

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.11 of 2011

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1. Mahawati Devi w/o Sri Ram Prasad Mahto	
2. Ram Prasad Mahato, s/o Sri. Ram Chanran Mahato, r/v + P.O. Chhotaipatti, P.S. Sadar, Distt. Darbhanga	 Appellants/s
Versus	
Branch Manager New India Assur	 Respondent/s

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Appearance :

For the Appellants/s : Mr. Mukesh Prasad Singh, Advocate
For the N.S.A : Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 20-07-2017

1. Heard learned counsel for the appellants as well as learned counsel appearing for New India Assurance Comp. Ltd.

2. The present appeal has been filed after 8 months 25 days of prescribed period of limitation but to condone the aforesaid delay I.A. No. 4968/14 has been filed. The delay in filing the present appeal is condoned and accordingly I.A. No. 4969 of 2014 stands disposed of.

3. The present miscellaneous appeal has been filed for setting aside the order dated 05.01.2010 and award dated 13.01.2010 in Claim Case No. 45 of 2007. The learned District Judge-cum-Claim Tribunal, Darbhanga dismissed the aforesaid Claim Case No. 45 of 2007 on the ground that claimants have not succeeded to prove the negligence of driver of the offended vehicle.



4. The appellants being dissatisfied with the aforesaid impugned order and the award filed the present miscellaneous appeal on various grounds.

5. On 02.12.2005 the appellants no. 2 gave a written report to Officer-in-charge of Darbhanga Police Station mentioning therein that on the same date at about 9.00 a.m. while his daughter namely, Chandani Kumari was going on main road of the Village Chhotaipatti, one pick-up van bearing Registration No. BR-7C-8296 dashed his daughter. The aforesaid pick-up van was being driven by his driver rashly and negligently. His daughter Chandani Kumari died on spot after the afore accident, the driver of the aforesaid pick-up van made attempt to run away along with the vehicle but villagers chased the vehicle and caught the driver along with vehicle thereafter, the driver and vehicle were handed over to the police.

6. On the basis of aforesaid written report, Sadar Darbhanga P.S. Case No. 262 of 2005 for the offences punishable under Section 304(a) and 279 of the Indian Penal Code was registered. The police after completion of the investigation submitted charge-sheet against the driver for the aforesaid offences. The aforesaid offended vehicle was insured by the respondent no. 1 at the time of alleged occurrence and the aforesaid fact is not in dispute in the present case.



7. The appellants being parents of deceased Chandani Kumari, filed claim petition under Section 166 of the Motor Vehicle Act, 1988 and also claimed interim relief under Section 140 of the Motor Vehicle Act. The learned Tribunal granted interim relief to claimants-appellants in Claim Case No. 10 of 2006 which had been filed by claimants/appellants under Section 140 of the Motor Vehicle Act. However, the claimants/appellants examined its witnesses and also got exhibited F.I.R. and post-mortem report as well as other relevant documents. No evidence was adduced either by insurance company or by owner as well as driver of the offended vehicle.

8. Learned Tribunal dismissed the claim of the appellants on the ground as I have already stated.

9. Learned counsel appearing for the appellants challenged the impugned order and award submitting that the learned Tribunal committed error in dismissing the claim of the appellants/claimants because the learned Tribunal termed his opinion on erroneous ground and failed to discuss the materials available on the record in its right perspective.

10. Learned counsel for the appellants further submits that Tribunal also failed to take note of this fact that the appellants/claimants had love and affection for their beloved daughter who died unfortunately in the above stated action.



11. On the other hand, learned counsel appearing for the Assurance Company submitted that the impugned order and award of the Tribunal is well discussed and the Tribunal has disbelieved the evidence of the applicants and therefore, Tribunal rightly held that the appellants/claimants failed to establish the negligence of driver of offended vehicle. He further submits that in motor accident, the claimant has to prove the negligence of driver of offended vehicle and if the claimant fails to prove the above stated fact, then the claimant shall not get any compensation. He further submits that the learned Tribunal rightly held that the appellants/claimants failed to prove the place of occurrence because there were several contradictions in the statements of claimants and witnesses and as a matter of fact, no one had seen the accident in question.

