IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1040 of 2018

==

Regional Manager, Oriental Insurance Company Limited, Near Uma Cinema, Peermohani, Kadam Kuan, Patna, Appeal and Appellant through the Asst. Manager & Duly Constituted Attorney/Authorized Signatory, Regional Office, The Oriental Insurance Company Limited, Primuhani, Patna.

... ... Appellant

Versus

1. Rita Devi, W/o Lt. Asharfi Ray, Resident of Village- Ganjpur, (Ram Nagar Karari), P.S.- Athmal Gola, Dist- Patna.

2.1. Pannalal Ray, S/o Late Deo Narayan Ray, Resident of Village - Ganjpar, (Ram Nagar Karari), P.S. - Athmal Gola, Dist. Patna.

2.2. Munni Devi, D/o Deo Narayan Ray, Resident of Village - Ganjpar, (Ram Nagar Karari), P.S. - Athmal Gola, Dist. Patna.

2.3. Lalita Devi, D/o Late Deo Narayan Ray, Resident of Village - Ganjpar, (Ram Nagar Karari), P.S. - Athmal Gola, Dist. Patna.

2.4. Pinku Devi, D/o Late Deo Narayan Ray, Resident of Village - Ganjpar, (Ram Nagar Karari), P.S. - Athmal Gola, Dist. Patna.

3. Soni Kumari, D/o Lt. Asharfi Ray Resident of Village- Ganjpur, (Ram Nagar Karari), P.S.- Athmal Gola, Dist- Patna.

4. Puja Kumari, D/o Lt. Asharfi Ray Resident of Village- Ganjpur, (Ram Nagar Karari), P.S.- Athmal Gola, Dist- Patna.

5. Sonu Kumar, S/o Lt. Asharfi Ray Resident of Village- Ganjpur, (Ram Nagar Karari), P.S.- Athmal Gola, Dist- Patna.

6. Babloo Kumar, S/o Lt. Asharfi Ray Resident of Village- Ganjpur, (Ram Nagar Karari), P.S.- Athmal Gola, Dist- Patna.

7. Dabloo Kumar, S/o Lt. Asharfi Ray Resident of Village- Ganjpur, (Ram Nagar Karari), P.S.- Athmal Gola, Dist- Patna.

8. Kalyan Ray, S/o Lt. Ram Chandra Ray, Resident of Village- Khirodharpur, P.S.- Khusroopur, Dist- Patna. (Driver)

9. M/s Vikramshila Auto Mobile, R/o Hasdiha Road, Near Teresa School, Aliganj, Bhagalpur, Bihar.

... ... Respondents

==

Appearance :

For the Appellant	:	Mr. Durgesh Kumar Singh, Advocate Mr. Abhijeet Kumar Singh, Advocate
For the Respondent Nos. 1 to 7	:	Mr. Kameshwar Singh, Advocate
For the Respondent No. 8	:	None.
For the Respondent No. 9	:	None.

==

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 16-12-2025

The present miscellaneous appeal under Section 173 of the Motor Vehicle Act has been preferred against the impugned judgment/Award dated 22.09.2017, passed by Additional District and Sessions Judge-VIII-cum-Motor Accident Claims Tribunal, Patna, in Claim Case No. 3349 of 2014, whereby learned Tribunal has directed the Insurance Company, who is Appellant herein, to pay Rs.7,32,000/- to the claimants, who are Respondent Nos. 1 to 7, towards compensation with interest @ 7% *per annum*.

2. The factual background of the case is that the Claim Case bearing No. 3349 of 2014 was filed against the driver, owner and Insurance Company of the offending vehicle bearing Registration No. BHR-1AS-2166. The claimants are wife, mother, sons and daughters of the deceased/Ashrafi Rai.

3. As per the claim petition, the deceased/Asharfi Ray was coming to home from Barh in a tempo on 31.01.2014 along with his relatives. When the Tempo reached near village - Dahaur, one Pick Up Van bearing Registration No. BHR-1AS-2166, being driven rashly and negligently, hit the Tempo, resulting into grievous injury to Asharfi Ray, who died in course of the treatment. Subsequently, Barh P.S. Case No. 36 of 2014 was lodged against the driver of the Pick Up Van and after investigation, charge-sheet was also filed against the driver. At the time of the accident, the Pick Up Van was insured by Oriental Insurance Company, who is Appellant herein.

4. Despite notice, the driver and owner of the vehicle, who were O.P. Nos. 1 and 2 before the Tribunal, did not appear before the Tribunal and hence, they were proceeded *ex-parte*.

