IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.481 of 2013

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Future Generali India Insurance Company Limited, 1st Floor, Harihar Chamber, Boring Road, Patna Through Its Assistant Manager (Legal Claim(& Constituted Attorney Sandeep Kumar S/O Sri R.B. Mahto Future Generali India Insurance Company Ltd., 502, Avani Signature, 5th Floor, 91 A/1, Park Street, Kolkata-700016 (Insurer Of Sonalika Car). .... Appellant.

Versus

1. Most. Husna Arara W/O Md. Ayaz Ahamd Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
2. Md. Galib Hussain S/O Late Md. Ayaz Ahmad Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
3. Darkhasa D/O Late Md. Ayaz Ahmad Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
4. Kankasa D/O Late Md. Ayaz Ahmad Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
5. Gulfasa D/O Late Md. Ayaz Ahmad Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
6. Ladli D/O Late Md. Ayaz Ahmad Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
7. Saba Naz D/O Late Md. Ayaz Ahmad Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
8. Most. Sakina Mother Of Deceased Late Md. Ayaz Ahamd And W/O Late Shamshuddin Resident Of Village- Gaiyari, Gaiyari, P.S- Araria, District- Araria.
9. Sri Daya Chand S/O Sri Shri Ram Resident Of Village- Baghpat, P.S- Baghpat, A.M. Tatiri, District- Baghpat (Uttar Pradesh) Pin Code- 250609.
10. National Insurance Co. Ltd., Branch Office, Bhagwan Mahavir Marg Baraut (Uttar Pradesh), Insurer Of Offending Truck Through National Insurance Co. Ltd., Divisional Office, Nh- 31, Purnia, Bihar.
11. Sri Niranjan Kumar Chaudhary S/O Late Ramanand Choudhary Resident Of Village Khagaha, P.O- Mirganj, P.S- Mirganj, District- Purnia (Bihar)
12. Shuk Kumar S/O Babu Ram Resident Of Village- Saidhari Midhamia, District- Lakhimpur, Kheri.

.... Respondents.

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Appearance :

For the Appellant : Mr. Durgesh Kumar Singh, Adv.
For the Respondent Nos.1 to 9 : Mr. Pramod Kumar Mallick, Adv.
Respondent no.11 : Mr. Rakesh Kumar, Adv.
Mr. Chandan Kumar Kashyap, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 06-10-2017

Heard learned counsel for the appellant and learned counsel for the respondents and perused the record.

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2. This miscellaneous appeal has been filed against the judgment dated 18.03.2013 and award dated 09.04.2013 passed by the Ad hoc Additional District Judge No.VIII-cum-M.V.A. Claims Tribunal No.VIII, Purnia in Compensation Case No.38 of 2011/Trial No.01 of 2012, whereby the learned Tribunal directed the National Insurance Company Limited, insurer of the truck and M/s Future Generali India Insurance Company Limited, insurer of the Rhanio car to pay compensation of Rs.9,14,750/- each with liberty to the National Insurance Company Limited to recover the the aforesaid half of the total awarded amount from the owner of the offending vehicle.

3. The factual matrix of the case is that respondents first set filed a Compensation Case No.38 of 2011 under Section 166 of the M.V. Act against the owner and insurer of the truck and the Rhanio car as well as driver of the truck for awarding compensation to the tune of Rs.23,11,000/- on account of death of Md. Ayaz Ahmad in the motor vehicle accident with the case in succinct that on 11.02.2011 at 5:15 AM the deceased Md. Ayaz was travelling by Rhanio car bearing registration no.BR-11G/3839 & was proceeding to Araria. When the said car reached near the village Daspur Gourgama Chauk on N.H.31, a truck bearing registration no.UP-17A/6597, coming from Purnia side being driven rashly and negligently by its driver dashed the said car. Due

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to said accident, the said car was badly damaged and the deceased and one Rajendra Prasad died on the spot. Regarding the said accident Korha P.S. Case No.33 of 2011 was instituted under Sections 279, 337, 338 & 304-A of the Indian Penal Code against the driver of the offending truck on the basis of written report of the Bhagwan Rai. The deceased was 36 years old at the time of accident and was a contractor in P.W.D. and used to earn Rs.18,000/- per month from the said vocation.

4. Opposite Party No.1-Daya Chand, owner of the said offending truck, opposite party no.2-National Insurance Company Limited, insurer of the said truck and opposite party no.4-M/s Future Generali India Insurance Company Limited, insurer of the Rhanio car put their appearance and filed their separate written statement.

