IN THE HIGH COURT OF JUDICATURE AT PATNA
C.R. No.486 of 2006

1. Smt. Pari Devi, Wife of Sri Jattu Rai
2. Sri jattu Rai, son of Late Dorik Rai
   Both resident of Gannipur Bejha, P.S.-Sakra, District-Muzaffarpur.
   …… Applicant …….. Petitioner
   Versus
1. Mr. Billu alias Mastdr Billa, son of A.K. Singh, resident of House No. A-33, Vijay Vihar Phase No. 2, Sector-4, Rohibi Uttari, Delhi
   …… Opposite Party No. 1 …….. Opposite Party
2. The Divisional Manager, National Insurance Company Ltd. At Motijheel, Muzaffarpur.
   ……. Opposite Party No. 3 …… Opposite Party.

C.R. No.521 of 2006

1. Urmila Devi, Widow of Late Mahendra Rai.
2. Sukurti Rai, son of Late Amir Rai.
3. Bholi Kumari (Minor), daughter of Late Mahendra Rai.
4. Guddu Kumari (Minor), daughter of Late Mahendra Rai.
   Serial No. 3 and 4 are under the guardianship of their mother Urmila Devi—Petitioner no. 1
   All are resident of Gannipur Bejha, P.S.-Sakra, District-Muzaffarpur.
   …… Applicants …… Petitioners
   Versus
1. Mr. Billu alias Mastdr Billa, son of A.K. Singh, resident of House No. A-33, Vijay Vihar Phase No. 2, Sector-4, Rohibi Uttari, Delhi
   …… Opposite Party No. 1 …… Opposite Party
2. The Divisional Manager, National Insurance Company Ltd. At Motijheel, Muzaffarpur.
   …… Opposite Party No. 3 …… Opposite Party.

C.R. No.522 of 2006

1. Sita Devi, Widow of Late Bishnu Dayal Rai.
2. Ranju Kumari(Minor) daughter of Late Bishnu Dayal Rai.
3. Sanju Kumari(Minor) daughter of Late Bishnu Dayal Rai.
4. Anil Kumar (Minor) son of Late Bishnu Dayal Rai.
   Serial No. 2 to 4 are minor daughters and son of Late Bishnu Dayal Rai, under the guardianship of their mother Sita Devi-Petitioner No. 1.
   All are resident of Gannipur Bejha, P.S.-Sakra, District-Muzaffarpur.
   ……. Applicants …… Petitioners
   Versus

1. Mr. Billu alias Mastdr Billa, son of A.K. Singh, resident of House No. A-33, Vijay Vihar Phase No. 2, Sector-4, Rohibi Uttari, Delhi
…… Opposite Party No. 1 …… Opposite Party
2. The Divisional Manager, National Insurance Company Ltd. At Motijheel, Muzaffarpur.
……. Opposite Party No. 3 …… Opposite Party.

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7. 18.9.2009 All these aforementioned three civil revision applications involving an absolutely identical and common question have been heard together and are being disposed of by this common order.

The petitioners are successful claimants whose claim for payment of compensation was allowed by the Motor Accident Claim Tribunal, Muzaffarpur on 27.6.2005. They are, however, aggrieved by the subsequent order of the Tribunal dated 17.12.2005 whereby and whereunder payment of their part of claim allowed by the Tribunal has been deferred till submission of the security by the owner of the vehicle.

In order to appreciate the issue involved in these three civil revision applications only this much facts have to be noticed that in a road accident on 18.5.2003 three persons, namely, Sanjit, Bishun and Mahendra, who were travelling in a maxi

ensured by the Oriental Insurance Company, had met their tragic death on account of a head in collusion with a truck ensured by the National Insurance Company. The owner of the truck is O.P.No.1, namely, Mr. Billu @ Mr. Billa. As a matter of fact three compensation cases were filed by the heirs and legal representative of the aforementioned Sanjit, Bishun and Mahendra and while the Oriental Insurance Company more or less had owned up its liability towards the Maxi involved in the accident, the National Insurance Company had set up a specific defence that the truck in question was being driven by a driver whose validity of the licence had already expired. It was thus the case of the National Insurance Company before the Accident Tribunal that the liability for compensation was that of the owner, O.P.No.1 and not that of the Insurance Company.

The Accident Tribunal, the court of 8th Addl. District Judge, Muzaffarpur by a judgment dated 27.6.2005 had accepted that part of the case of the National Insurance

Company that the liability for payment of half of the compensation awarded against the death of each of the three deceased persons was to be born by the owner of the truck, O.P.No.1 and the remaining half by the Oriental Insurance Company.

