

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.52 of 2011

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Rampari Devi, widow of Late Lal Mohan Sah, residing at village-Dekulidham, P.O. Dekulidham, via-Kinghiya, P.S. Biraul, Disrtrict-Darbhangha.

.... Claimant/Applicant.....Appellant.
Versus

1. Damodar Mandal, son of Late Janak Mandal, village-Baghauni, P.S. Baheri, District-Darbhangha (the owner of the vehicle Bus No.BR-09/7811).
....Opposite Party 1st Party.....Respondent Ist Set.
2. The Branch Manager, National Insurance Company Limited, Branch Office, Senapat Muhalla School Road, Darbhanga.
....Opposite Party 2nd Party....Respondent 2nd Set.
3. Md. Daud Khan, son of Md. Hamid Khan, village-Bhitwara, P.S. Biraul, District-Darbhangha (Driver of the vehicle Bus No.BR-09/7811).
.....Opposite Party 3rd Party.....Respondent 3rd Set.
..... Respondents.

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Appearance :

For the Appellant : M/s. Satya Nand Shukla and Mukesh Prasad Singh,
Advocates.

For the Respondent No.2 : Mr. Shailendra Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 22-04-2015

Heard learned counsel for the appellant and the Respondent
No.2.

2. The claimant/applicant-appellant has filed this Misc.
Appeal under Section 173 of the Motor Vehicle Act against the
Judgment/Award dated 15.09.2009/10.12.2011 passed in Claim Case
No.27 of 2004, whereunder the 2nd Additional District Judge-cum-Claim
Tribunal, Darbhanga (hereinafter referred to as “the Tribunal”)
dismissed the claim case of the claimant/applicant-appellant

3. In brief the case of the claimant-appellant is that her



husband, Late Lal Mohan Sah, boarded at the bus bearing Registration No.BR-09-7811 at Bahera for going to Darbhanga on 10.06.2003. When the said bus reached near Horalpatti under Police Station-Ashok Paper Mill, District-Darbhangha, the said Bus dashed in the electric pole due to rash and negligent driving of the driver of the bus and due to which electric wire fallen on the bus and several persons sustained injuries due to electric shock and died in course of treatment. Further case of the claimant is that Late Lal Mohan Sah died leaving behind him his widow claimant and two sons, daughter-in-law and four grandsons. Now, there is none to look after and maintain the family. At the time of accident the Bus bearing Registration No.BR-09-7811 was owned by the Respondent No.1, Damodar Mandal and insured by the opposite party no.2-Respondent No.2, the National Insurance Company Limited. The claimant claimed compensation Rs.3,24,000/- in addition to Rs.2000/-, Rs.5000/-, Rs.2500/- and Rs.1500/- respectively as funeral expenses, loss of consortium, loss of estate and medical expenses.

4. Learned counsel for the claimant-appellant submits that during the trial, AW-1, Ramchandra Sah, AW-2, Babuji Das and AW-4, Ram Swaroop Rai, who are said to be the witnesses of the accident, have supported the claim case of the claimant-appellant regarding sustaining electric burn injury in the incident and carrying the deceased at D.M.C.H., Darbhanga for treatment but the learned Tribunal illegally

disbelieved the evidence of the witnesses and dismissed the claim case of the claimant-appellant.

5. On the other hand, learned counsel for the opposite party-Respondent No.2 submits that while in course of trial, AW-1, Ramchandra Sah, AW-2, Babuji Das and AW-4, Ram Swaroop Rai, have stated about sustaining injury by the deceased when he was traveling in the bus in question due to dashing of the bus in the electric pole and falling of the electric wire on the bus regarding which Ashok Paper Mill P.S. Case No.57 of 2003 was instituted but no evidence has been adduced on behalf of the claimant-appellant to connect the death of the deceased due to sustaining burn injury in the said accident.

6. After hearing the parties and perusing the evidence available on the record, the learned Tribunal decided the five issues, as framed, against the claimant and dismissed the claim case of the claimant-appellant through the impugned Judgment and Award.

7. From perusal of the records, it appears that AW-1, Ramchandra Sah, AW-2, Babuji Das and AW-4, Ram Swaroop Rai, has stated in their evidence that they were also the co-passenger with the deceased, Lal Mohan Sah, in the bus bearing Registration No.BR-09-7811 and the bus on account of rash and negligent driving of the driver of the bus, dashed the electric pole and the electric wire fallen on the bus and due to electric shock 15 persons sustained burn injuries, who were

taken to D.M.C.H., Darbhanga, for treatment where Lal Mohan Sah died.

8. Ext.1 is the formal F.I.R. of Ashok Paper Mill P.S. Case No.57 of 2003 registered on 10.06.2003 under Sections 279, 337, 338 of the Indian Penal Code in which later on Section 304-A of the Indian Penal Code was also added on 22.07.2003. Ext.2 is the fardbeyan of Md. Anwarul, A.S.I. of Pator O.P., on the basis of which the aforesaid Ashok Paper Mill P.S. Case No.57 of 2003 was instituted. Ext.3 is the chargesheet dated 20.10.2003 of Ashok Paper Mill P.S. Case No.57 of 2003 which has been submitted under Sections 279, 337, 338 and 304(A) of the Indian Penal Code against the driver of the bus bearing Registration No.BR-09-7811. Ext.4 is the post-mortem report of the deceased, Lal Mohan Sah, which was held on 11.07.2003. In Exts.1, 2 and 3, the name of the deceased has not been disclosed. Ext.4, which is the post-mortem report of the deceased, Lal Mohan Sah, dated 11.07.2003, shows that there is no description about the P.S. Case Number. As such, the said documents do not disclose about the death of Lal Mohan Sah in connection with Ashok Paper Mill P.S. Case No.57 of 2003 which was instituted on the basis of the fardbeyan of Md. Anwarul, A.S.I. of Pator O.P. regarding the incident of suffering burn injuries by 15 persons, who were taken to D.M.C.H., Darbhanga. There is nothing on record to show that the deceased, Lal Mohan Sah, was admitted at

D.M.C.H., Darbhanga, for treatment. Ext.3, the chargesheet of Ashok Paper Mill P.S. Case No.57 of 2003, shows that on investigation the police submitted the chargesheet on 20.10.2003 after the post-mortem held on the dead body of the deceased on 11.07.2003 but the Police Station Case has not been detailed in the post-mortem report (Ext.4). In the claim petition there is no description about the treatment of the deceased after sustaining burn injury at D.M.C.H. Learned Tribunal took all the issues together and discussed the oral and documentary evidence in detail at paragraph-7 of the impugned Judgment and arrived at the conclusion that the documents, which have been filed by the claimant-appellant do not support the death of Lal Mohan Sah in accident as occurred due to rash and negligent driving of the bus bearing Registration No.BR-09-7811 regarding which Ashok Paper Mill P.S. Case No.57 of 2003 is instituted and, accordingly, dismissed the claim case of the claimant-appellant.

9. I find no infirmity and illegality in the impugned Judgment and Award. Accordingly, this Misc. Appeal stands dismissed.

(Rajendra Kumar Mishra, J)

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