IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.579 of 2011

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1. Smt. Raj Kumari Devi, W/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.
2. Rani Kumari Minor, D/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.
3. Sumit Kumar Minor, S/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.
4. Indrajeet Kumar Minor, S/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.

(Claimant Nos. 1 to 4)

.... Appellant/s

Versus

1. Srin Randeep Banerjee, S/O Ambika Ranjay Banerjee, Resident of Barkakana, Qr. No. 1C27/02, Naya Nagar, GMB Office NIS, Barkakana, Patratu Hazaribagh.

(Opposite Party No.1)

2. The Divisional Manager, National Insurance Company Ltd. Motijheel, Muzaffarpur.

(Opposite Party No.2)

.... Respondent/s

with

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Miscellaneous Appeal No. 557 of 2011

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The Divisional Manager, National Insurance Company Ltd., Gaushala Road, P.S. Mithanpura, District Muzaffarpur, represented through the Chief Manager, R.O. National Insurance Company Limited, Sone Bhawan, 4th Floor B.C. Patel, Path, District- Patna.

(Opposite Party No.2)

.... Appellant/s

Versus

1. Smt. Raj Kumari Devi, W/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.
2. Rani Kumari Minor, D/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.
3. Sumit Kumar Minor. S/O Late Suresh Kumar Yadav. Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.
4. Indrajeet Kumar Minor, S/O Late Suresh Kumar Yadav, Resident of Station Colony, Barkakana, P.S- Patratu, District- Ramgarh.

……………..Claimants.

………….. Respondent 1 set/

5. Srin Randeep Banerjee, S/O Ambika Ranjay Banerjee, Resident of Barkakana, or, No-1c27/02, Naya Nagar, Gmb Office Nis, Barkakana, Patratu Hazaribagh.

… ….Opposite Party No.1

.... Respondent 2nd set.

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Appearance :
(In MA No. 579 of 2011)
For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate.
For the Respondent No.1 : Mr. Abinash Kumar Singh, Advocate.
For the Respondent no.2 : Mr. Raj Kumar Singh, Vikram, Advocate.
(In MA No. 557 of 2011)
For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate.
For the Respondents 1 to 4 : Mr. Mukesh Kumar Singh, Advocate.
For the Respondent No. 5 : Mr. Abinash Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 24 -04-2015

Both Miscellaneous Appeals have been preferred, under Section 173 of the Motor Vehicle Act, against the judgment/award dated 22.01.2010/06.01.2011 passed in Claim Case No. 223 of 2008, whereby the court of 7th Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur, (hereinafter referred to as the 'Tribunal') has directed the opposite party no.2, Divisional Manager, National Insurance Company Limited, to pay the compensation Rs.5,75,500/- with 6% interest from the date of filing of the claim petition till realization to the claimants. Therefore, both Miscellaneous Appeals have been heard together and are being disposed of by common judgment.

2. The brief facts of the case is that the claimants

who are appellants in Miscellaneous Case No. 579 of 2011 and respondent nos. 1 to 4 in Miscellaneous Case No. 557 of 2011 filed claim petition, under Section 166 of the Motor Vehicle Act, with contention that on 02.02.2008 Suresh Kumar Yadav, was going to Barkakona station with his friend, Sachidanand Singh, from Loco Colony. When Suresh Kumar Yadav, reached Jora Talab at about 8.00 pm, the motorcycle bearing registration no. JHO-2H-7782, which was being driven rashly and negligently, dashed at the kachchi flank of the road to the Suresh Kumar Yadav, who sustained grievous injury and was rushed at Ramgarh hospital where he died in course of treatment. In this regard Patratu P.S. Case No. 28 of 2008 was registered. Further case of the claimants is that deceased, Suresh Kumar Yadav, who was the husband of claimant no. 1 and father of claimant nos. 2 to 4, was contractor of ARGADA railway halt under Barkakona railway junction and he used to earn Rs.56,000/- per annum. He was maintaining himself along with family members from his earning at the time of accident. The age of the deceased at the time of accident was 40 years. Due to sudden vehicular death the claimants became helpless and are suffering from mental pain, shock and there has been loss to the dependency, estate, love and affection to the claimants. As such, the claimants are entitled to get compensation amount of Rs.5,75,500/- in different heads. Further case of the claimants is that at the time of accident motorcycle bearing registration no. JHO-2H-7782 was owned by opposite party no.1 and insured with opposite party no.2, National Insurance Company.

