IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.32 of 2012

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Pradeep Kumar Mandal, son of late Digambar Prasad Mandal, resident of Mirkel Karhagola Ghat, P.S.-Barari, District- Katihar.

Claimants… .... Appellant

Versus

1. Baijnath Kumar Paswan, son of Ram Pratap Paswan, resident of Karhagola, P.S.- Barari, District – Katihar.
2. Kakko Rai, son of Lalu Rai, resident of Bhaisdira, P.S.- Barari, District- Katihar.
3. Pramod Kumar Chaudhary, son of Uma Kant Choudhary, resident of Pachama, P.S.- Korha, District- Katihar.
4. Tarkeshwar Singh, son of Kapildeo Singh, resident of Nazar Chauki Phulwari, P.S.-Korha, District- Katihar.
5. The New India Assurance Company Ltd. at Bishwanath Service Station near Bus stand NH-31, Purnea, P.S.- K. Hat, District- Purnea.
6. National Insurance Company at Bhagwati Complex Near Gurudwara, P.S.- and District- Katihar.

…… Opposite Parties……….respnondents

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with

Miscellaneous Appeal No.91 of 2012

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Baijnath Paswan, son of Ram Pratap Paswan, resident of Village- Karhagola, P.S. – Barari, District- Katihar (owner of the jeep no.BR-11C/7795)

(Opp. Party No.1)….. appellant

versus

1. Pradeep Kumar Mandal, son of late Digambar Prasad Mandal, resident of Mirkel Karhagola Ghat, P.S.-Barari, District- Katihar.

   (Claimant)…………respondent
2. Kakko Rai, son of Lalu Rai, resident of Bhaisdira, P.S.- Barari, District- Katihar.
3. Pramod Kumar Chaudhary, son of Uma Kant Choudhary, resident of Pachama, P.S.- Korha, District- Katihar.
4. Tarkeshwar Singh, son of Kapildeo Singh, resident of Nazar Chauki Phulwari, P.S.-Korha, District- Katihar.

5. The New India Assurance Company Ltd. at Bishwanath Service Station near Bus stand NH-31, Purnea, P.S.- K. Hat, District- Purnea. (Insurer of Jeep No.BR-11C/7795).
6. National Insurance Company Ltd. at Bhagwati Complex Near Gurudwara, P.S.- and District- Katihar(Insurer of Jeep No. BR-11A3801).

(Opp. Parties)….. respondents

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Appearance :

(In Miscellaneous Appeal No. 32 of 2012)

For the Appellant/s	:	Mr. Ajit Kumar Singh, Advocate
For respondent nos. 3 and 4	:	Mr. Ajay Kumar Singh, Advocate
For respondent no.5	:	Mr. Sanjay Singh, Advocate
		Mr. Bimlesh Kumar Jha, Advocate
For respondent no.6	:	Mr. Ashok Priyadarshi, Advocate

(In Miscellaneous Appeal No. 32 of 2012)

For the Appellant/s	:	Mr. Rajendra Prasad Sah, Advocate
For respondent nos. 3 and 4	:	Mr. Ajay Kumar Singh, Advocate
For respondent no.5	:	Mr. Sanjay Singh, Advocate
		Mr. Bimlesh Kumar Jha, Advocate
For respondent no.6	:	Mr. Ashok Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 28-01-2015

Heard the parties.

2. Since the two Appeals arising out of one judgment, as prayed for, are being heard and disposed of together by this common judgment

3. Both these Appeals have been preferred against composite Award and Judgment dated 28.11.2011 in Claim Case No. 4 of 2006 by the Additional District Judge-cum-Motor

Vehicles Accident Claim Tribunal, Katihar (hereinafter referred to as the "Tribunal") in which Miscellaneous Appeal No. 32 of 2012 has been preferred by the claimant appellant for enhancement of the Award aforesaid and Miscellaneous Appeal No. 91 of 2012 has been preferred by the owner of the vehicle seeking exoneration from the half payment of the liability on the ground of being under valid coverage of insurance

3. Undisputedly, the claimant was an employee of the owner appellant of M.A. No. 91 of 2012 as 'khalasi' of vehicle bearing registration No.BR-11C/7795.

4. Since there is no dispute as regards to manner, date and place etc. of the accident there is no need to go into further details of the matter.

5. Undisputedly, the Tribunal finding income of the claimant appellant taking into consideration injury sustained awarded a sum of Rs.3,80,600/-/- as compensation out of which 1,35,200/- was to be shared by the National Insurance Company, who is the insurer of the vehicle dashed wherein appellant of MA. No. 32 of 2012 was engaged and is employer. Appellant of later appeal has been saddled with Rs.1,35,000/- of the award on the ground lack of coverage of insurance and the National Insurance Company was saddled wit Rs.1,10,000/-.

6. It is submitted by learned counsel for the claimant appellant(in Miscellaneous Appeal No. 32 of 2012) that claimant has part with 85 % of his left leg which had to be imputed and in fact he has lost his entire income and capacity to do but the Tribunal has taken into consideration the aspects not within the purview of law and reduced it to 50 % further fail to consider loss of future prospects of the claimant aged about 34 years.

7. In view of the prevailing law, there is agreement amongst members of the Bar that he is to be compensated for his entire loss with future prospect up to 30% in view of the decision rendered in the case of ***Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121 .*** Since the Tribunal has assessed his annual income as Rs.28,800/- and the applicable due multiplier 16 bringing the amount to the tune of Rs.4,60,800/- but awarded half i.e. 2,30,400/- wherein Rs.40,000/- added as loss and other due expenses, bringing to the amount to Rs.2,70,400/- and owing to consideration about reduction up to 50% ordered to pay under this head Rs.1,35,200/- and by two sets half and half i.e. the appellant in Miscellaneous Appeal No. 91 of 2012 and the Insurer of dashing vehicle but since in view of agreed submissions taking into consideration and all stated above the amount of

compensation cannot be divided into two parts. Thus, he is entitled for Rs.4,60,800/- and as per Schedule, 30 % is to be added as future prospect bringing the amount to Rs.4,60,800/- + 1,53,600/- = Rs.6,14,400/- wherein the medical expenses and the expenses towards personal and other expenses as ordered by the Court below Rs.40,000/- is to be added which comes to the tune of Rs.6,54,400/-.

8. It is also submitted by learned counsel for the appellant in Miscellaneous Appeal No.91 of 2012 that the vehicle was validly insured by the New India Assurance Company Ltd. to whom premium was paid for 10 + 2 persons in spite of the fact that as per certificate of ownership/registration of the vehicle it has total capacity of 10 and as per evidence at the relevant time only 5 persons were occupied the vehicle, the Insurer cannot be exempted from the liability to indemnify the liability saddled against the owner appellant on face of exhibit 4 i.e. insurance certificate issued by the New India Assurance Company Ltd. it is liable to indemnify the owner and pay the compensation which is now being modified as indicated above.

9. The National Insurance Company Ltd. since has already satisfied the liability to the extent saddled upon then it shall pay half of the total modified Award with interest which

comes to the tune of Rs.3,27,200/- deducting the amount already paid and rest Rs.3,27,200/- with same rate of interest is to be paid by the New Indian Assurance Company Ltd.

10. All such payments must be made within a month from today.

11. Let statutory amount, if so deposited, be remitted back though demand draft to the Tribunal below for further needful.

(Akhilesh Chandra, J)

Ashwini/-

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