

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.60 of 2014

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The New India Assurance Company Ltd. through The Manager (Legal Deptt.)
Regional Office, B.S.F.C. Building, Fraser Road, Patna (for the New India Ass. Co.
Ltd., Branch Office at Mehra Bhawan, Pali Road, Dehri on Sone 82/307, District
Rohtas).

.... Appellant/s

Versus

1. Asha Devi W/O Dinesh Ojha
2. Dinesh Ojha S/O Sri Ram Chandra Ojha
3. Manish Kumar Ojha (minor) S/O Dinesh Ojha
4. Sumit Kumar Ojha (minor) S/O Dinesh Ojha
5. Swati Kumari (minor) D/O Dinesh Ojha [(3), (4) And (5) are under the legal
Guardianship of their mother (1) Asha Devi and father (2) Dinesh Ojha All
Residents of Village Lilari, P.S. Shahpur, District Bhojpur (Arrah).
6. Jitendra Pd. Tiwary S/O Late Girija Prasad Tiwary Resident of Village Birpur,
P.S. Shahpur, District Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s : Mr. Om Prakash Upadhyay, Advocate
Mr. Abhay Kumar Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 26-07-2017

Challenging an Award dated 09.09.2013 passed by the
Ad hoc Additional District Judge-V-cum-Motor Accident Claims



Tribunal, Ara, Bhojpur in Claim Case No. 27 of 2004, this appeal has been filed by the Insurance Company.

2. The claimants are parents, brothers and minor sister of the deceased Pintu Ojha who was a driver in Jeep No. BRIP- 3981 and on 31.12.2003 when Pintu Ojha was driving the vehicle and ferrying passengers, four men and a woman after payment of Rs. 160/- boarded the Jeep and after the Jeep had travelled some distance, they killed the driver and took away the jeep and ran away. On account of the fact that the theft of the jeep took place after killing the driver, a First Information Report was lodged and claiming compensation on account of death of Pintu Ojha in a road accident that took place, the claim in question was filed and the claim petition has been allowed to the tune of Rs. 7,16,000/-.

3. This appeal by the Insurance Company is solely on the ground that Pintu Ojha was murdered and it was not a case of motor accident and, therefore, the claim could not be allowed. That apart, it is stated that the income has not been properly assessed, deduction for personal expense has not been properly done and various issues pertaining to award of the compensation has been raised.

4. As far as the contention that due to death of Pintu Ojha which amounts to a murder, the claim petition was not



maintainable, this question need not be answered any further as it has been answered in favour of the claimant by the Supreme Court in the case of **Smt. Rita Devi and others Vs. New India Assurance Company Limited- A.I.R. 2000 Supreme Court 1930**. The case before the Supreme Court was pertaining to death of an auto rickshaw driver who was plying the auto rickshaw, when passengers entered and started travelling on the auto rickshaw after payment of the fair and while doing so, they killed the auto rickshaw driver and ran away with the auto rickshaw. Holding the same to be a motor accident identical claim petitions have been allowed and similar objections raised have been rejected by the Supreme Court. That being so, as far as the objection with regard to the accident that it is not a motor accident covered under the provisions of the Motor Vehicles Act is concerned, I find ground to make any indulgence in view of the law laid down by the Supreme Court in the case of **Smt. Rita Devi** (supra).

5. As far as the other grounds are concerned, it is seen that they are grounds pertaining to quantification on the compensation and no permission as required under Section 170 of the Motor Vehicles Act has been taken. Even though an application under Section 170 is said to have been filed but no order granting permission and contesting by the Insurance Company on the quantum



being available on record, I reject the prayer with regard to challenge made to the Award on the quantum by the Insurance Company.

6. The Appeal stands dismissed. The statutory amount be sent to the trial court for necessary disbursement. The Insurance Company to make deposit of the remaining amount of compensation within 60 days.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.07.2017
Transmission Date	

