IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.294 of 2020

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HDFC ERGO General Insurance Company Ltd. through its Manager, Arun Kumar, Son of D.B.Ray, aged 30 year 6th Floor, Leela Business Park Andheri, Kurla Road, Andheri East, Mumbai-400059.

... ... Appellant/s

Versus

1. Mithilesh Devi W/o Krishnadeo Raut, Resident of Village and Post-Manik Chowk West, P.S.-Runnisaidpur, District-Sitamarhi.
2. Satyendra Singh S/o Ambika Singh Resident of Village and Post-Sherpur, P.S.-Maner District-Patna. Male Age-not Known

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 27-11-2025 Heard Mr. Alok Kumar Shahi, learned counsel for the petitioner.

2. The present petition has been preferred for the following relief/s:

(i) for setting aside the order dated 19.07.2019 and award dated 13.12.2019 passed by learned Court of Sri Bajrangi Sharan, District Judge cum Motor Accident Claim Tribunal, Sitamarhi, in Claim Case No. 09 of 2017 whereby and whereunder the

learned Tribunal has allowed the claim case of the respondent nos. 1 and 2.

3. The facts of the present appeal is/are as follows:

4. One **Kajal Kumari** was going to her relative's place on bicycle when a **truck** bearing registration no. **BR01G-8410** coming from opposite direction in a rash and negligent manner dashed with the bicycle causing her death. She was minor (14 years) at that time.

5. The **mother of the deceased**, **Mithilesh Devi** preferred **Claim Case No. 09 of 2017 (Registration No.09/2017)** which was taken up by the Court of District Judge cum **Motor Accident Claim Tribunal, Sitamarhi** (henceforth for short **'the Tribunal'**).

6. The issue framed by 'the Tribunal' is/are whether the lady is entitled for the compensation under section 166 of the Motor Vehicle Act or not.

7. Three witnesses were examined by 'the Tribunal' namely, **Mithilesh Devi(AW-1), Raman Rai (AW-2) and Rajdeo Rai (AW-3)**. All of them claimed to be the eye-witnesses and supported the accident theory. On behalf of the Insurance Company, one **Arun Kumar,** the Legal Officer was examined and according to him, since the cheque amount of Rs.

12,595/- issued by owner of the vehicle was not encashed/bounced, the policy was cancelled effective **17.11.2010**. It is to be noted that accident took place on 22.07.2011.

8. The Court took into account the submission put forward by the claimant that she is not concerned with the fact whether the premium was paid or not but the fact that the policy was issued in respect of the said vehicle at the time of accident and informed to the owner if the contention of the Insurance Company (henceforth for short 'the Company') that the policy was cancelled is correct, the same can be recovered from the owner of the vehicle.

9. So far as the income part is concerned, 'the Tribunal' took the lowest amount of Rs.3000/- per month for the deceased and accordingly, after including all the expenses, gave direction for payment of **Rs. 4,30,000/-** to the claimant alongwith interest of **8% per annum** from the date of filing till the final payment is made. The order came to be passed on **19.07.2019.**

10. Aggrieved, the present appeal.

11. Learned counsel for the appellant, Mr. Alok Kumar Shahi submits that admittedly, as the cheque was

dishonoured, the policy was cancelled. However, while granting the relief to the claimant, 'the Tribunal' failed to take into account the aforesaid facts and at least, the right to recovery should have been allowed in favour of 'the Company' as admittedly, the policy stood cancelled on the day, the accident took place.

12. This Court has taken note of the fact that the details relating to the policy is missing inasmuch as the period for which it was insured as also whether cancellation intimation was made to the owner is/are not available. However, if 'the Company' is able to prove the fact that due to cancellation of the policy, the onus should have been on the owner to make the payment, 'the Company' must have the right to recover it in accordance with law.

13. This Court is armed with the order of Hon'ble Supreme Court in **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)

14. The accident took place in the year 2011, 'the Tribunal' passed an order in the year 2019, we are in the year 2025, more than a decade has gone without the claimant getting a single penny.

15. As recorded above, 'the Company' if it is able to prove that at the time to accident, the insurance of the vehicle came to an end because the cheque issued by the owner bounced and it was duly intimated, they will have the right to recovery in accordance with law. However, that cannot be the ground to stall the payment to the claimant.

16. Accordingly, it is ordered that:

(i) the claimant be cleared the amount alongwith the interest as recorded by 'the

Tribunal' by 31.12.2025;

(ii) failure to do so, the interest will go up to 12% per annum from 01.01.2026;

(iii) if still payment is not made by 31.03.2026, the claimant will be entitled to an additional amount of Rs. 25000/- from 'the Company' on 01.04.2026.

17. With the aforesaid observation, both the appeal as also the Interlocutory Applications stand disposed of.

(Rajiv Roy, J)

Ravi/-

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