IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.953 of 2017

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New India Assurance Company Ltd., Divisional Office, Nagmatia Road, Gaya.

... ... Appellant

Versus

1. Kiran Devi, Wife of Late Kedar Singh
2. Anita Kumari, age 12 years,
3. Vinay Prakash , age 7 years,
4. Neha Kumari, age 3 years,
5. Khusbu, age 2 years,
   (2 to 5 are minor son and minor daughters of Late Kedar Singh, through their mother and natural guardian, Kiran Devi, Respondent No.1)
6. Raghunandan Singh,
7. Smt. Vaitarni Devi,
   (6 and 7 are father and mother of Late Kedar Singh),
   All 1 to 7 are residents of Village- Biti Bigha, Thana- Sherghati, District- Gaya.
8. Brijraj Singh, Son of Roop Narain Singh, Resident of Bharathipur, Thana- Tarwan, District- Azamgarh U.P. Owner of Truck No.- UP- 50F-0696.

... ... Respondents

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Appearance :

For the Appellant : Mr. Vikash Chandra Srivastava, Advocate
For the Respondents : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

Date : 18-11-2025

The present Miscellaneous Appeal has been preferred against the impugned judgment/award dated 04.08.2016 and the Review order dated 29.06.2017, passed by learned Motor Accident Claim Tribunal-cum-Additional District and Sessions Judge-IV, Gaya in Motor Accident Claim Case No. 30 of 2001 (130 of 2011).

2. The factual background of this case is that seven Claimants, who are Respondent Nos. 1 to 7 herein, filed M.A.C.T Case No. 30 of 2001 against the Insurance Company, who is the Appellant herein and one Brij Raj Singh, owner of the truck bearing registration no. UP-50F-0696, claiming that they are entitled to get more than Rs.10,00,000/- as compensation on account of death of Kedar Singh in the Motor Accident, involving the truck bearing registration no. UP-50F-0696, which had taken place at *Kusha mor* of Dobhi police station in front of Siddharth Engineering Workshop in the district of Gaya on 11.12.2000 on account of rash and negligent driving by the driver of the truck. The deceased, Kedar Singh received serious injuries on account of the said accident and was sent to A.N.M.C.H, Gaya and a private nursing home for his treatment. He was also sent to Patna for further treatment. But in course of the treatment, he died. However, the last rites of the dead body of the deceased was performed without any conduct of postmortem. It is further stated by the Claimants in the claim petition that the deceased had monthly income of Rs. 6,000/- from Swaraj Tractor Agency/Distributorship, Gaya. The Claimant No.1 was the wife of the deceased, Claimant Nos.2 to 5 were the minor children of the deceased, whereas the

Claimant Nos.6 & 7 were parents of the deceased and the age of the deceased at the time of the death was 35 years.

3. On notice, the Insurance Company appeared and filed its written statement contesting the claim petition of the Claimants. It filed its written statement on 14.09.2001 and again additional written statement on 09.01.2008.

4. Vide order dated 3.9.2008, learned Tribunal had also allowed the application of the Insurance Company under Section 170 of the Motor Vehicles Act giving permission to it to contest the claim petition.

5. However, the owner of the vehicle did not appear and hence, he was proceeded *ex parte*.

6. On the basis of the pleadings of the parties, the following issues were framed : (i) Whether the claim petition was maintainable, (ii) Whether the claimants had cause of action to file the claim petition, (iii) Whether there was accident occurred at 10:30 AM on 11.12.2000 on the G.T. Road near the Dobhi Kusha mor involving the truck bearing registration no. UP-50F-0696 on account of rash and negligent driving, dashing the deceased, Kedar Sing & whether the deceased died in course of treatment on 17.12.2000 in Rajeshwar Hospital, Patna, (iv) Whether the monthly income of the deceased, Kedar Singh was

Rs.6,000/- and he was 35 years of age at the of time his death, (vi) Whether the driver of the vehicle bearing registration no. UP-50F-0696 was holding a valid driving license, (vi) Whether the offending vehicle was insured by the O.P. No.1, Insurance Company, (vii) Whether the Claimants were entitled to get compensation and if yes, then what amount and from whom and (viii) Whether the Claimants are entitled to get any other relief.

