

Nawab Ali, son of Late Maqbool Ahmad, resident of Village Konara, P.O.
and P.S. Barhi, District Hazaribag Appellant
Versus

With
Misc. Appeal No.574 of 2018

1. Md. Shamsul Ansari, son of Rahman Mian
2. Jahan Ara Khatoun, wife of Md. Shamsul Ansari
Both residents of Village Rasoiya Dhamna, P.O. and P.S. Barhi,
District Hazaribag
3. I.C.I.C.I. Lombard General Insurance Co. Ltd., Delhi, 2nd Floor, Ashirwad
Mansion, near Over Bridge, Main Road, Ranchi, P.O. Doranda, P.S.
Chutia, District Ranchi
4. Shiv Prasad Gour, son of Jai Karan Prasad, resident of Rajendra Nagar,
Hehal, P.O. Hehal, P.S. Sukhdeonagar, District Ranchi
5. Kamal Nah Mahto, son of Aghnu Mahto, resident of Bhekur, P.O. Gola,
P.S. Gola, Rajrappa O.P., District Ramgarh

.... Respondents

For the Appellants : Mr. Afaque Ahmed, Advocate
Mr. Altab Hussain, Advocate
Mr. Sharabhil Ahmed, Advocate
For the Res. No.3 : Mr. Amit Kumar Das, Advocate
Ms. Swati Shalini, Advocate
Mr. Kanishka Deo, Advocate

Both these appeals have been filed by the owner against the separate awards of compensation under Section 166 of the M.V. Act by

which liability to pay the compensation amount has been fixed only on the owner of the vehicle.

I.A. No. 5912 of 2021 and I.A. No. 5913 of 2021

Heard the learned counsel for the appellant in I.A. No. 5912 of 2021 and I.A. No. 5913 of 2021 which have been filed under Order XLI Rule 27 of the CPC to adduce additional evidence of the insurance policy issued by I.C.I.C.I. Lombard General Insurance Co. Ltd. which has been annexed with the interlocutory applications. As per the photocopy of the insurance policy, it is claimed that the said vehicle was under the insurance cover at the relevant time.

2. It is submitted that in the said unfortunate accident, the son of the owner (present appellant) had also sustained serious injuries and he was in a state of shock, therefore, policy of insurance could not be produced at the time of award. Later on, he died. Since the documents were in his possession, therefore, it could not be produced at that time before the learned Tribunal. The vehicle was financed by Mahindra Finance, and the cover note was erroneously produced of some other vehicle. It is further contended that Scorpio vehicle of the appellant, being driven by his son was also damaged, and claim for repair of the vehicle has been paid by I.C.I.C.I. Lombard General Insurance Co. Ltd, which goes to show that the vehicle was under the insurance cover. Appellant intends to adduce it also into evidence.

3. Learned counsel on behalf of the Insurance-Company submits that in order to admit an evidence as an additional evidence at the time of appeal, the fundamental requirement as provided under Order XLI Rule 27 of the CPC has not been satisfied. Mandate of law is that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, save and except, it establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. However, this has not been taken as ground in the memo of appeal.

4. Further prayer has been made to adduce into evidence a driving license of the driver of the Scorpio which has been held to be responsible for

the accident by the learned Tribunal. The said driving license was not produced. Since the charge sheet was submitted against the driver of the truck and no liability was fixed at the outset on the driver of the Scorpio, but since now the Tribunal has awarded compensation by holding the driver of the Scorpio responsible for the accident, therefore, the consideration of driving license of Scorpio will be for the ends of justice.

5. Having considered the submissions advanced on behalf of both sides and the grounds taken, since the policy of insurance is fundamental piece of evidence which needs to be considered while adjudicating claim and liability arising out of motor accident claim case and therefore, documents sought to be adduced into evidence are relevant and will be required by this Court for determining the just and fair compensation to the parties and the liabilities arising thereof. As the liability of causing accident has been fixed on the driver of the Scorpio, therefore, permission is given to bring on record the license of the driver of the offending vehicle.

I.A. No. 5912 of 2021 and I.A. No. 5913 of 2021 are allowed.

Let all these three documents be marked as **Exhibit A, B and C** respectively.

Insurance Company will have a right of rebuttal by leading evidence before this Court.

Let both Misc. Appeal No.573 of 2018 and Misc. Appeal No.574 of 2018 be listed after four weeks.

(Gautam Kumar Choudhary, J.)

Anit