

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.243 of 2022

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National Insurance Co. Ltd. Muzaffarpur, through Regional Manager 4th Floor, Sone Bhawan, Bir Chand Patel Marg, Patna-1.

... .. Appellant/s

Versus

1. Madina Khatoon W/o Late Md. Zahid Shah Resident of Village- Anandpur Kharaini, P.O. and P.S.- Paroo, District- Muzaffarpur.
2. Afroz Shah S/o Late Md. Zahid Shah Resident of Village- Anandpur Kharaini, P.O. and P.S.- Paroo, District- Muzaffarpur.
3. Ehashan Shah S/o Late Md. Zahid Shah Resident of Village- Anandpur Kharaini, P.O. and P.S.- Paroo, District- Muzaffarpur.
4. Rokida Khatoon D/o Late Md. Zahid Shah Resident of Village- Anandpur Kharaini, P.O. and P.S.- Paroo, District- Muzaffarpur.
5. Masomat Munni Devi W/o Late Gajendra Thakur Resident of Village- Chainpur Chautaha, P.O. and P.S.- Paroo, District- Muzaffarpur (Vehicle Owner).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhay Kumar Sinha, Advocate
For the Respondent/s : Mr. Manoj Kumar Manoj, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 09-10-2025 Heard the parties.

2. The present appeal has been preferred:

*“against the Judgment and Award dated
30.01.2021 and dated 09.02.2021 respectively
passed in MACT Claim Case No. 55 of 2015,
Madina Khatoon & others vrs Masomat Munni
Devi & others by Add. District Judge II cum Motor
Vehicle Accident Claim Tribunal, Muzaffarpur,
arising out of Paroo P. S. Case No. 106/2015*



whereby and where under the learned Court below has allowed Claim Petition and directed Insurance Company to pay Rs. 10,00,000/- only with 6% interest per annum from the date of filing of the claim case dated 12.03.2015 after deduction interim amount if paid within two months from date of order.”

I.A. No. 01 of 2022

3. The aforesaid Interlocutory Application has been preferred for condonation of delay of 106 days. Though there is nothing in the I.A. to show the actual delay in filing the appeal, in view of the fact that the office has pointed out the delay, in the interest of justice, I.A. No. 01 of 2022 stands allowed and the delay in filing the appeal is condoned.

M.A. No. 243 of 2022

6. Learned counsel for the appellant submits that the company is ready to follow the order of the Tribunal but the right to recovery from the vehicle owner/driver has not been provided despite paragraph 11 of the order recording that the Tavera (Registration No. AS-12D-3366) owner/driver despite the order, failed to provide the driving license. In that background, the Court concerned should have given the liberty



to the appellant-company to realize the amount from the erring in accordance with law.

7. The brief facts resulting into the present order is/are as follows:

8. On 12.06.2014, Md. Zahid Sah moving along with Gajendra Thakur was returning home on the Tavera vehicle after attending a Barat. However, on the way, to save an animal (blue bull), it met with an accident resulting into death of both Gajendra Thakur and Md. Zahid Sah. This led to Paroo P.S. Case No. 106 of 2015. Later, the Claim Case No. 55 of 2015 was preferred by the widow of Md. Zahid Sah against the company as also the widow of late Gajendra Thakur.

9. The matter was taken up by the Court of Second Additional Sessions Judge-cum-MACT Muzaffarpur and vide an order dated 30.01.2021/award dated 09.02.2021, the claim was allowed directing the appellant-company to pay Rs. 10,00,000/-with 6% of interest to the widow and family members of Md. Zahid Sah.

10. Learned counsel for the appellant has taken this Court to paragraph 11 to show that the Court though noted that driving license was not provided to show whether the movement of the vehicle was on a valid driving license but while allowing



the appeal, the liberty was not granted to realize the same if the Company is able to prove that the vehicle was being moved on the road without a proper driving license.

11. In this case, the unfortunate part is that two deaths took place, one of Md. Zahid Sah who was in the car and whose widow/children have been granted relief, the other was Gajendra Thakur who owns the car but also died in the said accident and in that background, onus now is on his widow to come forward with the documents.

12. Earlier, the Coordinate Bench had issued notice to the lady but there is no appearance.

13. Whether the vehicle in question moving with a valid driving licence or not, the same has to be proved by the appellant-Company. So far as the payment part is concerned, the vehicle was validly insured with the company and as such, the accident having taken place in the year 2014, the widow of Md. Zahid Sah and/or children are entitled to the relief as passed by the Court concerned.

14. However, in view of the observation made by the Court in paragraph 11, the prayer of the Company seems to be justified. The Court is armed with an order of the Hon'ble Apex Court in the case of **Parmindar Singh vs. New India**



Assurance Company Ltd. and Ors. reported in (2019) 3 SCC (CRI) 50 with reference to **paragraph 7.1** which read as follows:

"7.1. This Court in Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors., held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle."

(emphasis added)

15. In that background, modifying the order of the concerned Court, allowing liberty to the Company to take appropriate steps for agitating before the Court concerned on the point as to whether the vehicle was moving on the road on valid documents or not as also consequences, the payment part to the lady/family members is/are confirmed.

16. The Company is required to make payment to the claimant by 31st of October, 2025 alongwith the interest as directed by the Court failing which the lady/family shall be entitled to 9% interest from 1st November, 2025.



17. M.A. No. 243 of 2022 stands disposed of.

18. The statutory amount deposited be returned to the
concerned company.

(Rajiv Roy, J)

Adnan/-

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