

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.811 of 2012

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Anil Kumar Singh, S/o Late Nageshwar Chaudhary, Village-PO & PS Bathnaha,
Chaudhary Tola, District-Sita Marhi, Bihar.

.... Appellant/s

Versus

1. M/P Anand Kumar Singh, S/o Aditya Prasad Singh, C/o M/s Anand Travels,
R/o Village-Koluha Dadar, PS-Yahiyapur, District-Muzaffarpur, Bihar (Owner
of the Bus bearing Reg. no. BR06A/0716)
2. Md. Shakeel S/o Md. Saud, R/o Village Husaina, P.S. Mehsaul, District-
Sitamarhi, Bihar (driver of aforesaid bus)
3. Branch Manager, National Insurance Comp. Ltd, Bunny Bazar, Muzaffarpur
(Insurer) through its Chief Regional Manager, 3rd floor, Sone Bhawan, R.Block
Chauraha, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mukesh Prasad Singh
For the Respondent no. 1	:	Mr. Randhir Kumar Singh
For the Respondent no. 3	:	Mr. Ashok Priyadarshi

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 02-11-2017

Heard learned counsel for the appellant and learned
counsels for the respondent nos. 1 and 3 on this Miscellaneous
Appeal and perused the record.

2. This Miscellaneous Appeal has been filed against
the Order dated 03.05.2012 passed by A.D.J. 1st-cum-Motor Vehicle
Accident Claim Tribunal, Sitamarhi in Claim Case no. 09 of 2005,
whereby the learned Tribunal rejected the entire claim petition of the
appellant.



3. Factual matrix of the case is that the claimant filed Claim Case no. 09 of 2005 under Section 166 of the M.V. Act against the owner, driver and insurer of the Bus bearing registration no. BR06A/0716 on account of death of his younger brother in the motor vehicle accident with the case in succinct that the deceased Sunil Kumar @ Munna Kumar was the *khalasi* of bus bearing registration no. BR06A/0716. On 28.11.1999, the aforesaid Bus was coming from Muzaffarpur to Sitamarhi and when it arrived near Dadar Bridge, Muzaffarpur at 07:30 AM a truck being driven rashly and negligently by its driver from the side of Darbhanga to Bariya dashed the front gate of said bus and smashed it. Resultantly, the said deceased who was standing at the gate sustained serious injuries. He was rushed to the hospital, but he succumbed to his injuries on the way to the hospital. Regarding the said accident, Aahiyapur P.S. Case no. 266 of 1999 was instituted under Section 304A of the Indian Penal Code.

4. Owner, Driver, and Insurer of aforesaid bus put their appearance in the case and filed their written statement.

5. During pendency of the aforesaid case, the claimant filed a petition under Section 140 of the M.V. Act for awarding *ad interim* compensation to the tune of Rs. 50,000/-. The opposite party no. 3 (National Insurance Company Ltd.) filed rejoinder against the said petition.



6. The matter was pending for disposal of petition under Section 140 of the MV Act, but as the claimant was not present, on 03.05.2012, the learned Tribunal after hearing the opposite party no. 3 and perusing the record, dismissed the entire claim case vide impugned order dated 03.05.2012.

7. Being aggrieved and dissatisfied with the aforesaid order, the claimant has preferred the present miscellaneous appeal.

8. It is submitted by the learned counsel for the appellant that the appellant had filed xerox copy of the FIR lodged regarding the aforesaid incident and postmortem report of the deceased before the learned Tribunal. The said documents *prima facie* indicate that the left gate of the bus was dashed and smashed by a speeding truck at the place of accident inflicting serious injuries to the deceased standing at the gate and subsequently the deceased succumbed to his injuries. It is the admitted case of the opposite parties that the bus in question is hailing to opposite party no. 1 and insured by opposite party no. 3. For deciding petition under Section 140 of the MV Act, the learned Tribunal is only required to consider firstly as to whether an accident has arisen out of the use of a motor vehicle, secondly, the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim and thirdly, the claim is made against the owner and insurer of the vehicle