7. During the trial, on behalf of the Claimants, altogether three witnesses were examined, namely, A.W.1- Md. Yunus, A.W.2- Ramji Prasad and A.W.3- Kiran Devi, wife of the deceased.

8. The claimants have brought on record the following documentary evidence:

(i) Ext. 1- FIR of Sherghati (Dobhi) P.S. Case No. 195 of 2000

(ii) Ext.2- Death Certificate

(iii) Ext.3.- Owner book

(iv) Ext.4.- Photostat copy of the charge-sheet

(v) Ext.5.- Photostat copy of the Insurance Policy

9. However, no evidence was adduced on behalf of the O.P. No.2, the Insurance Company, who is the Appellant herein.

10. After trial, learned Tribunal came to the conclusion that the accident had taken place at 10:30 AM on 11.12.2000 near Kusha Mor Dobhi involving the truck bearing registration no. UP-50F-0696 on account of rash and negligent driving of the driver dashing Kedar Singh and causing serious injuries and in course of the treatment at Rajewshwar Hospital, Patna, the injured died. Learned Tribunal also came to the finding that the deceased was 35 years of age at the time of his death. It was further found that the monthly income of the deceased was Rs.3,926/-. Learned Tribunal also found that no driving license of the driver was brought on record. However, the offending vehicle was found to be insured by the Insurance Company, who is the Appellant herein at the relevant time of the accident. It was also found by learned Tribunal that the claim petition was maintainable and the Claimants had cause of action to file the claim petition. Learned Tribunal also came to the conclusion that towards their compensation, the Claimants are entitled to get total compensation amount of Rs. 9,29,608/- with the interest @ 8 per cent from 01.01.2015. Out of this total compensation, Rs. 9,04,608/- was granted towards loss of dependency, whereas Rs. 25,000/- was granted towards loss of estate, funeral expenses and other expenses.

11. Subsequently, on the review application dated 16.09.2016, learned Tribunal has passed the review order dated 29.06.2017, whereby learned Tribunal has reduced the total compensation amount from Rs. 9,29,608 to Rs. 3,86,104/-.

12. I heard learned counsel for the Appellant and learned Counsel for the Respondent Nos.1 to 7. However, nobody is present on behalf of Respondent No. 8, despite valid service of notice.

13. Learned counsel for the Appellant submits that the impugned judgment/award is not sustainable in the eye of law. However, the Appellant is aggrieved not by the quantum of compensation, but by the direction of learned Tribunal to the Appellant to pay the compensation amount to the Claimants who are Respondent No.1 to 7 herein.

14. To substantiate his submission, he submits that by way of additional written statement, the Appellant/Insurance Company has pleaded that the vehicle was not insured by the Appellant, and the insurance cover note filed on record is fake. However, this fact has not been taken into consideration by learned Tribunal. Even in review petition, this fact was brought to the notice of the Tribunal but learned Tribunal again did not consider this point while considering the review petition.

15. However, learned counsel for the Respondent Nos.1 to 7 submits that there is no illegality or infirmity in the impugned judgment/award. He submits that the Appellant/ Insurance Company, in its first written statement, has not pleaded that the Insurance Cover Note filed on record, is fake, nor any evidence has been adduced by the Insurance Company in support of its claim that the insurance cover note filed on record is fake. On the other hand, the insurance of the offending vehicle by the Appellant/Insurance Company is proved by the evidence of the Claimants. In this regard, he refers to the evidence of A.W.-3, Kiran Devi, the wife of the deceased, who has deposed in her examination-in-chief that the photostat copy of the insurance cover note has been filed in the Sherghati Dobghi P.S. Case No. 195 of 2000 by the police which was registered subsequent to the motor accident involving the offending vehicle bearing registration no. UP-50F-0696, causing death of the deceased, Kedar Singh, whose legal representatives have filed the present claim case for compensation on account of the death of Kedar Singh in the said motor accident.

