

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.855 of 2010

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1. Shanti Devi, W/o Late Arun Kumar Mandal, R/o Driver Tola, P.O., P.S. and District – Katihar.
 2. Ruma Kumari
 3. Soma Kumari, Both D/o Late Arun Kumar Mandal
 4. Sanjay Kumar, S/o Late Arun Kumar Mandal, Minor Son represented through his mother as natural Guardian.
- All R/o Driver Tola, P.O. P.S. and District – Katihar.

.... Claimants/Appellants

Versus

1. Gopal Chandra Sharma (Owner), S/o Late Mukut Bihari Sharma, R/o Rajhata Binodpur, P.O., P.S. and District – Katihar.
2. Kamlesh Kumar Mrignani @ Kamlesh Kumar Mrigwani (Driver), S/o Gopal Das Mrigwani, R/o Binodpur near Azad Transport, P.O., P.S. and District – Katihar.

.... Opposite Parties/ Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajendra Prasad Sah Mr. Ratnakar Ambastha
For the Respondents/O.P.	:	Mr. Bhola Prasad, Mr. Mukesh Kumar Jha.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 27-03-2015

Heard learned counsel for the claimants and learned
counsel for the opposite parties.

The claimants have filed this miscellaneous appeal
against the judgment dated 24.07.2010 and award dated 06.08.2010
respectively passed by the District Judge-cum-Motor Vehicle
Accident Claim Tribunal, Katihar in Claim Case No. 24 of 2007,
whereunder the Claim Petition of the claimants has been dismissed.

In brief, the facts of the case is that Arun Kumar



Mandal along with her wife and children (claimants) had gone to his Sasural at Gaushala to celebrate Holi festival. After celebrating Holi, Arun Kumar Mandal was returning from his Sasural on bicycle and the claimants were on rickshaw behind him. When the Arun Kumar Mandal reached Shyama Talkies turning, Mangal Bazar, Katihar, one Kamlesh Kumar Mrigwani came rashly on Hero Honda Motorcycle, bearing Registration No. BR 394A/8618, and dashed the bicycle of the deceased, who fell down and sustained injury. The claimant Shanti Devi got down from rickshaw and reached there and with the help of known local people picked her husband Arun Kumar Mandal up, local people asked the claimant Shanti Devi to go to house with children saying that they will rush to hospital for treatment. The claimant Shanti Devi along with children moved at her house and her husband was rushed to hospital on the offending motor cycle. But Arun Kumar Mandal succumbed to his multiple injuries in the next morning at Sadar Hospital. The person, who rushed with Arun Kumar Mandal at Sadar Hospital, telephoned to the relation deceased Arun Kumar Mandal then his wife Shanti Devi claimant no.1 came to Sadar Hospital.

The learned District Judge-cum-Claims Tribunal after hearing the parties and perusing the materials available on record dismissed the claim case of the claimants through the impugned

judgment and order.

Learned counsel appearing on behalf of the claimants submits that on the basis of the fardebyan dated 05.03.2007 of Rajendra Mandal, brother of the deceased, Katihar Town P.S. Case No. 115 of 2007 was instituted on 05.03.2007 under Sections 279 and 304'A' of the I.P.C. against unknown driver of the motorcycle and Police on investigation submitted the charge sheet (Ext.2) against opposite party no.2, Kamlesh Kumar Mrigwani, Driver of the vehicle but the learned Tribunal illegally relied upon the fardbeyan of the Rajendra Mandal, brother of the deceased and disbelieved the factum of the accident, as narrated by the claimants in the claim petition and dismissed the same. He further submits that in course of investigation, opposite party no.1, Gopal Chandra Sharma, owner of the motorcycle filed a petition for release of the motorcycle and the same was released in his favour which would appear from Ext. X/1 which itself sufficient to show that the said motorcycle was involved in the accident in which the Arun Kumar Mandal, husband of the claimant sustained injury and died in Hospital.

On the other hand, learned counsel appearing on behalf of the opposite parties submits that according to the claimants, accident took place on 04.03.2007 at about 7.00 pm. near Shyama Talkies turning, Mangal Bazar and the claimant Shanti Devi was



present in which her husband Arun Kumar Mandal sustained injury due to dashing of motorcycle, but the fardbeyan of Ranjendra Mandal, brother of the deceased and brother-in-law of the claimant Shanti Devi, it is apparent that Shanti Devi was not aware about her husband till morning on 05.03.2007 and on her instruction Rajendra Mandal, brother of Arun Kumar Mandal, searched him but he could not found trace and returned to house. Later on, information was received about laying the dead body in the hospital. As such, the learned Tribunal has rightly disbelieved the factum and manner of the accident, as claimed by the claimant in the claim petition.

There is specific case of the complainant that on 04.03.2007 in the evening when she was returning from her Maika along with her children on Rickshaw her husband Arun Kumar Mandal (deceased) was in front of Rickshaw on bicycle. At the turning of Shyam talkies Kamlesh Kumar Mrigwani, who was on Motorcycle bearing Registration No. BR 394A/8618 dashed her husband, who felled down and sustained injury and he was rushed at Sadar Hospital while she came to house along with children on asking by the local people known to her. Exhibit-1 is the F.I.R. of Katihar Town P.S. Case No.115 of 2007 registered on 05.03.2007 for the offence under Sections 279 and 304(A) of the I.P.C. on the basis of the fardebyan of Rajendra Mandal, brother of the deceased and



brother-in-law of claimant Shanti Devi, as recorded at about 12.15 A.M., disclosed that his Bhabhi, Shanti Devi asked him to trace her husband Arun Kumar Mandal because he did not return from his Sasural. Thereafter, he made search but he could not found trace of Arun Kumar Mandal and lastly returned to his house. After sometimes, he received information on telephone from Sadar Hospital that the dead body is lying inside the hospital. Some unknown motorcycle had dashed him so that he died. In the Claim Petition, Shanti Devi has claimed about her presence at the time of accident on 04.03.2007 in the evening but the fardbeyan of Rajendra Mandal, who is the brother of the deceased and brother-in-law claimant Shanti Devi shows that on 05.03.2007, the claimant Shanti Devi has no knowledge about sustaining the injury her husband in the accident. Exhibit-3 is the postmortem report of the deceased, Arun Kumar Mandal, which shows that post mortem was done on 05.03.2007 at 11.30 A.M. in which Doctor gave his opinion that time elapsed since death within 72 hours, which also not corroborated the factum of the accident at about 7.00 pm. on 04.03.2007 and death is in the morning on 05.03.2007. Exhibit-X/1 is only written application of Gopal Chandra Sharma to the effect that Hero Honda Motorcycle bearing no.BR 394A/8618, was given to the Kamlesh Kumar Mrigwani for going to Bansh Chawk on 04.03.2006 at about 5.00 pm. for some urgent work and he

returned the motorcycle. As such, Ext. X/1 does not indicate about sustaining injury by Arun Kumar Mandal on 04.03.2007 in the evening and died next day as alleged in the claim petition.

Learned Tribunal has discussed the evidence available on the record in paragraph nos. 19 to 22 relating to factum of accident and sustaining injury by Arun Kumar Mandal, husband of claimant Shanti Devi due to rash driving of Motor Bike bearing Registration No. BR39A/8618 by driver Kamlesh Kumar Mrigwani and rightly disbelieved the factum of accident as alleged in the claim petition and dismissed the same.

I find no infirmity and illegality in the judgment and order passed by the learned District Judge-cum-Claim Tribunal, Katihar. Accordingly, this miscellaneous appeal is dismissed.

(Rajendra Kumar Mishra, J.)

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