

(2002) 07 JH CK 0007**Jharkhand High Court****Case No:** L.P.A. No. 46 of 1999 (R)

Basanti Devi and Others

APPELLANT

Vs

Devi Dyal Bhagat and Another

RESPONDENT

Date of Decision: July 16, 2002**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 173

Citation: (2003) 2 ACC 303 : (2003) 2 JCR 112**Hon'ble Judges:** M.Y. Eqbal, J; Hari Shankar Prasad, J**Bench:** Division Bench**Advocate:** A.K. Lal, for the Appellant; D.C. Ghosh, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

1. This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 15.1.1999 passed in Miscellaneous Appeal No. 583/1993. The judgment dated 15.1.1999 reads as under :--

"Hear the parties and with their consent this appeal is disposed at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure,

It is not in dispute that on 21.1.1988 Shiv Shankar Sahu, while riding the moped bearing Registration No. BPY-6403 belong to Devi Dayal Bhagat was dashed by a truck, Registration No. whereof could not be ascertained and lost his life. His heirs filed complaint case No. 37 of 1988 under the Motor Vehicles Act, 1939. Neither the deceased was owner of the moped nor it was proved by the claimants that he had a valid driving licence. It was said that one Tovious Tata was pillion rider on the said moped and he was the eye witness and only person to say as to whether the accident took place for the fault of the deceased or the truck driver but surprisingly he was not examined. It was therefore not proved as to how the accident took place.

In such circumstances in my view the Tribunal rightly held that the insurer of the moped was not liable to pay compensation under the said Act to the claimants. This appeal is accordingly dismissed."

2. Admittedly the deceased was neither the owner of the moped nor he was having a valid diving licence Not only that there is nothing on record to show that which truck was involved in the accident.

3. In that view of the matter, we are of the view that the learned Single Judge rightly dismissed the appeal holding that the appellant-Insurance Company was not liable to pay any amount to the claimants. We do not find any merit in this appeal which is accordingly dismissed. However, needless to say that the respondent claimants will not be debarred from approaching other authority for the grant of compensation.