

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.486 of 2021

=====

The United India Insurance Company Ltd. through the Chief Regional Manager and the constituted Attorney, Regional Office, United India Insurance Company Ltd., Chanakya Commercial Complex, 3rd Floor, R-Block, Dist.- Patna.

... .. Appellant/s

Versus

1. Isharat Afroz wife of late Abul Barkat Resident of Village- Shrirampur, Post-Badarbanna, P.S.- Bahera, Distt.- Darbhanga, Pin Code- 847201.
2. Sudhir Kumar Trivedi S/O- Jagarnath Trivedi Resident of Village- Maheshijan, Post- Samayaila Lalganj, P.S.- Kewati, Distt- Darbhanga. Pin Code- 847121. (Owner of the offending Motorcycle bearing registration no.- BR-07N- 9951).
3. Dharmendra Yadav S/o Ram Vilas Yadav Resident of Village- Pathara, P.S.- Kewati, Distt.- Darbhanga, Pin Code- 847121. (Driver of the motorcycle bearing regn. no.- BR- 07N- 9951).

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 18-09-2025 Learned counsel for the appellant undertakes to remove the defect(s) and file deficit court fee of Rs. 55/- in course of the day.

2. Heard learned counsel for the appellant.

3. The present appeal has been preferred for the following relief(s):

“That this Memo of Appeal is directed against the Judgment dated- 23-02-2021 passed by the Id. court of Additional District Judge - cum - Motor Accident Claim Tribunal, 4th, Darbhanga in



Claim Case no. 61/2017 whereby the claim of the claimants has been allowed and o.p. no:-3, United India insurance company Ltd. has been directed to make payment of the compensation amount of Rs:- 52,28,394/- alongwith interest @6% per annum from the date of filing, i.e. 12-10-2017 till payment of compensation amount to the claimants within two months from the date of order.”

4. As per the story, Abul Barkat (husband of respondent 1st Set) met with an accident on 08.11.2014 when an unknown vehicle dashed the motorcycle which proved fatal and he died in course of treatment on 30.11.2014. This resulted into lodging of the FIR vide Sadar P.S. Case No. 320 of 2015 in which charge-sheet was submitted vide 196 of 2017 against the vehicle number BR-07N-9951.

5. The claim was preferred by the lady which led to **Claim Case No. 61 of 2017** before the competent Motor Vehicle Act Tribunal, Darbhanga (**Isharat Afroz vs. Sudhir Kumar Trivedi and Ors.**). The matter was taken up by the concerned Tribunal and vide an order dated **23.02.2021**, having come to the conclusion that the Insurance Company is liable to pay the amount to the lady, direction was given to pay Rs. 52,28,394/-



with six percent interest from 12.10.2017 till the actual payment is made.

6. The issues that were framed is/are as follows:

(i) whether the claim is justified;

(ii) whether Abul Barkat died in road accident;

(iii) whether the lady is the heir to the said deceased;

*(iv) whether it was rash driving of the vehicle number
BR-07N-9951 or not;*

*(v) whether the age and income of the deceased as
claimed in the suit correct;*

(vi) whether the lady is entitled to the compensation;

(vii) whether she is entitled to any other amount.

7. The Court answered to the issued and came to the conclusion that it is due to rash driving of BR-07N-9951 that the accident took place and Sudhir Kumar Trivedi (owner) O.P. No. 1 and Dharmendra Yadav O.P. No. 2 (respondent 2nd set) were responsible for it. As the vehicle was insured with the appellant company, direction was given for the payment.

8. Aggrieved, the present appeal by the Insurance Company.

9. Learned counsel for the appellant submits that the grievance is not regarding the payment order rather against the



denial of agitating the matter against the vehicle owner/driver for realizing the amount if they are able to prove that the same being driven by a person having no valid license.

10. In support of the said contention, he has relied on the case of **Parminder 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 pay the victim, and then recover the amount from the owner of the offending vehicle.”

(emphasis added)

11. This Court has gone through the aforesaid judgment as recorded of the Hon’ble Apex Court and is in complete agreement with it. The Insurance company can follow the principle of ‘pay and recover’ inasmuch as Insurance company should pay the amount and then recover it from the owner of the offending vehicle.

12. It is to be noted that the death took place in the year 2014, the order/award was prepared in the year 2021 and even after eleven years, the widow lady is awaiting the actual payment.



13. As the prayer has been limited to have liberty to agitate the matter against the vehicle owner which where the company will have to prove whether the driver was having driving license or not as also the consequential order.

14. However, that cannot be the ground for non payment to the widow lady. The MA No. 486 of 2021 is accordingly stands disposed of with a direction to the appellant company to pay the amount (**Rs. 52,28,394/-**) as prepared by 'the Tribunal' with the interest as awarded from the date 10.10.2017 till the actual payment is made i.e. 6% interest.

15. It is made clear that if the payment is not made by 10th of October, 2025, the interest amount shall increase with effect from 11.10.2025 as 9% till the actual payment is made. Further, following the **Honble Apex Court's order in Parmindar Singh (supra)**, liberty is being granted to the company to agitate the matter against the vehicle owner.

16. The statutory amount deposited by the appellant be returned forthwith.

(Rajiv Roy, J)

Adnan/-

U			
---	--	--	--