12. Having heard the rival contention of the parties. I have gone through the record along with lower court records. It is an admitted position that the First Information Report was lodged on the date of accident by appellant no. 2 and the aforesaid First Information Report got exhibited before the Tribunal by the claimants/appellants but Tribunal has not whispered even a single word in respect of the aforesaid First Information Report. It is also an admitted position that after an investigation police found the factum of accident true and accordingly, submitted charge-sheet against the driver of offended



vehicle and both the aforesaid documents were brought before the Tribunal and, therefore, at least it was established before the Tribunal that an accident had taken place and in the said accident the daughter of claimants/appellants died and the pick-up van bearing Registration No. BR-7C-8296 was involved. Therefore, even if, the witnesses in course of enquiry, made contradictory statements in respect of place of occurrence, then also it cannot be said that no accident had taken place at a particular place as given in the First Information Report. Moreover, in claim cases the meticulous enquiry is not required and it is not proper to expect from the claimants to prove the place of occurrence beyond all reasonable doubts and it is sufficient, if the claimants succeed to prove that an accident took place at a particular place. The aforesaid fact has already been proved in this case by bringing the FIR as well as charge-sheet of Darbhanga Sadar P.S. Case No. 262 of 2005 on record. Therefore, in my view, the Tribunal committed error in holding that the claimants failed to prove the place of occurrence.

13. The second ground of rejection of claim of the claimants/applicant is said to be their failure to prove the negligence of driver of offended vehicle but the deposition of claimants' witness no. 1 clearly goes to show that the aforesaid witness, specifically, stated that at the time of alleged occurrence, the vehicle in question



was being driven by its driver in rash and negligent manner and moreover, prima facie the negligence of the aforesaid driver has also been proved by submissions of charge-sheet in Darbhanga Sadar P.S. Case No. 262 of 2005. Therefore, it cannot be said that the claimants/appellants failed to prove the negligence of driver of the vehicle in question. In my view, the Tribunal committed an error in rejecting the claim of the claimants/appellants on the above stated ground.

14. It is evident from the perusal of the lower court records that the claim case was filed in the year 2007 and the accident took place in the year 2005 so, it would not be proper for this Court to remand this matter to Tribunal for fresh decision, rather, it would be proper for this Court to decide the quantum of compensation and close the chapter for all the purposes.

15. The deceased was 18 years old at the time of alleged accident and the vehicle in question was insured by the respondent no. 1 and both the aforesaid facts are not in dispute. It is also an admitted position that Rs. 50,000/- has already been paid to the appellants-claimants under Section 140 of the Motor Vehicles Act. Therefore, the appropriate multiplier in the present case appears to be 18 and if the age of the victim is multiplied by multiplier number 18, then the possible compensation amount comes near about Rs.



3,24,000/- but as agreed by the parties in course of hearing, Rs. 3,00,000/- after deduction of Rs. 50,000/- would be sufficient compensation amount in this case.

16. In view of the aforesaid discussions, this miscellaneous appeal is allowed at the admission stage itself and the impugned order dated 05.01.2010 as well as award dated 13.01.2010 stands set aside and it is ordered that the petitioner no. 1 shall pay Rs. 3,00,000/- after deducting the amount of Rs. 50,000/- given u/s 140 of the M.V. Act from the aforesaid Rs. 3,00,000/- to appellants within three months from the date of this judgment with interest at the rate of 6 % from the date of passing of impugned order 05.01.2010 till realization of the aforesaid amount.

Let the lower court records be returned to the concerned Tribunal.

(Hemant Kumar Srivastava, J)

sushma/-

AFR/NAFR	
CAV DATE	
Uploading Date	28/07/17
Transmission Date	