It has, however, to be noted that the owner of the truck against whom there was a direction for payment of half of the compensation had not appeared before the Tribunal and the proceeding against him was concluded ex-parte. The Tribunal, however, in keeping with the provisions of Section 149 of the Motor Vehicles Act, 1988 had directed that the amount which was payable by the owner of the truck was to be paid by the National Insurance Company which could later on recover the amount of compensation from the owner, O.P.No.1 through execution proceedings without filing any regular suit. The operative portion of the order of the Tribunal dated 27.6.2005 being relevant for this purpose is quoted hereinbelow:

> "It is further ordered that amount of compensation as stated above, paid by O.P.No.1 Mr. Billu, owner

in all the three cases has to be initially paid by O.P.No.3 National Insurance Co.Ltd. and later O.P.No.3 National Insurance Co.Ltd. shall recover the amount of compensation from the owner O.P.No.1 Mr. Billu through execution proceeding without filing any regular suit. So, the amount of compensation in all the three cases shall be paid as per above order by both the insurers and the insurer O.P.No.3 National Insurance Co.Ltd. shall recover the amount of compensation paid by him from the owner O.P.No.1 Mr. Billu through execution proceeding without filing any regular suit."

It is to be noted that the part of the order making the National Insurance Company liable for making payment till its realization by it from the owner was not challenged by the National Insurance Company and some how en ingenious and novel method was evolved by the said Insurance Company which having deposited its share of amount of compensation in the name of the claimants of all the three cases had sought to resist the payment of amount already tendered by it

when a prayer was made on behalf of the applicants to transfer the amount deposited by the Insurance Company in the Bank account of the claimants. In fact it was the individual application of the petitioners dated 22.11.2005 which was opposed by the National Insurance Company by filing a rejoinder dated 9.12.2005 taking a plea that such amount deposited by the Insurance Company should not be reimbursed and the cheques deposited by it should not be allowed to be encashed until the owner of the vehicle furnishes a security to this effect. Such an ingenious attempt on the part of the Insurance Company was made by placing reliance on the judgment of the Apex Court in the case of Pramod Kumar Agrawal & anor. Vs. Mushtari Begum (Smt.) & ors., reported in (2004)8 SCC 667.

The Tribunal having appreciated the rival contention has by the impugned order held that the payment of such cheques deposited by the Insurance Company would stand deferred and the amount under such cheques will not be deposited in the Bank

account of the claimant-petitioners unless and until the owner of the truck, held liable for payment of compensation would furnish a security as was directed by the Apex Court in the case of Pramod Kumar Agrawal & anor.(supra).

Counsel for the petitioners in all the three applications while assailing the correctness of the aforesaid impugned order have submitted that the court below, the Tribunal, in fact had failed to appreciate the law as with regard to the liability of the Insurance Company in the matter of payment of compensation in terms of section 149 of the Act as also scope of the judgment of the Apex Court in the case Pramod Kumar Agrawal (Supra). Expanding this part of submissions, counsel for the petitioners had also referred to the earlier judgment of the Apex Court in the case of Skandia Insurance Co. Ltd. Vs. Kokilaben Chanravadan & ors., reported in (1987)2 SCC 654, and in the case of National Insurance Co. Ltd. Vs. Swaran Singh & ors., reported in (2004)3 SCC 297.They had further submitted that the

Tribunal in fact had no jurisdiction to read between the lines in the earlier inter party judgment dated 27.6.2005 which nowhere had made release and payment of amount by the National Insurance Company to the claimant only upon furnishing of security by the owner of the Truck.

On notice issued by this Court in all these three cases, the National Insurance Company has appeared and though it has not filed any rejoinder to controvert the facts. Counsel appearing for the National Insurance Company has stressed that in view of the judgment of the Apex Court in the case of Pramod Kumar Agrawal (Supra) it has now to be taken a law of universal application that even when there is no liability on the part of the Insurance Company and it has to satisfy the award given by the Tribunal by making payment to the claimant, such payment cannot be made unless the security is furnished by the owner of the vehicle, who in fact is held liable under the award for payment of such compensation.

Having given anxious consideration to the aforementioned submissions and the admitted facts, this Court is of the opinion that the approach of the court below to say the least in allowing the frivolous pleas of the Insurance Company of withholding payment of amount already tendered by cheques of the Insurance Company is erroneous both on fact and in law.