3. Opposite Party No. 1, Randeep Banerjee, owner of the vehicle filed his written statement but has not denied the factum of the accident as detailed in the claim petition with contention that the motorcycle in question was insured with National Insurance Company Limited at the time of accident. As such, he is not liable to pay the compensation of the claimants.

4. The Opposite Party No. 2, National Insurance Company Limited, has filed written statement raising several usual defence including the defence to the effect that if the vehicle in question was being driven without any valid driving licence by the driver the National Insurance Company Limited is protected under Section 149(ii) of the Motor Vehicle Act and not liable to pay the compensation.

5. After perusing the pleadings and evidence available on record, the learned Tribunal allowed the claim application of the claimants through the impugned judgment/award dated 22.01.2010/06.01.2011 with direction to the opposite party no. 2, National Insurance Company Limited, to pay compensation

Rs.5,75,500/- with 6% interest from the date of filing of the claim petition till realization within one month. With further direction to deposit 75% of the said amount in the fixed deposit in any nationalized Bank and the claimants will receive the interest on the said amount and rest amount is to be paid through bank draft or account payee cheque to met out the day today expenses of the claimants.

6. The claimants being dissatisfied with the impugned judgment and award filed the Miscellaneous Case No. 579 of 2011 for enhancement of the compensation. The Divisional Manager, National Insurance Company, has also filed the Miscellaneous Appeal No. 557 of 2011 against the impugned judgment and award with contention that opposite party no. 1 owner of motorcycle in question in collusion with the claimants has not produced the driving licence. Hence, opposite party no.2, National Insurance Company, is not liable to pay compensation.

7. Learned counsel appearing on behalf of the claimants/appellants of Criminal Appeal No. 579 of 2011 submits that Exhibit 4 is the certificate issued from the office of Divisional Railway Manager (Commercial), Dhanbad, on 15.03.2010 regarding the earning of the deceased, Suresh Kumar Yadav, showing the earning Rs.7828/- for the month of December, 2007 as a Halt

Contractor at Arigada Railway halt, accordingly, the income of the deceased would be Rs.93939/- per annum but the learned Tribunal illegally assessed the earning of the deceased Rs.56,000/- per annum. It is further submitted that it would appear from the impugned judgment/award that there are four claimants, who are widow and minor children of the deceased, but the learned Tribunal has deducted the 1/3rd as personal expenses of the deceased out of his annual income. While in view of the decision of the Apex Court in Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another 2009(6) Supreme Court Cases 121, the deduction as personal expenses of the deceased should be 1/4th to the income not 1/3rd.

8. On the other hand, learned counsel for the National Insurance Company Limited, opposite party no.2, appellant of Miscellaneous Appeal No. 557 of 2011, submits that it would appear from the trial court record that driving licence has not been brought on record by the owner of the vehicle. While it is specifically stated in its written statement filed by the National Insurance Company that if the driver of motorcycle in question has no valid licence, the insurer under Section 149(2)(II) is precluded to pay the compensation to satisfy the liability of the owner of the motorcycle in question. In spite of that the learned Tribunal illegally directed the

opposite party no. 2, National Insurance Company to pay compensation Rs.5,75,500/- with 6% interest from the date of filing of the claim petition till realization within one month to the claimants.