5. After hearing the parties and perusing the record, the learned lower Court passed the aforesaid judgment and award.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award opposite party no.4-M/s Future Generali India Insurance Company Limited has filed this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that it is the case of the claimants that the aforesaid accident took place due to rash and negligent driving of the offending truck and dashing the Rhaino car from the front side in

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which the deceased was travelling. The F.I.R. was also filed against the driver of the offending truck and, accordingly, after investigation of the case charge-sheet was submitted against the said driver. All the witnesses in their respective examination-in-chief have supported the aforesaid case of the claimants barring A.W.2-Bhagwan Rai, who has stated in his cross-examination that the aforesaid accident took place due to negligence of the driver of both the vehicles i.e. the truck and the car and relying on the said evidence of A.W.2, the learned lower Court finding composite negligence of both the vehicles directed the appellant to pay 50% of the total awarded amount i.e. Rs.9,64,750/- to the claimants which is against the law and fact. A.W.2 has himself stated in his examination-in-chief that the said accident took place due to rash and negligent driving of the offending truck but in his cross-examination he has changed his stand and stated that the accident took place due to negligence of driver of both the vehicles i.e. the truck and the car. Said evidence of A.W.2 in contradiction to his statement given in the examination-in-chief and the pleadings is not sustainable and admissible in the eye of law and cannot be relied for holding the liability of the appellant to pay compensation.

8. On the other hand, learned counsel for the respondents has submitted that there was composite negligence of both the vehicles in the accident as the accident took place due to

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negligence of driver of both the vehicles. Hence, the learned trial Court has rightly found the appellant liable to pay 50% of the total awarded amount of compensation and the aforesaid judgment and award is correct and proper and is sustainable and this appeal has no substance and is liable to be dismissed.

9. From perusal of record, it appears that the deceased Md. Ayaz Ahmad was travelling in the Rhaino car, bearing registration no.BR-11G/3839, and the said car met with an accident on the date of the accident resulting into the death of the deceased and one another person, namely, Rajendra Prasad on the spot. Regarding the said accident, the F.I.R. was lodged against driver of the truck on the basis of written report of one Bhagwan Rai, son of Dilip Rai, resident of village & P.S. Mirganj, District Purnia. From perusal of the said F.I.R. marked as Ext.2, it appears that in the F.I.R. itself the informant has stated that the aforesaid accident took place due to dashing of the car by the offending truck due to rash and negligent driving of the offending truck by its driver.

10. The aforesaid case was investigated by the police and on conclusion of investigation and finding the case true, the I.O. submitted chargesheet, marked as Ext.3 against the driver of the offending truck, namely, Shiv Kumar finding negligence of the driver in the aforesaid accident. From perusal of the evidence

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adduced by the claimants, it appears that claimant no.1-Husn Aara, A.W.1 herself, A.W.2-Bhagwan Rai and A.W.4-Niyaz Alam in their respective examination-in-chief have unanimously stated that offending truck being driven rashly and negligently by its driver coming from Purnia side dashed the Rhaino car resulting into death of the deceased. Though A.W.2-Bhagwan Rai in quite contradiction to his aforesaid statement as given in the examination-in-chief has stated in paragraph-5 of his cross-examination that he was present in the Rhaino car at the time of accident and driver of both the vehicles were driving the same rashly and negligently, but the said statement of A.W.2 does not appears to be reliable and trustworthy rather afterthought as A.W.2 happens to be the informant of the case and in the written report he has himself stated that the accident took place due to rash and negligent driving of the offending truck by its driver and in consonance with the said statement in his examination-in-chief he has stated that due to negligence & rash driving of the offending truck by its driver the accident took place but in his cross-examination he has changed his stand. Moreover, the said evidence also happens to be in quite contradiction to the pleading of the claimants which is not admissible in the evidence as it is settled principle of law that no evidence, adduced against the pleadings is admissible in the eye of law.

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11. Considering the facts and circumstances of case, I find that the aforesaid accident took place only due to negligence of the driver of the offending truck and it is not a case of composite negligence of the aforesaid two vehicles. As the appellant happens to be insurer of the car it is not liable to pay compensation to the claimants rather the insurer of the offending truck i.e. National Insurance Company Limited is liable to pay total amount of compensation to the claimants.

12. In view of the aforesaid fact, the impugned judgment and award passed by the learned lower Court is modified to the extent as indicated above and the National Insurance Company Limited is directed to pay the entire amount of compensation along with interest at the rate of 6% per annum from the date of judgment of the learned Tribunal to the claimants. As from perusal of the impugned judgment it appears that learned Tribunal has found that the driving licence possessed by the driver of the offending truck at the time of accident was fake and as claimants happen to be third party to the contract of insurance entered into by the owner of the truck and its insurer and as the Motor Vehicle Act is a beneficial legislation, hence the National Insurance Company Limited would be at liberty to recover the aforesaid amount of compensation and interest thereon from the owner after its payment to the claimants that would subserve the

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ends of justice.

13. Accordingly, this appeal stands allowed. Let the statutory amount deposited by the appellant be returned to the appellant.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2017
Transmission Date	10.10.2017

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