5. However, the Insurance Company appeared before the Tribunal and filed its written statement contesting the claim petition of the claimants. However, Insurance Company has not denied that the offending vehicle in question, as claimed by the claimants, was insured by it. However, Insurance Company has pleaded that the claimants had not valid cause of action, that the claim petition was barred by principle of estoppel, waiver and acquiescence, that the claim petition was bad for mis-joinder and non-joinder of the necessary party, that the deceased himself was guilty and he was driving the said Tempo without having driving license, that the age, income and health condition of the deceased was not admitted, that the claimed compensation was excessive, that the driver of the Pick Up Van was not having driving license and there was no valid permit to the Pick Up Van at the time of the accident and hence, it is the driver and owner of the Pick Up Van who are liable to pay the compensation.

6. As per the pleadings of the parties, the following issues were framed by learned Tribunal :

> (i) Whether the claim petition was maintainable?
> (ii) Whether Asharfi Ray died on 30.01.2014 on account of negligent driving of Pick Up Van bearing Registration No. BHR-1AS-2166?
> (iii) What was the monthly income of the deceased?
> (iv) Whether the Opposite Parties are liable to pay compensation to the claimants?
> (v) Whether the Insurance Company has right to recovery?
> (vi) Whether the claimants are entitled to get compensation?

7. In course of the trial, two witnesses were examined in support of the claimants, namely, Rita Devi as C.W.-1, who is wife of the deceased/Asharfi Ray, and Dhiraj Kumar as C.W.-2, who was an eye-witness to the accident.

8. Following documents were also exhibited in support of the claim petition: **Ext.1**- F.I.R. of Barh P.S. Case No. 36 of 2014, **Ext.2**- charge-sheet, **Ext. 3**- postmortem report and **Ext.4**- Insurance Policy.

9. However, no witness has been examined on behalf of the Insurance Company, nor any document was brought on record in support of its written statement.

10. C.W. 1 - Rita Devi, in her examination-in-chief has supported the claim petition. In her cross-examination by

Insurance Company, she has deposed that the deceased was a driver and he had driving license. However, she does not know the age of her husband, nor she filed any document in support of his age. She has also not filed any document in support of his income. She has also deposed that she has no knowledge about the insurance.

11. C.W. 2 - Dhiraj Kumar, in his examination-in-chief has also supported the claim petition. He is an eye-witness to the accident. He has deposed that he was in the same Tempo which met with the accident, which resulted into death of Asharfi Ray. The offending Pick Up Van was seized by the local people after the accident and he took the injured- Asharfi Ray to hospital, where he died in course of treatment. His post-mortem was conducted at Barh hospital. He has also deposed that Asharfi Ray was driver and earning Rs.5,000/- per month. In his cross-examination by the Insurance Company, he has deposed that deceased/Asharfi Ray was his brother-in-law. He has also deposed that at the time of accident, he was in the same Pick Up Van. He has also deposed that the Registration Number of the vehicle was BHR-1AS-2166.

12. From perusal of the Insurance Policy, which is Ext.4, the insurance of the offending vehicle was Goods

Carrying Package Policy, valid from 30.01.2014 to 29.01.2015. As such, the date of the incident i.e. 31.01.2014 is covered.

13. As per post-mortem report, age of the deceased-Asharfi Ray was assessed to be 45 years and there were multiple injuries found on the person of the deceased and cause of death was held to be shock and haemorrhage.

14. I heard learned counsel for the Appellant and learned counsel for the Respondent Nos. 1 to 7, but nobody appeared on behalf of Respondent No. 8/Driver of the offending vehicle and Respondent No.9/owner of the offending vehicle despite valid service of notice.

15. Learned counsel for the Appellant submits that the alleged vehicle in question bearing registration No. BHR-1AS-2166 was not involved in the alleged accident because even in the written report filed by the informant it was stated that pick-up van, without carrying any registration number, had hit the tempo wherein the deceased was traveling. To substantiate his submission, he further submits that the FIR was lodged against pick up van bearing no registration No. Seizure of the vehicle is also not mentioned in the Police investigation. He also submits that in the claim petition or in the evidence adduced on behalf of the Claimants, there is no reference to Chassis number and

Engine number. Only registration number has been given in the claim petition. In regard to insurance, it has been stated that the vehicle was registered by Oriental Insurance Company who is Appellant herein, but the number of the Insurance Policy is not given. As such, learned counsel for the Appellant submits that it was the case of hit and run and the vehicle in question was not involved in the alleged offence.