involved in the motor vehicle accident. From perusal of the documents filed by the appellant, it is *prima facie* clear that the deceased was khalsi of the bus and has died during use of the motor vehicle and the appellant has made the owner and insurer of the bus as party in the case. It is further submitted by the learned counsel for the appellant that the bus was dashed on the left side by the speeding truck which indicates that there has been negligence of the driver of the bus also in the said accident. Hence, it is a case of composite negligence as two vehicles was involved in the said accident. It is further submitted that at the stage of petition under Section 140 of the MV Act, the evidence is not required to be considered meticulously as required under Section 166 of the MV Act rather *prima facie* case regarding the aforesaid ingredients is required to be considered. But learned Tribunal while considering the petition under Section 140 of the MV Act wrongly rejected the entire claim case finding that the appellant has not filed relevant documents like F.I.R. postmortem report, besides other documents and instead making driver, owner and insurer of the truck has collusively made owner, driver and insurer of the bus as opposite parties in the case. Hence, impugned order passed by the learned Tribunal is wrong and illegal and is liable to be set aside.

9. On the other hand, it is submitted by the learned counsel for the respondent nos. 1 and 3 that the accident is of the



year 1999, but the appellant has filed the case after more than five years and the respondents have been made party in the case one year later thereto, hence the claim case is time barred. It is further submitted that no claim has been made from the insurer of the bus by its owner regarding the said accident which belies the said accident of the bus in question. It is also submitted by the learned counsel for the respondent no. 1 that neither the bus was seized nor any MVI of the bus was made which also negates accident of the said bus. It is further submitted that as the appellant has not filed any document in support of his case, the learned Tribunal has rightly rejected the claim petition of the appellant as if main petition under Section 166 of the M.V. Act is not maintainable then the petition under Section 140 of the M.V. Act would also be not maintainable.

10. From perusal of the FIR of Aahiyapur P.S. Case no. 266 of 1999, it appears that gate of the bus bearing registration no. BR06A/0716 was smashed in the accident made by the speeding truck on the fateful day and the brother of the appellant namely, Sunil Kumar @ Munna Kumar has died in the said accident. The gate of the bus is always fixed on the left side of the bus, hence, the said aspect of the case indicates that the aforesaid bus was dashed by the speeding truck on left side as the said bus was on the right side of the road at the time of accident. Thus, there was composite negligence of the driver of both the vehicles i.e. aforesaid bus and



speeding truck in the accident. As it is a case of composite negligence, the claimant may file claim case against the owner and insurer of any of the vehicle as per his choice as in the case of composite negligence owner and insurer of both the vehicles are liable to pay the compensation either jointly or severally.

11. At the stage of disposal of petition under Section 140 of the M.V. Act, the learned Tribunal is required to consider only as to whether the death of the deceased has been caused during the use of motor vehicle in the accident made by the said vehicle and the claim has been made against the owner and the insurer of the offending vehicle and nothing else. But, learned Tribunal appears to have wrongly dismissed the entire claim case at the stage of disposal of the petition under Section 140 of the M.V. Act. Petition under Section 140 M.V. Act and the claim case under Section 166 of the M.V. Act lies on the different footing. In petition under Section 140 of the M.V. Act only *prima facie* case is considered while in claim case under Section 166 of the M.V. Act, the Tribunal is required to consider the evidence adduced by the parties and pros and cons of the case meticulously.

12. Moreover, to consider the *prima facie* case of the appellant, the Tribunal has not taken pain to peruse the FIR and postmortem report furnished by the appellant rather has wrongly mentioned in the order that the said documents have also not been



filed by the appellant.

13. As there is no limitation for filing the claim case under the Motor Vehicle Act, hence, in my considered opinion, filing the claim case by the appellant after five years of accident and making the owner, driver and insurer of the bus in question as party in the suit one year thereafter is not going to affect the merit of the case.

14. Considering the facts and circumstances of the case, impugned order passed by the learned Tribunal is set aside and this appeal is allowed and the case is remitted back to the learned Tribunal to dispose of the claim case including the petition under Section 140 of the M.V. Act in light of the observations made by me hereinabove.

15. Let the LCR be sent down to learned Tribunal for needful.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	08.11.2017
Transmission Date	N.A.

