

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.148 of 2014**

- 
- 
1. The Branch Manager, The New India Assurance Company Ltd. West Bengal and Anr. G.T. Road, Post Office- Panagarh Bajar District- Burdwan, West Bengal
  2. The Divisional Manager, The New Indian Assurance Co. Ltd. North Of Gandhi Maidan, Patna

... .. Appellant/s

Versus

1. Nazira Khatoon and Ors. Wife Of Md. Muzahir Resident Of Village- Telghi Makhdumpur, Post Office- Siramia District- Katihar
2. Md. Akhiak Son Of Abdul Sakur Resident Of Village Hafaganj, Post Office- Shakaria, District- Katihar, Bihar- 854105
3. Md. Shah Nawaj Son Of Md. Abdullah Resident Of Jandaha, District- Vaishali
4. Rajeev Kumar Chaudhary Son Of Subhash Chaudhary Resident Of Sindhia Makandpur, Police Station- Gopalpur, District- Bhagalpur
5. The Branch Manager, Oriental Insurance Co. Ltd. Null Shyama Talkies Road, Mangal Bajar, Katihar
6. The Divisional Manager, The Oriental Insurance Co. Ltd. R.B.S.S. Road, Police Station- Kotwali, District- Bhagalpur

... .. Respondent/s

---

---

**Appearance :**

For the Appellant/s : Mr.Rana Randhir Singh, Adv.  
For the Respondent/s : Mr.Varun Kr. Chaudhary, Adv.

---

---

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL ORDER**

6      04-12-2025                      Heard Mr. Rana Randhir Singh, learned counsel for  
  
the appellant and Mr. Varun Kumar Chaudhary for the Oriental  
  
Insurance Company Limited.

2. The present appeal has been preferred against:-

*“the order dated 26.04.2013 and  
award dated 24.08.2013 passed by the  
learned court of Ad-hoc Additional District  
Judge-III, Bhagalpur-cum-Motor Accident*



*Claim Tribunal, Bhagalpur in MACT Case No. 77 of 2006, Trial Case No. 23 of 2011 by which a final award has been granted for Rs. 3,81,000/- in most illegal and arbitrary manner.”*

3. The short facts of the present case is/are as follows:-

4. On 12.07.2003, **Nazira Khatoon**, wife of Md. Mujahir along with her family was moving on a **jeep** from Makhdumpur to Anjhari **Registration No. W.B.-38-J-9863**. As it reached near Bhawanipur on National Highway 31, a **tractor** bearing **registration no. B.R.-10G-0391** came from the opposite side in a rash and negligent manner and suddenly turned and dashed in the middle portion of the jeep. Nazira Khatoon was thrown out of the jeep along with her child and got injured, she was subsequently taken to the hospital with fracture in right hand as also injuries in the veins which resulted into complete paralysis of the right hand.

5. This led to lodging of **Gopalpur P.S. Case No. 127 of 2013** under sections 279, 337 and 338 of the Indian Penal Code. While the jeep was ensured with the New India Insurance Company Limited (henceforth for short ‘the company’), the tractor was ensured with the Oriental Insurance Company



Limited (for short 'Oriental Insurance'). This followed the present case before the Additional District Judge-3rd, Motor Accident Vehicle Tribunal, Bhagalpur in **Motor Vehicle Accident Case no. 77/2006/Trial case no. 23 of 2011.**

6. Upon notice, the parties appeared and the points put forward by the appellant company was that the tractor hit the jeep and as such, the entire insurance amount has to be borne by the Oriental Insurance to which it was ensured. The second point raised was that the jeep was registered for private purposes and not to carry passengers/commercial purposes.

7. 'The Tribunal' framed the issues as follows:-

*“(i) whether the claim is maintainable, whether the reasons are there;*

*(ii) whether it happened due to rash and negligent attitude of both the vehicles;*

*(iii) whether the claimants are entitled for the delay;*

*(iv) whether the opposite parties are responsible for the payment;*

*(v) whether the vehicles have not followed the insurance policy rules.”*

8. So far as disability part is concerned, the witnesses were put forward, the documents were perused and 'the Tribunal' vide an order dated **26.04.2013** and **award dated**



**24.08.2013** came to the conclusion that the lady has proved her case. The medical documents on record would show that her right hand has stopped functioning and it has become permanently paralyzed. Further, the Medical Board, Katihar headed by the Civil Surgeon found her to be disabled by 50%, she was less than 25 years of age at the time of accident and was working as a Tailor. In that background, 'the Tribunal' picked up the minimum monthly amount of Rs. 3000/- and after necessary calculation came to the conclusion that she is entitled to claim of Rs. 7,70,460/-. 'The Tribunal' took note of the fact that while the allegation is that the tractor hit the jeep, despite providing opportunity, the driver of the jeep failed to produce the driving license and as such, it came to the conclusion that both the insurance company have to share the aforesaid amount and accordingly, passed an order directing them to pay Rs. 3,81,000/- each.

9. The counsel representing 'the Oriental Insurance' submits that they have not preferred any appeal and to the best of his knowledge, probably, the payment has been made.

10. As 'the New India' has challenged the award, the present appeal.

11. Learned counsel for the appellant submits that it is



admitted fact that the tractor hit the jeep which resulted into accident of the lady crippling and damaging her right hand, in that background, it was the Oriental Insurance Company who should have paid the entire amount and not the New India Insurance Company. Thus, 'the Tribunal' erred in asking them to pay 50% of the amount.

12. The next point raised by the learned counsel for the company-appellant is that the vehicle was insured for private purposes and when it was being used for commercial purposes, they are not entitled to pay the amount as there was violation of insurance policy.

13. This Court has taken note of the submissions put forward by the learned counsel for the appellant as also the facts that has been recorded above.

14. The admitted fact is that the jeep is/was insured with the New India Insurance Company while the tractor was insured with the Oriental Insurance Company. The lady was sitting in the jeep when the tractor hit it from the opposite direction in a rash and negligent manner. Again, the admitted fact is that the lady was thrown out and suffered injuries and as per the medical certificates, her right hand has become paralyzed. The Civil Surgeon, Katihar led Medical Board found



the lady to be 50% crippled. 'The Tribunal' in that background took the minimum amount of Rs. 3,000/- per month as per monthly income and as such, came to the conclusion that she is entitled to Rs. 7,70,460/-.

15. This Court has also taken note of the fact that the jeep which met with an accident with the tractor, the driver as also the owner of the jeep despite opportunity failed to provide the driving license and in that background, 'the Tribunal' was perfectly justified in directing the Oriental Insurance Company to pay half of the amount.

16. However, in that background, the liberty must have been given to the appellant-company to take steps for recovery of the amount from the driver/owner of the jeep as admittedly, it was insured for private purposes but was being used commercially and secondly, the valid driving license was not produced before 'the Tribunal'. However, that cannot be reason to deprive the lady of the 50% contributory amount that has been ordered to be paid by her.

17. Thus, this Court allows the appellant to agitate the matter for the recovery of the amount ordered against it from the driver/owner of the jeep no. W.B.-38-J-9863 in accordance with law. However, the amount so ordered by 'the Tribunal' in the



year 2013 has to be cleared to the appellant by 31<sup>st</sup> of January 2026.

18. Failure to do so, the interest amount shall increase to 9% effective 01.02.2026 and if still the payment is not made by 31.03.2026, the lady will be entitled to an additional cost of Rs. 10,000/- from the said company.

19. With the aforesaid observation, the M.A. No. 148 of 2014 as also all the Interlocutory applications stand disposed of.

20. Statutory amount, if any, has be be returned.

**(Rajiv Roy, J)**

shivam/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