First of all it has to be noted that in all the three cases while the compensation matter was being agitated the owner had not appeared and accordingly, even when the defence of the Insurance Company and the owner of the truck not being driven through a driver having a valid licence on the day was accepted and the Insurance Company was exonerated of the liability of making payment of amount of compensation, the Tribunal in keeping with the object of section 149 of the Act had directed for making such payment to the Insurance Company. The Insurance Company did not assail that part of the award under which it was directed to make payment till its

recovery by the Insurance Company from the owner. That having been not done it was no longer open for the Insurance Company to come out with a new plea as inter party order/ judgment had acquired finality on the date on which the claimant petitioners having acquired knowledge of depositing of cheque by the Insurance Company in the Tribunal had only made a prayer for its being deposited in their respective Bank accounts for its encashment.

Apart from the aforementioned distinguishing feature, the reliance placed by the Insurance Company on the judgment of Pramod Kumar Agrawal (Supra) was/is also wholly misconceived. It has to be noted that in the said judgment there were some peculiar facts and in fact the said judgment was only an inter party judgment laying down no broader principle as has been sought to be canvassed before this Court by the counsel for the Insurance Company. This would become clear from the facts of that case, inasmuch as from the text of the judgment of Pramod Kumar Agrawal (Supra) it

would be born out that in a road accident on 11.11.2000 when the death of one Amir Hassan had taken place, the claim of compensation of his family members was opposed by the Insurance Company by taking a plea that the vehicle belonging to Pramod Kumar Agrawal, the owner of the vehicle was being driven by one Kamal Kumar Agrawal, the driver, who had no valid or effective driving licence and also that the vehicle was not insured and the claim petition was filed in collusion with the owner and the driver of the vehicle in question. The Tribunal in fact while examining such claim for compensation had recorded a finding that the vehicle in question involved in the accident was coming from Haridwar laden with sand in which 30-40 persons were already sitting and Amir Hassan alongwith two others had boarded and/or climbed the said truck which had later on overturned resulting into the accident leading to death of three persons including Amir Hassan. The plea of the owner and the driver, therefore, was that it was not a vehicle for commercial and passenger use and

rather it was a vehicle for use of goods carriage and if Amir Hassan and other had climbed in the vehicle/ truck forcibly, they (owner and the driver) were not liable to pay the amount of compensation under the Act. The Tribunal on analyzing the evidence had come to a finding that the plea of the owner and the driver was not correct and in fact fare was collected from the passengers including Amir Hassan and accordingly, the Tribunal had held that the vehicle was a goods vehicle and the owner had not ensured the vehicle for carrying passengers in good vehicle in which only the driver, cleaner and certain number of labourers could be carried. Consequently the owner, to the exclusion of the Insurance Company, alone was held liable and the appeal filed by the owner and the driver against the judgment of the Tribunal was also dismissed giving them no relief. It was in this background that the matter was carried to the Supreme Court by the owner and the driver who took a plea that since the accident had taken place after the amendment in 1994 in section 147

of the Act, therefore, the Insurance Company ought to have been made liable to indemnify the award. It was in this factual background that the Apex Court in paragraph 12 had given its direction for payment of compensation as awarded by the Tribunal in the following words:

> "Therefore, while upholding the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle i.e. Appellant I shall furnish security for the entire amount which the insurer will pay to the claimants. The offending

vehicle shall be attached, as a part of the security. If necessity arises, the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle i.e. Appellant I shall make payment to the insurer. In case there is any default, it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured (Appellant 1).”

(Under lining by this Court for emphasis)

From a bare reading of the aforementioned operative portion of the judgment of the Apex Court in the case of Pramod Kumar Agrawal (Supra), it would thus be clear that as the claimants were themselves present throughout in the proceedings either before the Tribunal or by filing of their appeal in the High Court or again by agitating the matter regarding liability of payment of compensation against

the Insurance Company even in the Apex Court, the Apex Court had directed for such payment of amount by the Insurance Company, subject to furnishing of security of the entire amount which the Insurance Company was to pay to the claimants. In the opinion of this Court, this cannot be held to be a law of universal application as has been sought to be canvassed by the counsel for the Insurance Company.

As a matter of fact the very scope and purpose of section 149 is to satisfy the judgment and award against the persons insured in respect of 3rd party risk. Section 149, therefore, presupposes that if there is an insurance covered by the Insurance Company against a vehicle involved in the accident it would be liable to pay the amount of compensation payable by the owner and recover the same later on from the owner.