9. On perusal of the trial court record, it appears that the claimants have specifically stated in their claim petition that the deceased was aged about 40 years at the time of accident and he was working as Halt Contractor at Arigada Railway halt and his earning was Rs.56000/- per annum at the time of accident. Before the Tribunal, claimant no.1, Raj Kumari Devi, widow, is examined as A.W.1 and she has stated in paragraph 2 of her evidence that the earning of her husband was Rs.5500/- per month, accordingly, the income of the deceased would come to Rs.66000/- per annum. P.W.4 is Rajiv Kumar who disclosed himself T.E. in Railway Department has stated in his evidence that in March, 2010 he was posted in the office of Senior Divisional Manager, Dhanbad on deputation. In respect to earning of deceased, Suresh Kumar Yadav, certificate was typed by Steno, R.C. Yadav on which Senior D.C.M., Samir Kumar, put his signature and he proved the certificate as Ext.4. Exhibit 4 is the typed copy of the certificate issued form the office of the Divisional Railway Manager (Commercial), Dhanbad, on 15.03.2010 regarding the earning of the deceased, Suresh Kumar Yadav,

Rs.7828/- for the month of December, 2007. In the bottom of certificate, the signature has been put "For Sr. Divl. Comml. Manager, E.C. Rly. Dhanbad" without seal and the name of signatory authority. It appears from the certificate that there is no indication, who typed this certificate. As such, genuiness of the certificate regarding the earning of the deceased for the month of December, 2007 said to be issued to the office of Divl. Rly. Manager (Commercial) Dhanbad appears to be doubtful.

10. In the claim petition, earning of the deceased is shown Rs.56,000/- per annum while claimant no.1, Raj Kumari Devi (A.W.1) has stated the earning of deceased Rs.5500/- per month, i.e., Rs.66000/- per annum. The learned Tribunal has assessed the earning of the deceased Rs.56,000/- per annum as detailed in the claim petition under the aforesaid facts and circumstances, I find no infirmity in the finding of the learned Tribunal regarding the assessment of the earning of the deceased.

11. The four claimants, Raj Kumri Devi, Rani Kumari, Sumit Kuamr and Indrajeet Kumar are the widow and minor children of the deceased, Suresh Kumar Yadav. In view of the decision of the Apex court in the case Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another 2009(6) Supreme Court Cases 121, deduction of the personal expenses to the income

of the deceased should be $1/4^{th}$ not $1/3^{rd}$ as deducted by the learned Tribunal to the income of the deceased in the assessment of the compensation. As such, taking into consideration the annual income of Rs.56,000/- per annum after deduction of $1/4^{rd}$ as personal expenses of the deceased the dependency amount would come to Rs.42,000/- per annum, accordingly, the amount of compensation would come to Rs.6,33,000/-. On adding Rs.2500/-, Rs.2000/- and Rs.5000/- for loss of estate, loss of funeral expenses and loss of consortium as added by the Tribunal, the total amount would come to Rs.6,39,500/- which is to be paid to the claimants.

12. Opposite party no. 2, National Insurance Company Limited, has stated in his written statement that if the driver of the vehicle in question had not valid licence at the time of accident, the National Insurance Company Limited is precluded under Section 149(2)(II) of the Motor Vehicle Act to pay the compensation. The trial court record shows that opposite party no. 2, National Insurance Company has filed a petition under Section 170 of the Motor Vehicle Act, to contest the claim but it appears from the evidence that while the National Insurance Company has cross-examined the witness adduced on behalf of the claimant but the witness has neither been cross-examined on the point of validity of driving lincence nor any evidence has been adduced on behalf of the

National Insurance Company to prove that the owner/driver had no valid licence at the time of accident. The onus is on the insurance company to prove his defence as raised under Section 149 of the Motor Vehicvle Act. As such, I find no substance in the submission of the learned counsel for the opposite party no. 2/ National Insurance Company Limited.

13. Under the facts and circumstances of the case and discussions made above while the Miscellaneous Appeal No. 579 of 2011 filed on behalf of the claimants is allowed with modification in the impugned judgment and award in respect to amount of compensation but the Miscellaneous Appeal No. 557 of 2011 filed on behalf of the opposite party no.2, Divisional Manager, National Insurance company is dismissed.

14. Let the trial court record and also the statutory amount deposited in Miscellaneous Appeal No. 557 of 2011 be sent to the Tribunal for needful.

(Rajendra Kumar Mishra, J)

Bhardwaj/-N.A.F.R.

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