

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.758 of 2013

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1. Asha Devi Wife of Late Kishan Prasad Mandal R/o Didhari, P.S. Kodha, District-Katihar, Bihar
 2. Anola Kumari D/o Late Kishan Prasad Mandal R/o Didhari, P.S. Kodha, District-Katihar, Bihar
 3. Narayan Prasad Mandal Son of Bengali Mandal R/o Didhari, P.S. Kodha, District-Katihar, Bihar
 4. Rudma Devi Wife of Narayan Prasad Mandal R/o Didhari, P.S. Kodha, District-Katihar, Bihar

.... Appellant/s

Versus

1. Oriental Insurance Co. Ltd. Katihar, through the Branch Manager, at Shyam Talkies Road, Mangal Bazar, Katihar, Bihar.
2. Divisional Manager, Oriental Insurance Co. Ltd, Divisional Office, NH-31, Purnea, Bihar
3. Rishikant Yadav Son of Raj Kishore Yadav R/o Mohalla-Bara Bazar, Argara Chowk, Katihar, Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yashraj Bardhan
For the Respondent no. 1 : Mr. Arun Kumar Srivastava

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the appellants and learned counsel for the respondents on this Miscellaneous Appeal and perused the records.

2. This Miscellaneous Appeal has been filed against the Judgment dated 31.08.2013 and Award dated 14.09.2015 passed by A.D.J. 1st-cum-Motor Vehicle Accident Claim Tribunal, Katihar in



M.V.A. Claim Case no. 2 of 2005 whereby the learned Tribunal dismissed the aforesaid claim case, finding it as not maintainable.

3. Factual matrix of the case is that the appellants filed the M.V.A. Claim Case no. 2 of 2005 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 4, 14,000/- on account of death of the deceased Kishan Prasad Mandal during the use of motor vehicle with the case in succinct that the said Kishan Prasad Mandal was driver of the Tata Sumo bearing registration no. WB-74D-6130 hailing to Rishi Kant Yadav. On 01.10.2004, he had gone to Jalalgarh from Katihar with the said vehicle on hire and later on he was found dead near Kakura Chhahar Dhar. Perhaps he was killed by unknown miscreants. Regarding the said accident, Jokihat P.S. Case no. 97 of 2004 was instituted. The deceased was aged about 31 years at the time of death and was earning Rs. 3000/- per month from the said vocation.

4. The Insurance Companies and owner of the offending vehicle put their appearance in the case and filed their written statement.

5. After hearing the parties and perusing the record, learned lower court dismissed the aforesaid claim case as not maintainable.

6. Being aggrieved and dissatisfied with the aforesaid Judgment and Award, the claimants have preferred the present appeal.



7. It is submitted by the learned counsel for the appellants that vehicle in question was taken to Jalalgarh on hire and on the way, the driver of the vehicle was eliminated by some unknown miscreants, hence the aforesaid death was caused during use of the said motor vehicle and the same is an accidental death, so the owner of the offending vehicle and indemnifying him the insurer of the said vehicle, is liable to pay compensation to the claimants, but the learned lower court has wrongly dismissed the claim petition finding that it is not a case of accidental death rather murder simpliciter and cause of death has not been opined by the doctor conducting autopsy of the deceased.

8. On the other hand, it is submitted by the learned counsel for the respondents that though the vehicle was taken on hire to Jalalgarh, but it is not ascertained as to whether the deceased was murdered by some unknown miscreants during the course of snatching the vehicle or out of animosity. It is not a case of accidental death rather murder simpliciter and hence, the appellants are not entitled to get any compensation under the M.V. Act and the learned lower court vide impugned Judgment has rightly dismissed the claim petition of the appellants which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

9. On perusal of impugned Judgment, it appears that it is the admitted case of the parties that the deceased was driver of the vehicle (Tata Sumo) bearing registration no. WB-74D-6130. He had



gone to Jalalgarh from Katihar with the said vehicle on hire and his dead body was found near Kakura Chhahar Dhar as the deceased was eliminated by some unknown miscreants on the way. The certified copy of the F.I.R. of Jokihat, P.S. Case no. 97 of 2004, as discussed in the impugned Judgment indicates that the deceased driving the offending vehicle departed from Katihar to Jalalgarh and was killed by some unknown miscreants and the miscreants took away the said vehicle. The claimant no. 1 examined in the case as PW-4 has also stated in her evidence that the deceased was killed by some unknown miscreants in the course of driving the aforesaid vehicle from Katihar to Jalalgarh and the miscreants took away the said vehicle. The aforesaid evidence adduced by the appellants indicate that the driver of the aforesaid vehicle was murdered by some unknown miscreants on the way to Jalalgarh where he was going with the aforesaid vehicle on hire. Which means that the deceased was murdered during the course of use of the aforesaid vehicle by some unknown miscreants. Mere not opining the cause of death by the doctor in the postmortem report as discussed by the learned Tribunal, in my considered opinion, has no potential to rule out the aforesaid finding.

10. Hon'ble Apex Court in *Rita Devi and Others Vs. New India Assurance Company Ltd. & Another* reported in *2000(5) SC 113* has been pleased to rule that the motor vehicle (auto rickshaw) registered as public carrier, hired by certain persons who



with the object to steal the vehicle, killed the driver. In such circumstances the death of the driver was an accidental murder. Hence, legal representatives of the deceased driver rightly held by the Claims Tribunal to be entitled to compensation for his death, from the owner, and, consequently, from the insurer of the motor vehicle.

11. In the aforesaid facts and circumstances, as the deceased died during the use of motor vehicle, it is the case of accidental death and the claimants are entitled to get the compensation and the claim petition filed by the appellants is maintainable. Hence, the impugned Judgment and Award passed by the learned lower court is set aside and the case is remitted back to the learned Tribunal to decide the case on merit. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
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