IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.473 of 2015
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The Branch Manager The New India Assurance Company Ltd.

... ... Appellant/s

Versus

1. Neelam Devi and Ors W/o Shatrudhan Bari
2. Shatrudhan Bari S/o Ram Sogarath Bari Both resident of Mohalla- Chunabhathi, Near Naka No.8, P.S.- LNMU, Dist- Darbhanga.
3. Yogendra Kumar Das S/o Lt Ram Kishun Das Resident of Mohalla- Hassan Chow, P.O.- Lalbagh, Dist- Darbhanga Owner
4. Surendra Yadav S/o Lt Sant Lal Yadav Resident of Village/PO- Gaunsaghat, P.S.- Sadar, Dist- Darbhanga Driver.

... ... Respondent/s
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Appearance :
For the Appellant/s : Mr.Durgesh Kumar Singh
For the Respondent/s : Mr.Gajendra Kumar Singh
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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
CAV ORDER

6 13-04-2023 This appeal has been preferred by the appellant, the New India Assurance Company Ltd. being aggrieved by the judgment dated 03.02.2015, which was corrected by the judgment dated 20.03.2015 and Award dated 24.03.2015, passed by ad hoc Additional District Judge-IV-cum M.V. Act, Darbhanga in M.V. Claim Case No. 42 of 2010, ('Neelam Devi and Anr Versus Yogendra Kumar Das and Ors,'), whereby the compensation has been allowed against the appellant, the Insurance Company.

The deceased Deepak Kumar, unmarried, aged about 20 years, son of the claimant, Neelam Devi and Shatrudhan Bari (respondent nos. 1 and 2), was going to attend the marriage party by the offending vehicle (pickup van), bearing registration no. BR-06-H-5693 on 09.05.2009. Due to rash and negligent driving of the driver in drunken state of mind, the accident took place resulting into his death.

The learned Tribunal found that the ill-fated vehicle was registered with the appellant, the Insurance Company and there was no violation of terms and conditions of the insurance policy. He allowed compensation to the claimants of Rs. 8, 20,000/- along with interest @ 8 per cent per annum, payable by the appellant from the date of filing of the claim petition.

The learned Tribunal, in operative portion of the order has mentioned that, "the Company will be entitled to recover the said amount from owner of the vehicle".

The learned counsel for the appellant, Mr. Durgesh Kumar Singh has submitted that the judgment and order passed by the learned Tribunal is suffering from errors apparently in the eye of law. The vehicle, in question, whereby the accident took place was not a passenger vehicle, rather it was goods carrier commercial vehicle. It has clearly been mentioned in the policy of insurance at the top that the vehicle is goods carrier commercial vehicle. The deceased was a gratuitous passenger, travelling in a goods carrier vehicle. It was a clear violation of terms and conditions of the insurance policy. As such, the Insurance Company (the appellant) is not liable for making compensation to the claimants. In support of his submission, he relied upon two decisions of this Court. The first is *M/s United India Insurance Company Ltd. Versus Most. Mangali Devi and Ors (Misc. Appeal No. 419 of 2013)*. The relevant portion of that decision is as follows:-

> "*On perusal of the manner in which the accident had occurred and narrated by the Appellate Tribunal in para 2 of the judgment and award in question goes to show that deceased Jai Shankar Goswami on 12.5.2004 while he was returning in the evening after attending the marriage of his uncle's doctor in a tractor trailer, the accident in question took place when the trailer turned turtle. Accordingly, from the detailed facts available on record, it is clear that the accident occurred due to the deceased travelling in the trailer of a tractor bearing Regn. No.11A/1282 and the trailer bearing Regn. No.11A 1831 and in view of the consistent view of the Hon'ble Supreme Court in various cases, considered and discussed in detail by the Patna High Court in M.A. No.453 of 2012 (The United*

India Insurance Company Limited vs. Biltan Sao @ Biltan Prasad & Ors.) decided on 16.10.2015 relying on various judgments of the Hon'ble Supreme Court wherein this principle has been reiterated, it is clear that when the deceased or the person concerned was travelling in a tractor trailer, the Insurance Company cannot be held liable for the same. In the case of Biltan Sao's case (supra) after considering all these aspects of the matter, identical award passed imposing liability on the Insurance Company has been quashed."

The second decision is *United India Insurance Company Ltd. Versus Biltan Sao @ Biltan Prasad,* respondent. Paragraph no. 28 of this judgment is being quoted hereinbelow:-

"*In such view of the matter, in the present case the tractor was insured for agricultural purpose, the victim was coming on the trailor of the tractor with brick for the construction of his building itself shows that the tractor was being used for commercial purposes and for that no extra premium was paid to the Insurance Company result is that the deceases was a gratuitous passenger*

> *inasmuch as the tractor owner by engaging the tractor in non-agricultural purpose itself violated the terms of the insurance policy will not liable the Insurance Company to indemnify the insurer".*

On the other hand, the learned counsel for the respondents no. 1 and 2 (claimants) Sri Shailendra Kumar has submitted that there was no specific averment on behalf of the appellant in its written statement that the vehicle in question was insured only for commercial purpose. In absence of specific pleading, he cannot take this plea for the first time at the appellate stage. He has submitted further that the deceased was not a gratuitous passenger, but he was a bona fide passenger and the vehicle whereby the accident took place was hired for consideration money.

From perusal of exhibit-5 which is policy of insurance it is apparent that ill-fated vehicle (pick-up van) was insured as goods carrier commercial vehicle. It was not a passenger vehicle as mentioned in the order of learned Tribunal, although, it is true that the Insurance Company in its written statement has not mentioned specifically that it was a goods carrier commercial vehicle but the policy of Insurance has been filed by the claimants themselves which shows that it was a goods carrier vehicle and was not a passenger vehicle. In these circumstances, even if, there is no specific pleading on behalf of the appellant, it cannot be assumed that the vehicle was a passenger vehicle. In the light of two decisions of this Court mentioned hereinabove, the Insurance Company (the appellant) is not liable for making compensation to the claimants.

From perusal of the record, it appears that the owner of the vehicle, who is respondent no. 3 appeared and filed vakalatnama but did not contest the award. From perusal of the lower courts record, it appears that respondent no. 3 was opposite party no. 1 in the lower court. The notice was served on him. Thereafter, he appeared but did not file his written statement. The order dated 10.01.2012, passed by the learned tribunal shows that the adjournment petition filed by the respondent no. 3 was rejected and the case was proceeded *ex parte* against him. As such, the owner of the vehicle though was appearing in lower court and in the present miscellaneous appeal also, did not contest the case.

Considering the above-mentioned facts and circumstances, I come to the conclusion that appellant is not liable to make compensation to the claimants, whereas the owner of the vehicle, respondent no. 3 is liable for making compensation. He is directed to make payment of the awarded compensation to the claimants within two months from this order, failing which the claimants (respondent nos. 1 and 2) would be entitled to get the compensation amount be realized by process of law.

With these observations, this miscellaneous appeal is disposed of.

(Nawneet Kumar Pandey, J)

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