

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No. 746 of 2012**

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1. National Insurance Company Ltd., C 1/3 Laxmi Dah Naini Bala Bags, Azadpur, Commercial Complex, Delhi-3.
  2. National Insurance Company Ltd., P.W. High School Road, Khagaria, P.S. And District Khagaria.
- Both represented through Shri Anjani Kumar, Working As A.O. and dully Constituted Attorney of The National Insurance Company Ltd. having its regional office at 4th floor, Sone Bhawan, P.S. Sachivalaya, District Patna.

... .. Appellant/s

Versus

1. Romita Tiwary W/O Late Maheshwar Tiwary.
  2. Khushboo Tiwary D/O Late Maheshwar Tiwary.
  3. Lal Saheb S/O Late Maheshwar Tiwary.
  4. Kajal Tiwary D/O Late Maheshwar Tiwary.
  5. Madhu Tiwary D/O Late Maheshwar Tiwary.
  6. Suraj Saheb S/O Late Maheshwar Tiwary.
  7. Prince Saheb S/O Late Maheshwar Tiwary.
- All minor sons and daughters are under the guardianship of their mother Romita Tiwary the natural guardian, Resident of village-Jhamjhara, P.S. Pasharaha, District- Khagaria.
8. Babloo Poddar @ Satya Narain Poddar S/O Ram Saran Poddar Resident of Village Maraiya Bazar, P.S. Parbatta, District Khagaria. Owner Of Jeep Bearing Its Registration No. DL-1C/2761

... .. Respondent/s

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The Motor Vehicles Act, 1988---Section 140, 166, 173—appeal against award by Additional Claim Tribunal—violation of terms of insurance policy—liability of insurance company—claim of third party.

*Held:* There is no merit in the appeal—statutory amount deposited at the time of filing of appeal be remitted back through cheque in the name of respondent—appellants to pay awarded amount to claimants—may recover from the owner of the vehicle.

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... .. Respondent/s

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**Appearance :**

For the Appellant/s	:	Mr. Shailendra Kumar, Advocate
For the Respondent No. 1	:	Mr. Sanjeev Kumar, Advocate
		Mr. Rajesh Sinha, Advocate
For the Respondent No. 8	:	Mr. Binod Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**  
**ORAL JUDGMENT**

**Date : 29-01-2019**

Heard learned counsel for the parties.

2. The National Insurance Company Limited has challenged in this appeal under Section 173 of the Motor Vehicles Act, 1988 the award dated 17<sup>th</sup> December, 2011 and 10<sup>th</sup> January, 2012 respectively, passed in Claim Case No. 5 of



2005 by the learned 2<sup>nd</sup> Additional Claim Tribunal, Khagaria, whereby the Tribunal has asked the appellants to pay the awarded compensation in favour of the claimants, who are respondent Nos. 1 to 7 here. Respondent No. 1 Romita Tiwary is wife of the deceased and other respondents are children of the deceased.

3. Deceased Maheshwar Tiwary was an advocate, aged about 35 years. He died in a motor vehicle accident on 19.12.2002 caused by rash and negligent driving of the Jeep bearing registration No. DL-IC/2761. The dependents claimed compensation of rupees three lacs fifty thousands under Section 166 of the Motor Vehicle Act showing income of the deceased as six thousand per month. However, the Tribunal allowed compensation of rupees two lacs forty thousands plus rupees nine thousand five hundred as funeral expenses, loss of consortium and loss to the State. Out of that rupees fifty thousand which was paid in a separate petition filed under Section 140 of the Motor Vehicles Act was ordered to be adjusted.

4. Learned counsel for the appellants submits that at the time of accident the vehicle was insured for private use. However, the same was being used as a commercial vehicle



against the terms of policy. He further submits that the driver of the offending vehicle had no valid and effective driving license on the date of accident. The owner violated the terms and conditions of policy of insurance. Hence, the Tribunal should not have fixed the liability on the appellants.

5. The law is well settled that in the situation aforesaid, the insurer has to pay claim of third party and to recover the same from the owner of the vehicle, if a case of recovery is made out in the execution proceeding against the award.

6. Hence, I do not find any merit in this appeal on the ground mentioned above. Therefore, it stands disposed of with liberty to the appellants to first pay the awarded amount to the claimants and thereafter may recover against respondent No. 8, the owner of the vehicle. The statutory amount deposited at the time of filing of this appeal be remitted back through cheque in the name of respondent No. 1 Romita Tiwary which shall be adjusted against the final payment.

**(Birendra Kumar, J)**

Mkr./Banti-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2019
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