IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.412 of 2017

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The Divisional Manager, The New India Assurance Company Ltd.

... ... Appellant/s

Versus

1. Smita Pandey and Ors W/o Shailendra Kumar Resident of Village - Dhanaur, P.S. - Katra, Dist. - Muzaffarpur.
2. Madhawi Devi w/o Girja Nand Pandey
3. Girja Nandan Pandey @ Girja Nand Pandey
4. Bhabya D/o Shailendra Kumar
5. Ayush S/o Late Shailendra Kumar All residents of village - Dhanaur, PS - Katra, Dist - Muzaffarpur.
6. Vijay Mishra S/o Late Mahanth Raghunath At and PS - Kaji Mohammadpur, Dist - Muzaffarpur.

... ... Respondent/s

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Appearance:

For the Appellant/s : Mr. Bimlesh Kumar Jha, Advocate

For the Respondent/s : Mr. Mukesh Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date: 26-06-2025

Heard Mr. Bimlesh Kumar Jha, learned counsel for the appellant and Mr. Mukesh Prasad Singh, learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed against the judgment 02.09.2016 and Award dated 09.09.2016**,** passed by the Learned 2nd Additional Motor Vehicle Accident Claim Tribunal Muzaffarpur in claim Case No. 157 of 2013 whereby the appellant is directed to pay Rs. 14,95,500/- with interest of 6% per annum from the date of filing of the claim petition excluding paid amount under section 140 of M.V. Act.

3. Learned counsel submits that the impugned judgement/award is bad in the eye of law and also bad in the present facts and circumstances of the case. The impugned judgement is against the established law. He also submitted that the Tribunal did not give any attention on the genuineness of the driving license and permits of the vehicle in question. The appellant could not get the copy of driving licence and permits in spite of several efforts. The appellant failed to get the copy of driving licence and permits from the Court record of the Claim case and also from the record of Criminal case. The appellant also send the letter to the owner of the offending vehicle but did not get any response regarding the same.

4. He further submitted that in absence of driving license and permits, the appellant is entitled to get the right of recovery. He relied on the judgment of Hon’ble Apex Court passed in the case of ***Pappu and Ors. v. Vinod Kumar Lamba and Ors. 2017*** in which the Insurance Company has been granted the right to recover the compensation from the owner of the vehicle. He also relied upon judgment of Hon’ble Apex Court passed in the case of ***Amrit Paul Singh & Anr. v. Tata AIG General Insurance Company Ltd. & Ors. 2018***

> *“23. In the case at hand, it is clearly demonstrable from the materials brought on*

record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That part, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasize, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think So in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of license or a fake license or a license for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in ***National Insurance Company Ltd. v. Swaran Singh and Ors.(2004) 3 SCC 297*** *and* ***Lakhmi Chand v. Relieance General Insurance 8(2016) 3 SCC 100*** *in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of*

> *the Tripitaka that the existence of a Permit of any nature is a matter of documentary evidence. <u>Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the Compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver</u>. The said directions are in consonance with the principles stated in* ***Swaran Singh (supra)*** *and other cases pertaining to pay and recover principle."*

5. 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.

6. Having heard learned counsel for both the parties and considering the law established by Hon'ble Apex Court in this regard, if the driver of the offending vehicle does not possess a valid driving license and permits, the principle of 'Pay and Recover' can be ordered to direct to the Insurance Company to pay the victim, and then recover the amount from the owner of the offending vehicle.

7. So far, objections raised by the appellant that the offending vehicle had no valid permit and fitness and therefore, the appellant may be given right to recover the award amount from the owner of the said offending vehicle.

8. Accordingly, this appeal is disposed of.

(Ramesh Chand Malviya, J)

Harshita/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.07.2025
Transmission Date	N/A