

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1045 of 2019

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Manager, Reliance General Insurance Company Limited 19, Reliance Centre Walchand Hirachand Marg, Mahep Balland Estate, Mumbai, through Manager, Reliance General Insurance Company Limited, 301, 302, Kaushalya Estate, Bandar Bagicha, Dakbanglow Chauraha, Patna, P.O., P.S. and District- Patna. Appeal and Appellant through Authorized Signatory Reliance General Insurance Company Limited, Thapar House, 163, SP Mukherjee Road (Mudiali Kalighat) 4th Floor, 4 A, Kolkata- 700026 (West Bengal).

... .. Appellant/s

Versus

1. Dr. Seema Sinha wife of Late Dr. Deepak Kumar Resident of Village/ P.O.- Khairamal, P.S.- Pipra, District- East Champaran, Motihari. At present Shreyaskar Hospital, NH- 28 A, Chhatauni Chowk, Motihari, P.O.- Motihari, P.S.- Chhatauni, District- East Champaran, Motihari.
2. Shewoji Yadav @ Shewaji Yadav son of R.A. Yadav Resident of- Tengineg, Tengiyag, Ground Road, Agarpura, (Bhagav), Kolkata (West Bengal).
3. Yogendra Kumar son of Krishn Dev Sharma @ Krishna Sharma Resident of Village and P.O.- Dadhopi, P.S.- Madanpur, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 13-11-2025 Heard Mr. Durgesh Kumar Singh, learned counsel for
the petitioner and the State.

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

*Being aggrieved by and
dissatisfied with the Judgment dated
15.07.2019 and Award dated 03.08.2019
passed by Sri Shashi Bhushan Niraj, The
Learned Additional District Judge-III-cum
Motor Vehicle Accident Claim Tribunal, East*



Champaran, Motihari, (hereinafter referred to as the Tribunal), in Claim Case no. 166/2014 'Dr. Seema Sinha v/s Shewoji Yadav & others' by which compensation has been allowed against the appellant.

The facts of the case is/are as follows:

3. Dr. Deepak Kumar along with his family member were traveling in Santro Car BR-1 AY 8320 from Mohania to Patna when a **Truck** bearing Registration No. **WB-23 C-5418** coming from Dinara side in a rash and negligent manner dashed the Santro Car, as a result whereof, **Dr. Deepak Kumar** died on the spot and Dr. Seema Sinha son, Dushyant Kumar @ Shreyaskar and maternal grandfather were seriously injured. They were sent to the Health Centre, Dinara and then to PMCH, Patna/IGIMS where the son, Dushyant Kumar @ Shreyaskar also died. The record shows that those injured were permanently disabled. This led to **Dinara (Bhanas) P.S. Case No. 251 of 2012** under different sections of the IPC.

4. Two deaths took place, one of Dr. Deepak Kumar (husband of the Dr. Seema Sinha) and the second, relating to Dushyant Kumar @Shreyaskar (son of Dr. Seema Sinha). She thus preferred two petitions before the Tribunal and after the passing of the order, two appeals have been preferred before this Court vide M.A. No. 1036 of 2019 as also **M.A. No. 1045 of**



2019, the present appeal which relates to the death of the son, Dushyant Kumar @ Shreyaskar.

5. The lady, Dr. Seema Sinha preferred this Claim Case No. 166 of 2014 before the Motor Accident Claim Tribunal, Motihari relating to death of his son. Though the Insurance Company appeared, the owner/driver of the vehicle despite issuance of notice chose not to respond.

6. The stand of the Reliance General Insurance Company (henceforth for short 'the Company') is/was that there were negligence on the part of the deceased driver and as such, they are not entitled for the compensation. Alternatively, it was submitted that the Insurance policy has not been confirmed nor there is anything on record to show that driver was holding a valid driving license at the time the accident took place.

7. 'The Tribunal' thereafter framed the issues which is/are follows:

(1.) Whether the above claim case is maintainable against the opposite party?

(2.) Whether the claimant has cause of action against the O.Ps?

(3.) Whether the deceased Dushyant Kumar @ Shreyaskar died in the motor accident by vehicle No. WB 23-C/5418 due to rash and negligent driving of



its driver Yogendra Kumar and there was contribution of driver of car in accident?

(4.) Whether the offending vehicle No. WB 23-C/5418 was insured at the time of accident?

(5.) Whether the driver was holding valid cum effective driving license and the vehicle was plying without permit?

(6.) Whether the claimant is entitled for compensation, as claimed from the O.P.s?

8. The matter was taken up on 15th July 2019 and ‘the Tribunal’ after taking into account all the facts came to the conclusion that the Truck bearing Registration No. WB 23 C 5418 was involved in the accident that led to the death of Dr. Deepak Kumar and his son, Dushyant Kumar @Shreyaskar. Further, the Truck was having valid policy between **04.05.2013 to 03.05.2014** with the Insurance Company having **Policy No. 1501722334000728**.

9. In that background, the court ordered payment of Rs. 5,00,000/- compensation to the claimant, Dr. Seema Sinha with interest at the rate of six per cent from the date of filing till its realization till two months, failing which the claimant will be entitled to get compensation through the process of the Court.

10. Aggrieved, the present appeal.



11. Learned counsel for the appellant, Mr. Durgesh Kumar Singh submits that while passing the order, the Court failed to take into account that the owner/driver chose not to appear and/or to produce the driving license to show that the driver was plying the vehicle with valid driving license. In that background, liberty should have been granted to the appellant company to agitate the matter for recovery of the amount from the owner/driver of the vehicle if it is able to prove that the Truck was on road at the time of accident and the person who was on the wheels was not having a proper driving license.

12. This Court has gone through the facts of the case and the materials on record. Admitted fact is that Dr. Deepak Kumar was moving on the road with the family in a Santro Car having Registration No. BR-1 AY 8320 from Mohania to Patna met with an accident when a Truck bearing Registration No. WB-23 C-5418 driving in a rash and negligent manner hit their vehicle. This resulted into unfortunate death of Dr. Deepak Kumar as also his son, Dushyant Kumar @Shreyaskar. The lady, Dr. Seema Sinha, widow of Dr. Deepak Kumar is agitating the matter since then. Again, it is an admitted fact that the Truck was insured with the appellant company with valid insurance policy as recorded above.



13. In that background, the Court concerned was justified in making an order for grant of award to the widow, Dr. Seema Sinha. However, when it has acknowledged that the owner and the driver of the vehicle despite notice failed to appear before the Court and/or to produce any document, the liberty to the company to recover the amount in accordance with law must have been granted which is missing.

14. This Court has also taken note of the Hon'ble Supreme Court judgment 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. In that background, this Court affirms the order



dated 15th July, 2019 passed by the MACT, Motihari in Claim Case No. 166 of 2014. However, liberty is granted to the appellant company to take appropriate steps/agitate the matter for recovery of the aforesaid amount if it is able to prove that the vehicle/driver was on the road without any proper driving license.

16. So far as the payment part is concerned, the lady shall be released the amount of Rs. 5,00,000/- along with the interest as recorded by the Court by 10th of December, 2025 failing which she shall be entitled to twelve per cent interest from 11.12.2025 till the payment is made.

17. This order has been passed taking into account the fact that the payment has not been made and if the amount stands released, no further step is to be taken.

18. The statutory amount, if any, be returned to the appellant company.

19. All the I.A.s also stands disposed of.

(Rajiv Roy, J)

Vijay Singh/-

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