P1112 was insured with OP no.-1 the National Insurance Company Ltd?

(v) whether the policy was enforced at the time of accident?

(vi) whether the petitioner is entitled for compensation as stated in the petition or other wise?

12. Learned counsel for the appellant submits that in view of the fact that the accident took place with the truck, it was joint liability and as such the responsibility must have been put on the truck also. He thus submits that although the Insurance Company do not refute the fact that the accident took place, the Jeep was insured with its Company and as such he had the liability to pay, liberty should have been given to the Insurance Company to take appropriate steps under the law of land to fix the responsibility on the offending vehicle/truck

owner.

13. Having gone through the rival submissions, so far as the order passed by 'the learned Tribunal', Rohtas at Sasaram in M.V. Claim Case No. 109 of 2002 is concerned, this Court do not find any error in it as the same has been explained in a very appreciable manner and thus need no interference.

14. Thus, this Court does not find any merit in M.A. No. 671 of 2021 and the same is hereby dismissed.

15. So far as the submission of the Insurance Company that as the truck was also responsible for the accident, liberty be given to proceed against it, this Court holds that Insurance Company always have the remedy of taking appropriate steps in accordance with law for the redressal of its grievance.

16. After the order was passed, the learned counsel for the appellant submits that the matter is fixed before 'the learned Tribunal' for attachment of the property of the National Insurance Company due to non-payment and as such some relief may be granted in the I.A. No. 01 of 2022. He further undertakes that the Company will be providing the compensation amount alongwith the interest through RTGS process in the bank account by 12.12.2022.

I.A. No. 01 of 2022:

The aforesaid Interlocutory Application has been preferred for staying the operation of the order dated 24.11.2022 contained in Memo No. 1005 dated 25.11.2022 in Execution Case No. 02 of 2021.

In view of the fair submission made by the learned counsel for the appellant that the payment process shall be completed by 12.12.2022 through RTGS process in the bank account, the further proceeding in Execution Case No. 02 of 2021 is stayed till 12.12.2022.

If however, contrary to the undertaking given by the learned counsel for the appellant, the compensation amount is not released by 12.12.2022, 'the learned Tribunal' will be free to carry on the further proceeding effective 13.12.2022.

With the aforesaid observation, the I.A. No. 01 of 2022 is allowed.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2022
Transmission Date	NA