16. However, learned counsel for the respondent Nos. 1 to 7 vehemently supports the impugned judgment/award passed by learned Tribunal submitting that there is no illegality or infirmity in it. To substantiate his submission, he further submits that whatever submission is being made by the Appellant before this Appellate Court, no such pleadings was made by the Appellant/Insurance Company before learned Tribunal. In the claim petition, the registration number of the vehicle has been clearly stated and it has been deposed by the witnesses examined in support of the claim petition that the vehicle was involved in the accident which resulted into death of the deceased/Asharfi Ray. It is true that in the FIR and written report, the registration number of the vehicle was not mentioned because at that time it was not carrying any registration number, but the Insurance Policy which is already on record and marked as Ext.4, clearly shows that the vehicle was new and Vikramshila Automobiles Pvt. Ltd. was owner of the vehicle and as per certificate of Temporary Registration which is already on record, though not exhibited, clearly shows that the vehicle bearing Chassis No. MAT524005DRP10865 and Engine No. 497SPTC43PWY662798 bears temporary registration No. BHR-1-AS-2166. The same chassis number has also been mentioned in the Insurance Policy issued on 30.01.2014 which was valid upto 29.01.2015 covering the date of accident on 31.01.2014. However, there is slight difference with regard to Engine number. Last two digits of the Engine number as mentioned in the Insurance Policy are 87, whereas in the temporary registration number, the last two digits are 98 which is human error committed by the concerned dealing clerk.

17. He further submits that in the written statement, Insurance Company, who is Appellant herein, has never challenged the Insurance Policy by specifically denying it, nor any evidence has been adduced on behalf of the Insurance Company before the Tribunal to disprove Insurance Policy which is Ext.-4. Even the witnesses were not examined on the point of non involvement of the offending vehicle and Insurance Policy.

Points For Determination

18. In view of the rival submission of the parties, the only point which arises for determination by this Court is whether pick up van bearing registration No. BHR-1AS-2166 was involved in the Motor Accident resulting into death of the deceased/Asharfi Roy and the said vehicle was insured by the Appellant/Insurance Company.

Consideration

19. I considered the submissions advanced by both the parties and perused the material on record.

20. As per pleadings of the Claimants/Respondent Nos. 1 to 7 and their evidence, it clearly transpires that the deceased/Asharfi Roy was travelling in the Tempo along with his relatives, including C.W.-2, Dhiraj Kumar, which was hit by pick-up van bearing registration No. BHR-1AS-2166, coming from the opposite side which resulted into serious injury to Asharfi Roy who ultimately died in course of treatment.

21. I also find that at the time of accident, the pick-up van was not bearing registration number. It appears that it had been just plying on the road coming out from the Show-Room after temporary Registration and Insurance of the vehicle. I also find that as per pleadings and evidence of the Claimants on record, it is found that after accident, the pick-up van was intercepted by the local people and seized by the Police and FIR was lodged against driver of Pick Up Van without carrying any registration number. After investigation, charge-sheet was submitted against the driver of the Pick Up Van bearing registration No. BHR-1AS-2166. Insurance Policy of the said vehicle is also on record as Ext.-4.

22. As such, I find that the Claimants have discharged their onus to prove the involvement of the vehicle and the insurance of the same by the Insurance Company who is Appellant herein. Thereafter, it was for Insurance Company to rebut such evidence adduced on behalf of the Claimants who are respondent Nos. 1 to 7 herein, but Insurance Company has not even taken such plea in the written statement in regard to the non-involvement of the vehicle and non-insurance of the vehicle by it, nor even Claimants' witnesses have been cross-examined on this point by the Appellant/Insurance Company. In fact, the Appellant should have not only made pleadings to such effect, but even some official witnesses were required to be examined on such points, including even Police Officers, if required. But nothing of the sort has been done by the Insurance Company during trial before learned Tribunal. At this stage, raising new facts and circumstances can not be permitted.

23. Hence, I find that there is no illegality or infirmity in the impugned judgment/award.

24. Accordingly, the Appeal is dismissed directing the Appellant to pay compensation amount in terms of the impugned judgment/award within two months, failing which, the Appellant/Insurance Company will be liable to pay penal interest @ 12%. The Statutory amount of Rs. 25,000/- deposited by the Appellant be returned to the Appellant.

25. The record of the Tribunal be sent back forthwith.

(Jitendra Kumar, J.)

Chandan/Ravish
ankar

AFR/NAFR	A.F.R.
CAV DATE	02.12.2025
Uploading Date	16.12.2025.
Transmission Date	16.12.2025.