The whole issue as with regard to such a contingency of making payment by the Insurance Company where it has not been held liable to pay for compensation on its own

was considered, dealt and decided by the Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & ors.(Supra) where a three Judges Bench having considered all possible facets of this aspect of the matter had laid down law in this respect in the following terms:

> "104. It is, therefore evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.
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> 105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.
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> 106. It is a well settled rule of law and should not ordinarily by deviated from. (See Bengal Immunity Co. Ltd. Vs. State of Bihar, AIR 1955 SC 661, Keshav Mills Co. Ltd. vs. CIT, AIR 1965 SC 1636, Union of India vs. Raghubir Singh, (1989)2 SCC 754, Gannon Dunkerley and Co. vs. State of Rajasthan, (1993) 1 SCC 364, Belgaum Gardeners Coop. Production Supply and Sale Society Ltd. Vs. State of Karnataka, 1993 Supp (1) SCC 96(1), and

Hanumantappa Krishnappa Mantur vs. State of Karnataka, 1992 Supp (2) SCC 213).

107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those

> exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

The said judgment of the Apex Court, therefore, leaves nothing for speculation as with regard to liability of the Insurance Company and the manner and mode of recovery of the amount of compensation by the Insurance Company from the owner.

In the opinion of this Court the ratio laid down by the Apex Court in the aforesaid judgment of Swaran Singh (supra) will govern the field and if any subsequent view has been taken by the Apex Court in the case of Pramod Kumar Agrawal (supra) that must be considered only in view of what has been said by way of exception as carved out

in paragraph 107 of the aforementioned judgment of the Apex Court in the case of Swaran Singh (supra). As a matter of fact this aspect of the matter in fact also gets explained from yet another judgment of the Apex Court in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma & ors., reported in (2004) 8 SCC 517, wherein again the question directly involved was as to whether the Insurance Company could have been held liable for payment of compensation in respect of an accident of a tempo on which had no valid permit to carry passengers. It was in this context that the Apex Court in the case of Challa Bhrathamma (Supra) had held that the view taken by the Tribunal and affirmed by the High Court holding the Insurance Company for payment of compensation was not correct and consequently the Apex Court had issued a direction that it would be proper for the Insurance Company to satisfy the award, though in law it had no such liability. Having given such direction when the Apex Court had also explained the mode of

recovery of such amount by the Insurance Company from the owner of the tempo it had made an observation that before release of the amount to the claimants, owner of the tempo will be required to furnish security for the entire amount which the Insurance Company will pay to the claimants. Such direction, therefore, was again issued in the peculiar facts of that case and in any event would not govern the facts of the present case where in the original judgment dated 27.6.2005 the Tribunal had given no such direction for furnishing a security by the owner of the vehicle as a condition precedent for making payment of the amount.

The matter in fact can be viewed from another angle. When the owner had not appeared in the proceedings before the Tribunal and the Insurance Company had not filed its appeal against that portion of the direction of the Tribunal to pay the amount in the first instance to the claimant petitioners and recover it later from the owners, could the Insurance Company be permitted to even raise a defence which

would in effect make the whole award and judgment of compensation nugatory? It is not difficult to envisage that if in a period of three years till adjudication made by the Tribunal the owner could not be traced, he may not still be traced and therefore, putting a condition of impossibility as a condition precedent for payment of award would in fact defeat the very purpose of award. It has to be noted that the share of the National Insurance Company being half in the amount of compensation so determined in all these three cases has been successfully deprived by it by playing a clever gimmick on the court. The Insurance Company did deposit the amount under three cheques for its payment to the claimant petitioners but with a caveat that the same should not be allowed to be encashed unless the owner whose existence and trace is yet to be found out, had submitted his security. This Court, therefore, is satisfied that the said conduct of the Insurance Company was not only unbecoming of an authority which is the State within the meaning of Article 12 of

the Constitution but also aimed to harass the claimant petitioners.

In that view of the matter, this Court would hold that the impugned order passed by the court below in all these three cases being the same one and common, are definitely visited both by vice of material irregularity and jurisdictional error and consequently the same is set aside. The National Insurance Company, O.P.No.2, is hereby directed to either revalidate or issue a fresh cheque for the amount which it had deposited earlier in the Tribunal within a period of one month alongwith a cost of Rs. 10,000/- in each of the three cases for the delay caused in encashment of the earlier cheques deposited by it. In the event the Insurance Company fails to pay the amount of compensation as deposited by it earlier under three cheques alongwith a cost of Rs. 10,000/- each in three cases within a period of one month from the date of receipt/ production of a copy of this order, the Tribunal will take immediate steps for its realization in accordance with law.

With the aforementioned observations and directions, the applications are allowed.

(Mihir Kumar Jha,J.)

Surendra/