IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.856 of 2019

The Branch Manager, New India Assurance Company Ltd., Motihari through its Chief Regional Manager and the constituted Attorney, Regional Office, New India Assurance Company Ltd., 6th Floor, B.S.F.C. Building, Fraser Road, Patna

... ... Appellant/s

Versus

1. Sarita Kunwar W/o Late Motilal Patel Resident of Village- Dakhi, P.s.- Gopalpur, District- West Champaran-845418
2. Sushan Kumar (minor) S/o Late Motilal Patel Resident of Village- Dakhi, P.s.- Gopalpur, District- West Champaran-845418
3. Vishwajeet Kumar (minor) S/o Late Motilal Patel Resident of Village- Dakhi, P.s.- Gopalpur, District- West Champaran-845418
4. Bhubneshwar Singh S/o Nagina Singh Resident of House No. 454, At and P.o.- Mahadeva Noneya, P.s.- Raxaul, East Champaran, Bihar, Pin Code- 845305 (owner of the BUS bearing registration no. BR-06P-3654)
5. Sanjay Tiwari S/o Rabindra Tiwari Resident of Vill.- Noneya Tola, Sangrampur, East Champaran-845434

... ... Respondent/s

Appearance :
For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 13-11-2025 **I.A. No. 01 of 2020**

The aforesaid Interlocutory Application has been preferred for condoning the delay of 62 days in filing the memo of appeal.

2. On the basis of the averments made in the aforesaid Interlocutory Application, the same is allowed and the delay in filing the appeal stands condoned.

M.A. No. 856 of 2019

3. Heard Mr. Raj Kumar Singh Vikram, learned counsel for the appellant. There is no appearance from the other side.

4. The present appeal has been directed:

> *"against the judgment dated 27.12.19 passed by the ld. Additional District Judge-4th-cum-M.A.C.T., Motihari, East Champaran in Claim Case no. 127 of 2013/reg. no. 42/14 whereby the final compensation of the claimant has been allowed for a compensation of Rs. 8,76,400.00/-with interest @6% per annum from the date of filing of the claim petition, ie. 02-07-14 till payment within a period of two months from the date of order, failing which the rate of interest 9% p a will be applicable only after two months from the date of order till actual realization."*

5. The facts of the case leading to the present appeal is that: on 25.06.2012, one Motilal Patel was coming to Raxaul from Motihari by a **Motorcycle** after attending the function of his relative. As he reached near Ghorasahan Canal, a Bus bearing Registration No. **BR-06P-3654** coming from the

opposite direction in a rash and negligent manner, dashed and crushed the said Motilal Patel resulting into his immediate death. This led to **Adapur P.S. Case No. 74 of 2012 u/s 279 and 304(A)** of the Indian Penal Code against the driver of the bus. Later, the widow (respondent no. 1) and the two sons preferred **Claim Case No. 127/2013 (Reg. No. 42/14)** before the Motor Vehicle Accident Claims Tribunal, Motihari, East Champaran (hereinafter referred to as 'the MACT').

6. Notices were issued but the owner of the Bus chose not to appear while the driver of the vehicle (opposite party no. 3, Sanjay Tiwari) filed his written statement. According to it, the vehicle was registered with the New India Assurance Company Limited, Motihari Branch (henceforth for short 'the Company') with Policy no. 54050631110100001414 which was valid between 21.10.2011 to midnight of 20.10.2012. He also claims to have valid driving license on the alleged date of occurrence.

7. The Insurance Company appeared and filed written statement submitting that the driving license of the offending driver was fake and also put the same as Exhibit no. 9. The written statement is part of the present appeal and paragraph-4 shows that the said stand was taken by the Insurance Company.

8. The Court after hearing the parties came to the

conclusion that an accident has taken place, the Bus with Registration No. BR06P-3654 is/was involved in it, it was having a valid Insurance Policy at the time of accident with 'the Insurance Company' and in that background, the widow and the two sons are entitled to the claim. As such, a compensation of Rs. 8,76,400/- was awarded alongwith interest of 6% from the date of the filing of the claim petition (02.07.2014) till the payment is made. Further direction was given to earmark Rs. 50,000/- each for the two minors to be kept in the fixed deposit till they attain majority. The last direction was to pay the amount in two months or to pay interest at 9% till the payment is made.

9. Aggrieved, the present appeal.

10. Learned counsel for the appellant-company submits that so far as the facts are concerned, the same is not in dispute. The husband of the respondent no. 1 was driving a vehicle which came under the wheels of the Bus (Registration No. BR06P-3654). It was driven by Sanjay Tiwary and insured with the Insurance Company with valid policy. However, the fact remains that at the time, when he was driving the vehicle, the respondent no. 5 was not having a valid driving license. He has taken this Court to the communication provided by the Regional Transport Officer, Giridih (Jharkhand) to the Insurance

Company to show that **DL No. 315/2002/GRD** has not been issued by the said Authority.

11. He submits that in that background, while passing the order, at least, the Court of 4^{th} Additional District Judge, MACT, Motihari, East Champaran should have given liberty to the appellant-company to agitate the matter against the owner/driver of the vehicle for the recovery of the amount/award granted to the respondent nos. 1 to 3.

12. As recorded above, though the respondents have put in their appearance, on call, no one is present to oppose the submissions put forward by the appellant-company.

13. This Court has gone through the facts of the case as also the records and have heard learned counsel representing the appellant-company. As acknowledge by the learned counsel neither the accident nor the fact that the Bus was insured with the Insurance Company are under dispute. The accident took place in the year 2012, we are at the fag end of the year 2025, the lady/minor sons lost their husband/father, the bread earner. For the last one decade, they are waiting for the rightful compensation. However, this Court cannot also ignore the fact what has been put forward by the learned counsel for the appellant-company that the bus was driven by Sanjay Tiwary

without any valid driving license as per the information given by the RTO, Giridih.

14. In that background, in the considered opinion of the Court, the Tribunal should have given liberty to the Company to take steps/agitate the matter for the recovery of the amount. This Court is armed with an order of the Hon'ble Apex Court in the case of **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)*

15. This Court is further of the opinion that not only the Insurance Company is entitled to agitate the matter, they are also entitled to put forward all the documents under their belt to

show that the driver was plying the vehicle without any driving license. However, that cannot be a ground to stall the payment to the claimants.

16. In that background, the appellant-company is directed to pay the award amount to the widow/sons of Motilal Patel by 10th of December, 2025 with interest as per the direction by the Motor Vehicle Court. Failure to do so, from the next date (11.12.2025) till the payment is made, the awardee shall be entitled to 12% interest.

17. The right to agitate against the driver/owner of the vehicle in also granted to the appellant-company.

18. The appeal stands disposed of with aforesaid observation.

19. The Insurance Company will be entitled to the return of the statutory amount, if any, deposited at the time of filing of the appeal.

(Rajiv Roy, J)

Adnan/-

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