

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Misc. Appeal No.15 of 2019

Magma HDI General Insurance Co. Ltd. 7th Floor, Mira Towers, DN 27,
Sector V, West Side, Salt Lake City, P.O. & P.S. Salt Lake City, Kolkata

.... Appellant

Versus

1. Anju Devi, wife of Late Ram Kumar Mahto
2. Niraj Kumar Mahto, son of Late Ram Kumar Mahto
3. Bhaskar Kumar Mahto, son of Late Ram Kumar Mahto
4. Prince Kumar Mahto, son of Late Ram Kumar Mahto
5. Aghni Devi, wife of Late Balju Mahto

Respondent Nos.3 and 4 being minors are being represented through their
mother being natural guardian and next friend, all residing at Baredih,
P.O. and P.S. Ormanjhi, District Ranchi

6. Vinod Mahto, son of Late Pyari Mahto, resident of Village, P.O. and P.S.
Barkagaon, District Hazaraibag

.... Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Alok Lal, Advocate

For the Res./Claimants : Mr. Arvind Kumar Lall, Advocate

Mrs. D. Arati Kumari, Advocate

Mr. Shiwam Lath, Advocate

Mr. Shivam Singh Kashyap, Advocate

Order No.09 / Dated : 13.11.2025

Insurance Company is in appeal under Section 173(1) of the Motor Vehicle Act, 1988 against the judgment and award of compensation in Motor Accident Claim Case No.147/2014 whereby and whereunder liability has been fixed on the Insurance Company to pay the compensation amount.

2. It has not been disputed that the offending vehicle bearing registration no.JH 01AS 4631 was involved in the motor vehicle accident resulting in the death of Ram Kumar Mahto. It has also not been disputed that the said vehicle was under the insurance cover of the appellant-Insurance Company.

3. The appeal has been preferred mainly on the ground that there was a fundamental breach of insurance policy as the said offending tractor was not having a valid permit nor the driving license was adduced into evidence by the owner, who had appeared before the learned trial Court. It is argued

that law is settled by the Apex Court in *Pappu & Others Vs. Vinod Kumar Lamba & Another*, (2018) 3 SCC 208, that onus was on the owner of the vehicle to have led evidence to establish that the driver of the offending vehicle was authorized by him to drive the vehicle and he had valid driving license at the time of the accident. This onus has not been discharged by the owner of the vehicle. There was specific pleading with respect to it in para 9, 12 and 15 of the written statement.

4. Despite there being breach of the terms and conditions of the insurance policy, no right of recovery has been given to the appellant-Insurance Company.

5. With regard to permit, it is submitted that from the letter no.768, dated 21.08.2015 obtained from Transport Department, South Chotanagpur under RTI Act, it shall be evident that if the tractor was a commercial vehicle for carrying goods, the permit was required.

6. Notices were earlier issued and had been validly served on the owner of vehicle, but no one appeared, consequently, the appeal is being heard *ex-parte* against the owner of the vehicle.

7. Having considered the submissions advanced on behalf of the Insurance Company, it is apparent that the grounds of appeal are in two folds i.e. failure to produce permit and driving license by the owner of the vehicle.

8. So far permit part is concerned, from bare perusal of the FIR, it appears that accident took place from the tractor and there is no evidence on record to suggest that the said tractor was being used as a commercial vehicle for carrying and transporting goods. In this view of matter, the plea that the said vehicle was being plied as commercial vehicle requiring the permit, cannot be accepted.

9. So far driving license is concerned, there is merit in the submission that once the owner had appeared, it was incumbent on his part to bring on record the driving license of the driver. The registration number of the driving license has also not been mentioned in the claim application so as to enable the Insurance Company to verify the same. In this view of matter,

there is a clear-cut breach of terms of insurance policy for permitting the vehicle to be driven by a person without valid driving license.

10. Under the circumstance, appellant- Insurance Company will be entitled to right to recovery after final satisfaction of the awarded amount with interest as awarded by the learned Tribunal.

Miscellaneous Appeal is accordingly, allowed. Statutory amount be refunded to the Insurance Company. Pending Interlocutory Application, if any, is disposed of.

(Gautam Kumar Choudhary, J.)

Anit

Uploaded
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