

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.325 of 2013

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The United India Insurance Company Ltd., Rajendra Prasad Road, Bhagalpur,
Insurer of Vehicle No. BR 10 P-9645 Jeep.

.....Opposite Party No. 2-Appellant

Versus

1. Krishna Devi, Wife of Prakash Sah, Permanent Address-Village-Angani, P.S.-
Jagdishpur, Bhagalpur, At Present-Village-Musahri Tola, Naugachhiya, P.S.-
Naugachhiya, District-Bhagalpur.

2. Chandani Devi

3. Bandana Kumari

4. Rupa Kumari

5. Rakesh Kumar

6. Champa Kumari

7. Bena Kumari

8. Gulshan Kumar

All Sons and Daughters of Late Krishna Devi.

.....Claimants (1 to 8)-Respondents

9. Prahlad Pd. Bhagat, Son of Late Mahavir Bhagat, Resident of Village-Angari,
P.S.-Jagdishpur, District-Bhagalpur, (Owner of Vehicle No. BR 10 P-9645 Jeep).

.....Opposite Party No. 1-Respondent

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Appearance :

For the Appellant : Mr. Ram Chandra Lal Das, Advocate

For the Owner-Respondent : Mr. Vivekanand Vivek, Advocate

For the Claimants-Respondents : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 10-03-2015

This file is brought under the heading “For Hearing

Under Order XLI Rule 11 CPC”.

2. Heard the parties.

3. This appeal has been preferred against the Judgment dated 28th November, 2012 and Award dated 7th March, 2013 passed in Claim Case No. 21 of 2008 by learned Additional District and Sessions Judge-IV - Cum- Additional Motor Accident Claim Tribunal-IV, Naugachiya.

4. The claimants-respondents have preferred claim against death of one Prakash Sah, a mason having earning Rs. 3,600/- per month, who died at the age of 33 years due to rash and negligent driving by the driver of a jeep, having Registration No. BR 10 P 9645, on 18th July, 2007 while he was going for personal work on foot alongwith another. The vehicle in question is owned by respondent no. 9 but under valid coverage of insurance by the appellant. The Claim Tribunal on basis of material available on the record allowing the claim and directed the appellant to pay a sum of Rs. 4,49,100/- at the interest @ 6% per annum from the date of filing of claim application till date of realization.

5. The appeal has been preferred on two counts only that (i) deceased was a gratuitous passenger and (ii) the vehicle in question was used as a commercial vehicle though premium

was paid as of a personal vehicle. It is also submitted that the Award, as imposed, is exaggerated one. Even there is no documentary evidence to show the actual income of the deceased but the Claim Tribunal instead of applying notional income accepted the claim as preferred.

6. The record indicates that the deceased was not travelling in the jeep rather he alongwith A.W.-1, Anil Sah, was going on foot to market, wherein, from behind he was pushed by the jeep which turned down and some more persons were also injured and dead. A.W.-2, Krishna Devi, is the claimant-widow of the deceased (not an eye-witness) and she received information about accident through A.W.-1, who is an eye-witness.

7. In view of the above, the first submission relating to deceased being a gratuitous passenger is not at all acceptable. By way of documentary evidence altogether four exhibits have been produced, which are as follows:-

- (i) **Ext.-1 - C/c of F.I.R. Jagdishpur P.S. Case No. 126/2007.**
- (ii) **Ext.-2 - Photocopy of Insurance Policy.**
- (iii) **Ext.-3 - Photocopy of Postmortem Report.**
- (iv) **Ext.-4 - Photocopy of Chargesheet Jagdishpur P.S. Case No. 126/2007.**

Ext.-1, First Information Report of Jagdishpur P.S.

Case No. 126 of 2007 was instituted on basis of the Fardbeyan of one Renu Devi, widow of one Krishna Kumar, who also died in such accident.

8. No evidence is adduced by the insurer-appellant to establish any sort of violation of terms of insurance and in order to meet this; the submission is that the owner in collusion with the claimants avoided appearance. On the other hand, it is the submission of the learned counsel representing respondent no. 9, the owner, that in absence of any service of summons he could not appear before the Claim Tribunal, however, in response to notice issued by this Court, entered into appearance.

9. The contention of learned counsel for the appellant about violation of terms and conditions of insurance, it cannot be accepted for the present. The appellant, in the event of being sure of such assertion, may initiate a separate proceeding for recovery of the amount from the owner-respondent no. 9 only after satisfying the Award and making payment to the claimants-respondents.

10. True it is, the Claim Tribunal has accepted the assertion of income of deceased as Rs. 3,600/- per month which is a bit more than the notional income but, at the same time,

committed an error by deducting 1/3rd as personal expenses, whereas, in view of the decision of Hon'ble Apex Court in a case of **"Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another"** reported in (2009) 6 SCC 121, taking into consideration the dependency, it should have been 1/5th.

11. In that view of the matter, there appears no reason to interfere in the findings of the Claim Tribunal, even on the point of quantum. In the result, finding no merit in this appeal, it is hereby dismissed. The appellant is directed to satisfy the Award, as imposed, within a period of one month from today. Of course, on only being satisfied with its entitlement of recovery of amount from the owner on the ground of violation of terms and conditions of insurance, he may initiate proceeding wherein the owner-respondent no. 9 shall every right to contest the claim, if he so wishes.

(Akhilesh Chandra, J)

Praveen-II/-

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