

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.105 of 2014

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1. Masomat Fulmanti Devi W/o Late Pramod Kumar Choudhary
 2. Bipin Kumar
 3. Rahul Kumar

Both are minor Son of Late Pramod Kumar Choudhary under the Legal And Natural Guardianship of their Mother Namely Fulmanti Devi Appellant No. 1 All Residents of Mohalla Neem Tola, Par Nawada, P.S. & District Nawada.

.... Appellants

Versus

1. Md. Nasim S/o Md. Nasir Resident of Bhadouni Nawada, P.S. & District Nawada. (Owner of Trekker Bearing Registration No. BHY 7711)
2. Branch Manager, National Insurance Co. Ltd. Rajendra Nagar (Nawada Branch) P.S. & District Nawada. (Insurer of Trekker Bearing Registration No. BHY 7711).

.... Respondents

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Appearance:

For the Appellant/s : Mr. Jitendra Kumar, Advocate.
For the Respondent no.2 : Mr. Ashok Priyadarshi, Advocate
For respondent no.1 : Mr. Rajesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 30-10-2017

Re.: I.A. No. 3602 of 2014

The appellants have filed the aforesaid delay condonation petition for condonation of delay of six months and eleven days in filing this miscellaneous appeal on the ground that the appellant no.1 along with her minor children had gone of the State and she had no knowledge of the judgment and award passed in the case as the same was not communicated to her by her counsel for want of her address. However, she learnt about the fate of the case on regressing to her home in the month of February and on contacting her lawyer regarding her case. Then she obtained certified copy of the



judgment and award and on advice of her counsel got this appeal prepared and filed. There have been no willful and deliberate latches on the part of the appellants in filing the aforesaid appeal.

In the facts and circumstances of the case and in the interest of justice, the aforesaid delay in filing this miscellaneous appeal is condoned and the aforesaid interlocutory application is allowed.

Re.: M.A. No. 105 of 2014

Heard learned counsel for the appellants and learned counsel for respondent no.2 on this appeal and perused the record.

2. This appeal has been filed against the judgment dated 13.02.2013 and award dated 08.05.2013 passed by the Adhoc Additional District Judge – cum - Motor Accident Claim Tribunal in Motor Vehicle Claim Case No. 05 of 2011 / 16 of 2011 whereby the learned Tribunal directed the owner of the offending vehicle to pay compensation to the tune of Rs. 2,99,500/- after deducting amount received by the claimants under Section 140 of the Motor Vehicles Act along with the interest at the rate of 8% per annum from the date of filing claim petition till its realisation.

3. Factual matrix of the case is that the appellants have filed Claim Case No. 05 of 2011 / 16 of 2011 on account of death of their husband and father respectively, namely, Pramod Kumar Chaudhary in the motor vehicle accident with the case in succinct



that on the fateful day, said Pramod Kumar Chaudhary was regressing from Hasuya to Nawada by Trekker bearing Registration No. BHY 7711. As soon as the said trekker arrived near Sobhiya Mandir Kebat Nagar, it rammed into a van rickshaw due to rash and negligent driving of the same by its driver resultantly the said trekker turned turtle and engulfed in fire. Said Pramod Kumar Chaudhary sustained burn injuries in the said accident and he was rushed to Sadar Hospital Nawada and from there to PMCH Patna, but he succumbed to injury during the course of treatment. He was aged about 25 years at the time of accident and was an employee in the Aluminium Factory and used to earn Rs. 2500 per month from the said vocation.

4. Both the owner and insurer of the offending vehicle put their appearance in the case and filed their written statements.

5. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award, the claimants have filed this miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the amount of compensation awarded by the learned Tribunal is quite inadequate and the amount of compensation awarded in other



traditional heads is also inadequate. It is further submitted that the offending vehicle was insured by the National Insurance Company Limited and the driving license was valid at the relevant time of accident, hence, not the owner rather aforesaid Insurance Company is liable to pay the aforesaid amount of compensation to the appellants, but the learned Tribunal has wrongly directed the owner of the offending vehicle to pay the said compensation to the appellants.

8. On the other hand, learned counsel for respondent no.2 submitted that the aforesaid amount of compensation awarded to the claimants is quite adequate. It is further submitted that as the driver of the vehicle was not possessing valid driving license at the relevant time of accident, hence, the Insurance Company is not liable to pay any amount of compensation rather owner of the offending vehicle is liable for the same and the impugned judgment and award passed by the learned lower court is correct and valid and is liable to be sustained.

9. From perusal of the record, it appears that the deceased was aged about 25 years at the time of accident and the accident is of 23.08.2003. Hence, in absence of cogent evidence regarding notional income of the deceased and considering the prevailing economic era and price inflation at the relevant time, I think it proper and appropriate to consider the notional income of the deceased as Rs. 30,000/- per annum. As the deceased has died



leaving behind him his widow and two children, hence $\frac{1}{3}^{\text{rd}}$ of the aforesaid income is deducted as personal expense of the deceased which he would have made had he been alive. On deduction of the aforesaid personal expense of the deceased, the loss of dependency comes to the tune of Rs. 20,000/- per annum. As the deceased was aged about 25 years at the time of accident, hence as per 2nd Schedule of Motor Vehicles Act, multiplier of 17 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 3,40,000/-. Besides the aforesaid amount of compensation, I think it proper and adequate to award Rs. 25,000/- towards loss of estate, Rs. 25,000/- towards funeral expenses, Rs. 25,000/- towards loss of consortium. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 4,15,000/-. As the claimants have already received Rs. 50,000/- by way of ad-interim compensation, hence they would be entitled to get the rest amount of compensation to the tune of Rs. 3,65,000/- along with interest at the rate of 8% per annum from the date of filing claim case till its realisation, excluding the period of date of award till this judgment.

10. Learned counsel for the appellants by filing the photo stat copy of the driving license at this stage has submitted that the driver of the offending vehicle was having valid driving license at the time of accident, hence, Insurance Company is liable to pay the



compensation and not the owner of the vehicle. But as the said photo stat copy of the driving license filed by the appellants at this stage of appeal has not been got admitted and exhibited as additional evidence by the appellants, hence, it cannot be taken into consideration. As the driver of the offending vehicle was not possessing valid driving license at the relevant time of accident, the Insurance Company is not liable to pay any compensation to the appellants. However, as the appellants happen to be the third party to the contract of insurance entered into between the Insurance company and the owner of the offending vehicle and as the Motor Vehicles Act is a beneficial legislation, hence, the Insurance company is directed to pay the aforesaid amount of compensation and the interest thereon to the appellants within two months from the date of receipt or production of a copy of this order. However, the Insurance Company shall be at liberty to recover the said amount from owner of the offending vehicle after its payment which will subserve the ends of justice. Accordingly, this appeal is allowed and the impugned judgment and award passed by the learned Tribunal stands modified.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	01.11.2017
Transmission Date	

