

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.697 of 2008

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National Insurance Company Limited through the Chief Regional Manager at Regional Office “Sone Bhawan” (4th Floor) Birchand Patel Marg, Patna (for the Branch Manager, National Insurance Company Limited, near Prakash Petrol Pump, G.T. Road, Sasaram, Rohtas). Appellant.

Versus

1. Rajwanti Kuer, wife of Late Aman Kumar alias Saroj Kumar.
 2. Ragni Kumari (minor daughter of Late Aman Kumar alias Saroj Kumar).
 3. Pushkar Kumar (minor) son of Late Aman Kumar @ Saroj Kumar.
2 and 3 minor daughter and son of Late Aman Kumar @ Saroj Kumar under the guardianship of their mother Rajwanti Kuer.
 4. Kunti Devi, mother of Late Aman Kumar @ Saroj Kumar.
 5. Sujata Verma, minor daughter of Late Aman Kumar alias Saroj Kumar under the guardianship of their mother and natural guardian, Rajwanti Kuer.
All are residents of village Kota, P.O. Budhan Road, P.S. Sasaram (Darigaon), District Rohtas.
 6. Smt. Shanti Singh, wife of Shri Jang Bahadur Singh, resident of Mohalla-Mahabir Mandir, Taktakpur, P.O. and P.S. Cantt. Varansi, District Varansi (U.P.) (owner of the vehicle). Respondents.
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Appearance :

For the Appellant : Mr. Mukteshwar Prasad Singh, Adv.
For the Claimants : Mr. Siddharth Harsh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 07-08-2017

Heard learned counsel for the appellant and learned
counsel for the claimants/respondents.

2. This appeal has been preferred against the judgment



dated 05.02.2008 and award dated 23.06.2008 passed by the learned Additional District Judge (Fast Track Court No.II)-cum-Motor Accident Claim Tribunal, Rohtas at Sasaram in Claim Case No.39 of 2006, whereby the learned Judge has directed the appellant to pay compensation to the tune of Rs.7,50,000.00 along with interest at the rate of 6% per annum from the date of filing the claim petition to the date of realisation, within two months from the date of order.

3. The factual matrix of the case is that on the fateful day one Aman Kumar alias Saroj Kumar was proceeding to Amna Talab, Mahadeo Basera Line Hotel from his house in connection with his business by his own motorcycle. When he reached near Mandal Kara, Sasaram on G.T. Road, a truck bearing registration No. UP 65R 0816 hailing to respondent no.6 coming from Dehri-on-Sone dashed the said motorcycle of the deceased, as a result the deceased fell down from the motorcycle and died on the spot due to grievous injury in his head and neck. The deceased was earning Rs.15,000.00 per month. Due to demise of the deceased his legal representative filed Claim Case No.39 of 2006 against the appellant and others.

4. After hearing the parties and perusing the record, the learned lower court passed the impugned judgment and award.

5. Being aggrieved and dissatisfied with the aforesaid judgment and award the Insurance Company has preferred this appeal.



6. It has been submitted by learned counsel for the appellant that the impugned judgment is very cryptic. The learned lower court has not even discussed the case of the appellant regarding not possessing the valid driving licence by the driver of the offending truck at the relevant time of accident and also regarding the extent of liability of the Insurance Company which is only to the extent of 50% as both motorcycle of the deceased and the offending truck met head on collision, which has already been raised by the appellant in his written statement filed before the learned court below. Besides this, the learned lower court has also not discussed in the impugned judgment the number of dependents of the deceased, the age of the deceased, the income of the deceased at that relevant time, loss of dependency and multiplier applied by it for working out the amount of compensation and merely mentioning the earning of the deceased and Rs.50,000.00 given to the claimants by way of ad interim compensation it has passed the impugned judgment. Hence, the impugned judgment and award passed by the learned court is wrong, illegal, unreasoned and is liable to be set aside.

7. On the other hand, learned counsel for the claimant/ respondents, countering the aforesaid submissions of the appellants, has submitted that the learned lower court has passed the impugned judgment and award after considering all the facts and material



available on the record and correctly appreciating the evidence adduced by the parties and the same is correct, legal and valid. Hence, this appeal has no force and is liable to be dismissed.

8. From perusal of the impugned judgment, it appears that besides other defence taken by the appellant by filing the written statement, it has claimed that the driver of the offending truck did not possess the valid driving licence at the relevant time of accident, hence the Insurance Company is not liable to pay the compensation indemnifying the owner of the vehicle. At most the Insurance Company is liable to pay only 50% of the compensation claiming that there was negligence on the part of deceased as also on the driver of the offending truck in the accident but the learned lower court has neither framed any issues on the aforesaid aspect nor discussed the same in the impugned judgment. Moreover, the learned lower court has also not discussed about the number of dependents of the deceased, the age of the deceased, the loss of dependency and multiplier applied by it for working out the amount of compensation in the impugned judgment and simply mentioning income of the deceased and receiving of the amount of Rs.50,000.00, by way of ad interim compensation by the claimants, has passed the impugned judgment and award, which is quite illegal and unreasoned.

9. In view of aforesaid facts and circumstances the



aforesaid judgment and award is set aside and the case is remitted back to the learned lower court to pass a fresh judgment, after considering all the aspects of the case as discussed by me hereinabove. The learned lower court is directed to conclude the case as expeditiously as possible, preferably within two months from the date of receipt/production of a copy of this judgment after giving proper opportunities to the parties to adduce their evidence, if not available on record. The statutory amount of Rs.25,000.00 deposited by the appellant Insurance Company be also sent to the learned lower court.

10. With the aforesaid observations and direction, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2017
Transmission Date	NA

