

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.208 of 2021

The National Insurance Company Limited, Patna Regional Office, Sone Bhawan, 4th Floor, Birchand Patel Marg, Patna represented through Assistant Manager/authorized signatory/duly constituted attorney, Regional Office, Patna.

... .. Appellant/s

Versus

1. Abhishek Anand Son of Late Sachidanand Sahay, resident of Bari Mirjapur, Police Station Kasim Bazar, District Munger.
2. Manish Kumar, Son of Yugal Kishore Yadav, resident of Hasanganj, Safiasarai, Police Station Kasim Bazar, District Munger, Tractor No. BR-53-6059 Tractor No. BR-53-6060, owner.
3. Jaidrath Yadav, Son of Late Dinanath Yadav, resident of Hasanganj, Police Station Kasim Bazar, District Munger, Tractor No. BR-53-6059 Tractor No. BR-53-6060, Driver.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rupak Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 20-11-2025

Heard Mr. Rupak Kumar, learned counsel for the appellant.

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

*Being aggrieved by and dissatisfied
with the judgment dated 03.01.2020 passed by
the learned Additional District Judge, 2nd-cum-
Motor Vehicle Accident Claim Tribunal,
Munger in Claim Case No.54 of 2015
(Abhishek Anand Vrs. Manish Kumar and*



others) by which compensation has been allowed against the appellant, appellant begs to move this memo of appeal on amongst following.

3. The facts of the present appeal is/are as under:-

4. On 28.08.2014, the informant was moving on his motorcycle (**BR-08D-6814**) when a Tractor having **Reg. no. BR-53-6059** moving in a rash and negligent manner, hit the motorcycle. The motorcycle was damaged and Abhishek Anand was also injured. He was shifted to Sadar Hospital, Munger, and this followed **Kasim Bazar P.S. Case No. 144 of 2014** on **02.09.2014** under Section 279, 337, 338 and 427 of the Indian Penal Code against the driver of the tractor. Charge sheet was submitted **vide no. 195 of 2014** on **30.09.2014** whereafter the claim was preferred. This led to **Claim Case No. 54 of 2015 (CR No. 69 of 2015)** before the **Additional District Judge-II-cum-Motor Vehicle Accident Claim Tribunal, Munger** (henceforth for short '**the Tribunal**').

5. 'The Tribunal' framed the issues as follows:-

(i) whether the case is maintainable;

(ii) whether the claimant is entitled to the

relief sought for;



(iii) whether the accident took place due to rash and negligent driving of the tractor's driver;

(iv) whether it was insured with National Insurance Company Limited;

(v) whether he is entitled to the claim.

6. In this case, beside the appellant company notices were also issued to the driver and owner of the Tractor (**Reg. No. BR-53-6059**) but as per the order sheet, they chose not to appear.

7. The stand of the appellant company who appeared on notice before the Tribunal is/are that, it was the appellant who was driving in rash and negligent manner and further the tractor's driver did not had any proper document to move on the road.

8. **'The Tribunal'** vide an order dated **03.01.2020** took up the matter and held as follows:-

(i) the accident took place due to rash and negligent driving of the tractor's driver (BR-53-6059);

(ii) the claimant came under the tyre of the tractor and he could be removed only with the help of the JCB, his bones were fractured;

(iii) being a private teacher and running a coaching institute, he was having an income;



(iv) the vehicle was insured with the National Insurance Company Limited;

(v) though the salary slip was not provided but the witnesses supported the fact that he is/was running a coaching institute;

(vi) the charge sheet has been submitted against the driver of the tractor, Jaidrath Yadav and the exhibit also shows that the said tractor was insured with the National Insurance Company Limited with a valid insurance policy from 25.04.2014 to 24.04.2015;

(vii) the document of the Sadar Hospital, Munger, clearly shows that he has been shown to be 20% disabled.

9. In that backdrop, 'the Tribunal' came to the conclusion that the accident took place with the tractor, it was insured with the National Insurance Company Limited, the claimant was injured and as such he is entitled to the relief.

10. Accordingly, taking into account the minimal salary of Rs. 3000/- per month, direction was given to pay Rs.7,00,000/- with 7% interest which is/was to be paid within a period of 60 days.



11. Aggrieved the present appeal.

12. Learned counsel for the appellant, Mr. Rupak Kumar, submits that we would like to contest the matter on two points.

(i) no salary slip was provided, so far as the appellant is concerned;

(ii) the right to recover from the tractor owner/ driver in accordance with law was/were not given as there is nothing on record to show that the tractor's driver was moving the vehicle on a proper driving license as they chose not to appear despite the valid service of notice.

13. This Court has recorded the entire facts of the case. Admitted case is that the appellant who was moving on a motorcycle was hit by the tractor which was insured with the appellant company. The accident was such that JCB was put into service to remove him from the tractor, his bones were broken and treated at Sadar Hospital, Munger. Further the medical certificate show that he has now 20% disability.

14. So far as the salary part is concerned, though the claimant presented the case that he was running a coaching institute and earned Rs. 5,000/- per month, 'the Tribunal' reduce is



to a minimal Rs. 3,000/- whereafter the calculation came to only Rs. 7,00,000/.

15. In the opinion of the court, there can not be any amount lower (per month) to what has been ascertained by 'the Tribunal'. In that backdrop, the first contention of the appellant company is rejected. So far as the second contention that the tractor's driver/ owner failed to appear despite valid service of notice and though it was insured with the appellant company, they never produced valid driving license to show their bonafide, the appellant company should have been given the right to recover the amount in accordance with law if they are able to prove the same.

16. This Court has taken note of 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 reads 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."



17. In that background, following the order of Hon'ble Apex Court in Parmindar Singh (supra) and granting liberty to the appellant company to recover the amount that has been awarded to the claimant from the driver/owner of the tractor registration number (BR-53-6059) in accordance with law, the following direction is/are issued herein below:

*(i) 'the company' is duly bound to pay the amount to the claimant with 7% interest by **15th December, 2025;***

*(ii) failure to do so, the claimant shall be entitled to an interest of 9% as the award from **16th of December, 2025;***

*(iii) if the payment is still not made by **31st March 2025**, the claimant shall be entitled to an additional amount of Rs. 25000/- beside the 9% interest from 16.12.2025 which the company shall recover from the Officer, who tries to delays the payment to the claimant.*

18. Since an order has already been passed and the present appeal has been disposed of, in view of the undertaking given by Mr. Rupak Kumar, learned counsel for the appellant Company that they shall be clearing the amount by 15.12.2025, to



the claimant, 'the Tribunal' is requested to defer the matter till the aforesaid date (15.12.2025).

19. The present M.A. no. 208 of 2021 stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

Jyoti/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	25.11.2025
Transmission Date	

