

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.99 of 2012

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Branch Manager United India Insurance Company Ltd., Biharsharif, Nalanda through Sri Pranay Kumar, Manager-cum-duly constituted Attorney United India Insurance Company Limited, Regional Officer 3rd Floor, Chanakya Complex, B.C. Patel Road, P.O. G.P.O., P.S. Sachiwalaya, District Patna. Appellant.

Versus

1. Chameli Devi, wife of Late Bhagwan Das.
2. Mithilesh Ravidas, son of Late Bhagwan Das.
3. Santosh Kumar Ravidas, son of Late Bhagwan Das.
4. Sakaldeo Ravidas, son of Late Bhagwan Das.
5. Rajhari Kumari, daughter of Late Bhagwan Das.
6. Kundan Ravidas, son of Late Bhagwan Das.
All minors under the guardianship of respondent no.1 and all residents of village Manjour, P.O. & P.S. Warsaliganj, District Nawada.
7. Md. Jabir Hussain, son of Md. Qyum, resident of Station Road Nawada, P.S. and District Nawada.
8. Yogandra Mahto, son of Baso Mahto, resident of village Kawakole, P.S. Kawakole, District Nawada.

.... Respondents.

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 17-08-2017

This appeal has been preferred against the judgment dated 18.07.2011 and award dated 14.11.2011 passed in M.V. Case No.53 of 2002/3 of 2010 by the learned Additional District Judge, F.T.C.-IV-cum-Motor Vehicles Claim Tribunal, Nawada, whereby allowing the claim petition the learned court has directed the appellant to pay the compensation to the tune of Rs.2,81,900.00 along with 6% interest to the claimants.

The factual matrix of the case is that claimants who happen to be the wife, sons and daughter of the deceased Late



Bhagwan Das have filed the aforesaid claim case for awarding compensation to the tune of Rs.2,00,000.00 against the appellants with the case in succinct that on 22.05.2002 at 9 PM the deceased, Bhagwan Das, who happens to be the employee of Shankar Band Party, boarded the minibus bearing registration no.BHP 6165. As the bus was overcrowded he was forced to sit on its roof by the driver. The said vehicle was being driven negligently and rashly due to which it came in contact of high tension wire and the deceased died due to electrocution coming in contact with the said wire. The deceased was aged about 40 years and was earning Rs.50.00 per day by shoe repairing at Warishaliganj Railway Station. He was also doing work in a Band Party for Rs.100 per day during lagan & marriage.

The opposite parties put up their appearance in the case and contested the same. After hearing the parties and perusing the record, the learned lower court has passed the impugned judgment and award as discussed in earlier paragraph.

Being aggrieved and dissatisfied with the quantum of compensation awarded by the learned Tribunal, United India Insurance Company Ltd., who happens to be one of the opposite parties in the said case has preferred this appeal.



It has been submitted by learned counsel for the appellant that it is the admitted case of the parties that the deceased was travelling on the roof of the minibus at the time of accident and has died due to electrocution as he came in contact with the high tension wire so the deceased had also contributed to the said accident. Hence, the liability of the appellant would be only 50% of the aforesaid awarded amount.

No one turned up on behalf of the respondents to argue the case in spite of service of notice.

On perusal of the record and the impugned judgment, it appears that it is the admitted case of the respondents that the deceased was travelling on the roof of the minibus and has died due to electrocution coming in contact with the high tension wire. Thus the deceased has also contributed to the said accident and hence amount of 50% is to be deducted and after deducting the amount of the Insurance Company would be liable to pay only 50% of the aforesaid awarded amount.

Accordingly, this appeal is allowed and the impugned judgment and award passed by the learned court below is modified to the said extent. The appellant is directed to pay 50% of the aforesaid awarded amount along with interest at the rate of



9% per annum from the date of filing the claim petition till its realization to the respondent nos.1 to 6. Rs.25,000.00 deposited by the appellant be sent to the learned Tribunal to be paid to the aforesaid respondents by way of adjustment towards said payment.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2017
Transmission Date	NA

