IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.15 of 2015

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Oriented Insurance Comopany Ltd. Sasaram

... ... Appellant/s

Versus

1. Poonam Devi and Ors W/o Late Rakendu @ Rakendu Singh @ Tulsi Singh
2. Shristi Kumar D/o Late Rakendu @ Rakendu Singh @ Tulsi Singh
3. Harsh Kumar Singh S/o Late Rakendu @ Rakendu Singh @ Tulsi Singh
4. Somya Singh D/o Late Rakendu @ Rakendu Singh @ Tulsi Singh (Minors under the guardianship of their mother respon All Resident of Village Burhwal, P.S. Karakat Gorari, District Rohtas.
5. Kashinath Behora S/o Late Karunakar Behora Resident of Village Chorda, P.O. and P.S. Jaipur Road, District Jaipur Orissa.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjay Sinha, Adv.
		Mr. Ashok Priyadarshi, Adv.
For the Respondent/s	:	Mr. Jitendra Prasad Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

26 04-12-2025 Heard Mr. Sanjay Sinha, learned counsel for the appellant and Mr. Jitendra Prasad Singh representing the claimant.

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

> *Being aggrieved and dissatisfied with the Judgment dated 01.7.2014 and award dated 14.08.14 passed by Motor Vehicles Claims Tribunal Cum 4th Addl. District Judge Rohtas at Sasaram in Claim Case No. 17 of 2007 the Appellant above named begs to file this Memorandum of*

Appeal.

3. The short facts leading to the present case is/are as follows:

4. The deceased, **Rakendu Singh** was driving a **Bolero vehicle** having Registration No. **OR-02-AC/5397** on **13.06.2005** when he dashed the vehicle with a peepal tree which proved fatal. This led to lodging of the **Anandpur P.S. case no. 60 of 2005**. The widow, Punam Devi and children later moved before the **Additional District and Sessions Judge-IV-cum-Motor Accident Claim Tribunal, Rohtas at Sasaram** (henceforth for short 'the Tribunal') in **Motor Vehicle Claim Case No. 17 of 2007 (Punam Devi & Ors. Kashinath Behora & Ors.)**. The jeep was insured with the **Oriented Insurance Company Limited** (henceforth for short 'the company') and as such, on notice, they appeared.

5. The issues framed by 'the Tribunal' amongst the other were as follows:

> *(i) whether the claim case is maintainable;*
>
> *(ii) whether the deceased was driving the said vehicle in a negligent manner;*
>
> *(iii) whether the claimants are entitled to the relief;*

(iv) to what extent or relief they are entitled to;

6. 'The Tribunal' took up issue nos (ii) and (iii) together and came to the conclusion that there was no negligence on the part of the driver (deceased) when it dashed with the peepal tree. Further, it was insured having proper insurance policy with 'the Company' and as such, the claimants are entitled to the relief. The Tribunal having taken note of the fact that the driving license of the vehicle was not produced before it held that the deceased can be clubbed in the category of unskilled driver.

7. It further held that knowingly, the owner handed over the keys of Bolero to him which violates the condition of the Insurance Company. 'The Tribunal' held that the deceased was serving with **Gopal Builders Engineers & Contractors as 'Civil Supervisor'** with monthly salary of **Rs. 11,000/-** which has not been challenged by the company.

8. Accordingly, it came to the conclusion that considering the age and multiplying the amount, it comes to around Rs. 15,01,000/-. 'The Tribunal' while directing 'the Company' to pay the amount vide an **order dated 01.07.2014** allowed them to recover fifty per cent of the compensation amount from the owner of the vehicle.

9. Aggrieved, the present appeal.

10. Learned counsel for the appellant submits that when admittedly, the deceased was not having a proper driving license when the accident took place, in that background, the onus was on the owner to pay the amount and not to the Company’. The further submission is that the deceased being not ‘the driver of the vehicle, cannot be considered to be third party for which the payment has to be made.

11. On the other hand, Mr. Singh representing the claimant has provided the order of the **Hon’ble Apex Court** in the case of **Ningamma & Anr. Vs. United India Insurance Co. Ltd.** wherein with specific reference to **paragraph nos. 13, 16, 22 and 25** which read as follows:-

> *“**13**. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal*

representative? Before dwelling further, it would be useful to discuss the relevant paras of Section 163-A and 166 of the MVA applicable in the present case.

"163-A. Special provisions as to payment of compensation on structured formula basis.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

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(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

166. Application for compensation- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

16. *The aforesaid decisions make it quite clear that the Parliament by* *introducing Section 163-A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub- section (1) of Section 163-A of the MVA. In order to prove a claim of this nature the claimant would not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned.*

22. *When we analyze the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the* *vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA. In this connection, reference can be made to a judgment of this Court in the case of Oriental Insurance Company Ltd. vs. Rajni Devi and Others (supra), wherein, it was held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.*

***25**. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare* *legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."*

12. He submits that once the driver (deceased) was driving the vehicle, he stepped into the shoes of the owner and as such, cannot be deprived of the compensation amount. The further submission is that 'the Tribunal' has already directed 'the Company' to get fifty per cent of the amount recovered from the owner in accordance with law. He concludes by submitting that the appeal is fit to be dismissed.

13. This Court has gone through the facts of the case as also the materials on record. The admitted facts are that the vehicle met with an accident when the Bolero Jeep bearing Registration No. OR-02-AC-5397 dashed with the peepal tree.

Again, it is an admitted fact that the claimant's husband was driving the vehicle and it was insured with 'the Company' with proper insurance policy. The claimant's husband was serving with the Gopal Builders Engineers & Contractors at the relevant time as 'Civil Supervisor' with a salary of Rs. 11,000/- which was not challenged by 'the Company'. However, one point which has been taken by the appellant company is that the driving license was not produced.

14. In that background and taking into account the order of the Hon'ble Apex court in the case of **Ningamma** (supra), this Court is of the opinion that 'the Tribunal' was perfectly justified in directing 'the company' to make the payment to the tune of Rs. 15,01,000/-. However, instead of allowing 'the company' to recover fifty per cent of the Award amount, when it is an admitted fact that the driving license was not produced, owner despite notice chose not to appear before 'the Tribunal', in that background, 'the Company' should have been given the right to recover the entire amount from the owner in accordance with law.

15. To that extent, the **M.A. No. 15 of 2015** is modified and it is held that 'the appellant company' shall be entitled to recover the Award amount to be paid to the claimants

from the owner in accordance with law.

16. So far as the payment part is concerned, Rs. 50,000/- has already been paid. The rest of the amount has to be cleared by 'the company' by 31st of January, 2026 along with the interest.

17. Failure to do so, the interest amount shall increase to 9% effective 01.02.2026. If the payment is still not made by 31.03.2026, effective 01.04.2026, they will be entitled to additional cost of Rs. 10,000/- from 'the said company'.

18. M.A. No. 15 of 2015 is disposed of with aforesaid observation.

19. Statutory amount, if any, has to be returned.

(Rajiv Roy, J)

Vijay Singh/-

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