

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.520 of 2011

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The New India Assurance Company Ltd through the General Manager, Branch Office at Sudarshan Building Municipal Chowk Chapra, Distt.- Saran, represented through Sri Prabhakar Pradhan, Deputy Manager and constituted Attorney of the New India Assurance Company Ltd. having its regional office at 6th And 7th Floor, B.S.F.C. Building, Frazer Road, P.S.- Kotwali, Distt.- Patna

..... opposite party no.3.....appellant

Versus

1. Mira Devi, W/O late Ajay Kumar, D/O Satya Narain Sah
2. Ritesh Kumar, minor son of late Ajay Kumar
3. Priyanka Kumari, minor daughter of late Ajay Kumar

Minor son and daughter are represented through their mother Mira Devi the natural guardian.

all resident of Vill.- Bhuwal Chapra Dokati, Distt.- Balia (U.P.) at present residing at Murthan, P.O.- Parmanandpur, P.S.- Sonepur, Distt.- Saran.

..... claimants..... respondents 1st set

4. Nirbhaya Kumar Singh, S/O Sri Ram Sundar Singh
5. Smt. Ram Singaro, Devi W/O Sri Ram Sundar Singh

Both resident of Moh.- Salempur, Near Ganga Singh College

.. owner of bus bearing its registration no. BR 04/9995

.... Respondent 2nd set

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar, Advocate

For respondent nos. 1 and 2 : Mr. Dronacharya Krishna Kumar Yadav, Advocate

For respondent nos. 4 and 5 : Dhananjay Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 23-01-2015

Heard the parties.

2. This is an Appeal preferred against judgment and

award dated 19th February 2011 passed by the Additional District Judge-cum-M.V.A.C. Tribunal, Saran, Chapra (hereinafter referred as to the "Tribunal") in Claim Case NO. 10 of 2001 by the Insurer appellant.

3. This is relevant to mention that one Ajay Kumar was driver of a bus bearing No. BR-04/9995, owned by respondent nos. 4 and 5, who died due to sudden collision with a truck, driver of which also died at the spot but claim application was preferred without impleading the owner, insurer and heirs of the deceased driver of such truck and also no details wereof the same was mentioned in the claim application. The Insurer and the bus on his appearance in written statement has taken objection of their being not impleading a party to the proceeding. In spite of such objections nothing could be done.

4. The Tribunal, on the materials available on the record, allowed as sum of Rs.4,41,000/- (rupees four lac forty one thousand) as compensation against death of the deceased payable by the appellant.

5. Since authority of the claims, coverage of insurance of the vehicle of which the deceased was driver etc. besides, date and place of the accident is undisputed there is no

necessity to go into further details.

6. The Appeal has been preferred mainly on the ground of contributory negligence on the part of two colliding vehicles, consequently, sharing of the liability. Learned counsel representing appellant submitted that had owner etc. of the offender truck was made party to the proceeding on basis of their objections and evidence the liability could have been divided and the appellant's liability accordingly could have been reduced or even negatived. On the other hand, learned counsel representing respondents, by placing reliance upon the decisions rendered in the cases of *Karnataka State Road Transport vs. K. V. Sakeena and Ors.* reported in *1996(3) SCC 446* and *Smt. Kaushnuma Begum and Ors. vs. The New India Assurance Company Ltd. and Ors.* reported in *2001(1) PLJR 184 SC* submits that even ignoring the negligence or other parts, now even of death of the deceased in an accident, his heirs are liable to be compensated and since, bus in question, was under coverage of insurance, the appellant is liable to pay and at the same time, if at all, it appears necessary to correct the owner etc. to another colliding vehicle impleaded for proper determination matter may be remitted back to the claim tribunal below for further needful.



7. When the learned members of the Bar were confronted with the factual position of this case arising out of an accident taken place in the year 1999 and objection of non-joinder of necessary parties was taken at the initial stage by the appellant in its written statement and coupled with the lapse of about 16 years making it virtually next to impossible to now locate the heirs of driver of the truck, its owner as well the insurer or even if, they are located another round of litigation may consume substantial period besides expenditures as well compensation to the parties contesting the claim and the interest if any accrued upon the award.

8. On considering such aspects, it is now submissions of the Bar that in stead of going further in the matter assuming another offender vehicle liable for 50% of loss suffered by the claimants are now at this stage cannot be realized. The appellant i.e. insurer of the bus may pay half of the amount which shall satisfy its liability.

9. Taking into consideration all such aspects and submissions of the Bar which seems acceptable to serve interest of justice, this Appeal, accordingly, with modification in the award dated 19th February 2011 passed by the Additional District

Judge-cum-M.V.A.C. Tribunal, Saran, Chapra in the light of submissions made above stands disposed of.

10. The appellant is directed to make payment of 50% of the award with interest as awarded deducing the amount, if any paid within a month from today.

11. Let statutory amount, if any, deposited be remitted back to the Tribunal below for further needful.

(Akhilesh Chandra, J)

Ashwini/-

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