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C.A.No. 6285 OF 2001

ITEM No.114

Court No.7

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.6285/2001

NEW INDIA ASSURANCE CO. LTD.

Appellant (s)

VERSUS

DHIRENDRA NATH SAHA & ANR.

Respondent (s)

(WITH OFFICE REPORT)

Date : 07/10/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. S.L. Gupta, Adv.
Mr.Harkesh Chand Aggarwal, Adv.
Mr. J.S. Attri, Adv.

For Respondent (s)Mr. Parthapratim Chaudhuri, Adv.
Mr. K.S. Rana, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard parties for fifteen minutes.

The appeal is dismissed in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)

Court Master

(Jasbir Singh)

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6285 OF 2001

NEW INDIA ASSURANCE CO. LTD.

Appellant (s)

VERSUS

DHIRENDRA NATH SAHA & ANR.

Respondent (s)

O R D E R

Heard parties.

This appeal is against an order of the High Court dated 17th December, 1999. Briefly stated, the facts are that an accident took place on 6th February, 1986 whereunder a 25 year old boy was killed. Initially a claim was filed, before the Motor Accident Claims Tribunal, by the father of the boy i.e. the first Respondent (herein). However, subsequently, the mother of the boy was also added as a claimant. The Motor Accident Claims Tribunal awarded to both the claimants a sum of Rs.5,00,000/- with interest at the rate of 10% p.a.

An appeal was filed by the appellants before the High Court. In that appeal the mother was not made a party. It appears that this fact was not noticed by the High Court. However, the High Court has dismissed the appeal on merits.

This appeal has been filed against that judgment. In this appeal also the mother, who was one of the original claimant, has not been made a party. In our view, in the absence of a necessary party, this appeal cannot be entertained. Even if we find merit in this Appeal and were inclined to modify this Award, we could only do it qua the father. The Award, which is joint, would stand, qua the mother. Thus, entertaining this appeal would mean that there could be conflicting awards. This cannot be permitted. It would also be an exercise in futility. The Award qua the mother has become final. She can always execute it and recover the entire sum of Rs.5,00,000 Lacs with interest thereon.

Therefore, we dismiss this appeal on the ground that a necessary party is not before the High Court. There will be no order as to costs.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi;
October 07, 2003.