

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.97 of 2012

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1. Md.Yasin S/O Late Md. Asraf
 2. Bibi Tabbasum Kahkasan W/O Md. Yasin R/O Mohalla - Sahibganj, P.O.
 & P.S. Habibpur and District - Bhagalpur

.... Appellant/s

Versus

1. Sri Daya Nand S/O Hoshiyar Singh R/O C.W 567 Sanjay Gandhi
 Transport Nagar, Delhi - 42
 2. Sri Anand Singh S/O Hoshiya Singh R/O Saraswati Vihar, New Delhi
 3. The Branch Manager, National Insurance Co. Ltd., New Delhi
 4. The Divisional Manager, National Insurance Co. Ltd., Tilkamanjhi
 District Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madan Mohan

For the Respondent/s : Mr. Ashok Priyadarshi

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

13 20.07.2017 Petition under Order 41 rule 27 of the CPC has been filed
 on behalf of the appellants which is being not pressed by the
 appellants.

The present appeal is bared by seven days of limitation and
 for condonation of delay, I.A. no. 4347/2012 was filed by the
 appellants and the aforesaid I.A. no. 4347/2012 was disposed of by a
 bench of this court on 2.1.2013 keeping the matter of limitation alive
 to be considered at the appropriate stage. However, in the aforesaid
 circumstance, delay in filing this appeal is, hereby, condoned.

Appellants/claimants have challenged the judgment dated
 26.8.2011 followed by award dated 17.10.2011 passed by the
 Additional Sessions Judge, Fast Track Court I-cum- Motor Vehicle
 Accident Claim Tribunal, Bhagalpur in Claim Case no. 72/2005 by



which and wehereunder he dismissed aforesaid claim case holding that appellants/claimants failed to prove their case and, therefore, they were not entitled to any compensation.

Perusal of impugned judgment goes to show that altogether six issues were framed by the Tribunal but while deciding the aforesaid issues, Tribunal held that some relevant documents were not filed by the appellants/claimants and moreover, only photostat copy i.e. too not certified copy of photostat copy had been filed but learned counsel appearing for the appellants drew my attention towards annexures 1, 2 and 3 and submitted that the certified copy of the FIR, photostat copy of insurance policy and photostat copy of post mortem report were filed but even then the learned Tribunal rejected the claim of the appellants/claimants on erroneous ground.

From perusal of lower court record, I find that the appellants/claimants have already brought relevant documents on record of the lower court and the Tribunal could have decided the matter on the basis of documents available on record but the Tribunal rejected the claim of appellants only on technical grounds.

Exhibit 1 goes to show that on 15.8.2004 one truck bearing truck no. HR 38A 7286 was being driven by its driver in negligent manner and dashed bus bearing registration no. WB 41A 4937 in which deceased and several other persons were travelling.

Moreover, deceased, who was only 8 years old at the time of said accident, got some injuries and subsequently, died in course of her treatment. The factum of the accident as well as death of the deceased are proved by exhibit 1 and exhibit 3. It is not in dispute that



the aforesaid truck was insured at the time of alleged occurrence and witnesses specifically stated before the Tribunal that offended truck was being driven by its driver in negligence manner. Therefore, in my view, appellants/claimants succeeded to prove their case that their daughter died in the aforesaid accident due to rash and negligent driving of the driver of the offended truck.

The claimant filed claim case in the year 2005 and their claim case was dismissed in the year 2011 i.e. after six years of the filing of claim case. Thereafter, present appeal was filed in the year 2012 and since then i.e. for near about five years, present appeal is pending. Therefore, in my view, it would be proper for this court to decide the quantum of compensation instead of sending the matter again to the Tribunal for deciding the quantum of compensation.

Since deceased was only 8 years old girl and she had no independent income, the proper multiplier would be fifteen. However, claimants have made claim of Rs. 1, 84, 500/- which is evident from perusal of para 7 of the memo of appeal. As the appellants/claimants being parents of the deceased girl are fighting this case since 2005, I think it proper that lump sum amount of Rs. 2, 00000/- (Two lacs) would be sufficient to compensate the death of their beloved daughter.

Therefore, in the aforesaid circumstances, this appeal stands allowed and impugned judgment and award is, hereby, set aside directing respondent nos.3 and 4 to pay amount of Rs. 2, 00000/- (Two lacs) to the appellants/claimants with 6% interest from the date of filing of the claim case till its realization within three months from today. However, it is made clear that the amount of interim



compensation, if paid earlier, shall be deducted from the above stated amount. The lower court record be returned.

shahid

(Hemant Kumar Srivastava, J)

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