IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.269 of 2021

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United India Insurance Company Limited, through Divisional Manager (D.O.I.), Times of India Building, Frazer Road, Patna.

... ... Appellant/s

Versus

1. Bikki Kumari, Wife of Late Sanjay Pandey, resident of Village-Rajkharsa, P.S. Mehendiya, District-Arwal.
2. Rajmani Devi, Wife of Dinesh Pandey, resident of Village-Rajkharsa, P.S. Mehendiya, District-Arwal.
3. Dinesh Pandey, son of Late Ram Lakhan Pandey, resident of Village-Rajkharsa, P.S. Mehendiya, District-Arwal.
4. Samridhi Pandey, Daughter of Sanjay Pandey, resident of Village-Rajkharsa, P.S. Mehendiya, District-Arwal.
5. Rajendra Rai, son of Ramekbal Rai, Resident of Village-Farhada, P.S. Dighwara, District-Saran (Driver of the offending Mini Bus bearing Registration No. BR1D5011).
6. Sujit Kumar, son of Mithilesh Kumar Pandey, Resident of LIG H10, Kankarbagh, Patna. (Owner of the offending Mini Bus bearing Registration No. BR1D5011).

... ... Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Mritunjay Kumar, Advocate
For the Respondent/s	:	Mr. Kameshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date: 10-07-2025

Heard Mr. Mritunjay Kumar, learned counsel for the appellant and Mr. Kameshwar Singh, learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed against the judgment dated 13.10.2020 passed by the Learned MACT-cum-Additional District and Session Judge-XII, Patna in Claim Case No. 414 of 2018 whereby the appellant is directed to pay Rs. 56,91,080/- with interest of 6% per annum from the date of institution of the claim petition excluding paid amount under Section 140 of M.V. Act within 2 months.

3. Learned counsel submits that the impugned judgment/award is bad in the eye of law and also bad in the present facts and circumstances of the case. The impugned judgment is against the established law. He also submitted that the appellant i.e., UIICL being insurer, has been directed by the MACT to pay compensation amount, i.e. Rs. 56,91,080/- along with 6% simple interest from date of the institution of the case within two months from receiving/production of copy of the order dated 13.10.2020 to claimants. Further direction has been given to the Appellant/OP No.3 UIICL to recover the awarded amount from Respondent Nos. 5 and 6 in the present appeal who are respondent 2nd Set/OP Nos. 1 and 2 i.e. driver and owner of Mini Bus in accordance with law.

4. He further submitted that the appellant filed this appeal inter alia primarily and fundamentally on the ground that Learned MACT has given liberty to the Appellant/OP No.3 i.e., UIICL to recover the awarded amount from Respondent Nos. 5 and 6 in the present appeal who are respondent 2nd Set/OP Nos. 1 and 2 i.e. driver and owner of Mini Bus in accordance with law which is contrary to the well settled principle of law by the Hon'ble Supreme Court in cases of ***M/S. National Insurance Co. Ltd vs Baljit Kaur And Ors*** reported in ***(2004) 2 SCC 1*** and ***Oriental Insurance Co. Ltd vs Shri Nanjappan And Ors*** reported in ***(2004) 13 SCC 224***. In both the cases it has specifically been held by the Hon'ble Supreme Court that for the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer.

5. It is further contended that the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.

6. Learned counsel submitted that the MACT without taking into consideration the facts and circumstances and material available on record in true and correct legal perspective decided Issue No. VII in two parts against the appellant in as much on one hand in paragraph no. 26 of the impugned judgment accepted the submission of the appellant but on another hand not adjudicated the same and hold therein that appellant is liable to pay the compensation amount to the claimants and liberty given to the appellant to recover the same under due process of law.

7. Lastly, he submitted that as such in view of the aforesaid submission the impugned order may be set aside to the extent to recover the awarded amount from Respondent Nos. 5 and 6 in the present appeal who are respondent 2nd Set/OP Nos. 1 and 2 i.e. driver and owner of Mini Bus in accordance with law. Further for the purpose of recovering the same from the insured Respondent Nos. 5 and 6 in the present appeal who are respondent 2nd Set/OP Nos. 1 and 2 i.e. driver and owner of Mini Bus respectively, the insurer i.e., the appellant may not be directed to file a suit. The Appellant may be given liberty to initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

8. He further relied on the judgment rendered by the Hon'ble Supreme Court in;

i. M/S. National Insurance Co. Ltd vs Baljit Kaur & Ors. (2004) 2 SCC 1. (Para 21 of Judgment):

> *"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been*

overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub- served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding."

ii. Oriental Insurance Co. Ltd vs Shri Nanjappan & Ors. (2004) 13 SCC 224 (Para 8 of Judgment:

"Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants

within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

9. The learned counsel for the respondents submitted that he has no objection on the point of right of recovery and the appellant is entitled to recover the compensation from the owner of the vehicle.

10. Having heard learned counsel for both the parties and considering the law established by Hon’ble Apex Court in this regard, for the purpose of recovering the compensation from the insured i.e., Respondent Nos. 5 and 6 in the present appeal who are respondent 2^{nd} Set/OP Nos. 1 and 2 i.e. driver and owner of Mini Bus respectively, the appellant/ Insurance Company is not required to file a suit and recover the same from the insured by initiating a proceeding before the executive court without being required to file a separate suit. The Appellant has liberty to initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal.

11. Accordingly, this appeal stands disposed off.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	N/A
CAV DATE	N/A
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