Points For Determination

16. In view of the pleadings of the parties and evidence on record, it is not disputed that Kedar Singh met with motor accident on 11.12.2000 at Kusha Mor of Dobhi police station in the District of Gaya, involving the truck bearing registration no. UP-50F-0696 and receiving serious injuries and died on account of such injuries. However, it is disputed by the Appellant/Insurance Company that the offending vehicle was insured by it. It is claimed by the Appellant/Insurance Company that the insurance policy produced on record is fake, and hence, the Appellant is not liable to indemnify the owner of the vehicle. Hence, the only point which arises for determination by this Court is whether the offending truck bearing registration no. UP-50F-0696 was insured by the Appellant/Insurance Company.

<u>Consideration</u>

17. From perusal of the record of the Motor Accident Claim Tribunal, it transpires that the Insurance Company, in its first written statement, has not raised any objection in regard to the insurance policy being fake. Hence, no issue was framed in regard to fake insurance policy. The issue was framed on 13.01.2004.

18. I further find that additional written statement was filed by the Insurance Company on 09.01.2008 when the matter was at the stage of evidence, but I find that there is no application on behalf the Insurance Company for framing of additional issues in regard to fake policy.

19. I further find that the Insurance Company has not adduced any evidence, whatsoever, nor any witness has been examined, nor any documentary evidence has been brought on record by the Insurance Company/Appellant.

20. I further find that even in the cross-examination of the three witnesses, examined on behalf of the claimants, there was no question put on behalf of the Insurance Company regarding fake insurance policy. On the other hand, I find that Kiran Devi, the wife of the deceased, who has been examined as A.W.-3 on behalf of the claimant, has clearly deposed that she had received the photostat copy of the insurance policy in question from Sherghati (Dobhi) Police Station and the same has been filed by her on record of this case and the insurance policy has been filed in Sherghati (Dobhi) Police Station Case No. 195 of 2000, which was registered subsequent to the motor accident involving the offending truck bearing registration no. UP-50F-0696 causing death of the deceased, Kedar Singh. In her cross-examination, she has also deposed that she had visited even the insurance company regarding the insurance of the offending vehicle and she had given one application for inquiry in regard to the insurance. But the insurance company has not put any question or suggestion that the insurance policy which has been filed on record is fake.

21. In view of the aforesaid facts and circumstances of the case and evidence on record, it clearly transpires that the claimant has discharged its initial burden to prove the insurance policy by way of filing photostat copy of the insurance policy on record which the wife of the deceased has received from Dobhi Police Station and that photostat copy of the insurance policy has been exhibited as Ext.-5 and thereafter the onus shifted on the Appellant/Insurance Company to prove that the insurance policy filed on record is fake. But, I find that the insurance company has not examined any witness or brought on record any documentary evidence in regard to its claim that the insurance policy filed on record is fake. Moreover, it is settled principle of law that plea of fraud in a civil or criminal proceeding must be established beyond reasonable doubt by the person who is taking the plea of fraud.

22. Here one may refer to **Union of India Vs. Chaturbhai M. Patel and Co.** as reported in **(1976) 1 SCC 747,** wherein Hon'ble Supreme Court has clearly held as follows:

> "7. ………………………………………. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. ………………………………….."

23. Hence, mere oral submission of learned counsel for the appellant that the insurance policy filed on record is fake will not do. As per the material on record, the claimant has well proved that the insurance policy was issued by the Appellant/ New India Assurance Company Ltd.

24. Hence, I find that there is no illegality or infirmity in the finding of learned Motor Accident Claims Tribunal.

25. Accordingly, the present appeal being shorn of any merit, stands dismissed.

26. LCR be sent back to the Court concerned forthwith.

(Jitendra Kumar, J.)

Chandan/
Ravishankar-

AFR/NAFR	A.F.R
CAV DATE	16.09.2025
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