

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.464 of 2014

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Manoj Kumar Jha, son of Radha Krishna Jha, resident of village Tetri, P.O. Tetri,
P.S. Naugachia, District Bhagalpur. Claimant/Appellant.

Versus

1. The Branch Manager, the New India Assurance Co. Ltd. Chandralok Complex,
Ghantaghar Chowk, at P.O., P.S. & District Bhagalpur-812001.
2. The Regional Manager, the New India Assurance Co. Ltd. Gandhi Maidan,
Patna.
3. Ravi Kumar Singh @ Rakesh Kumar Ram, son of Late Dhananjay Pd. Singh @
Dhananjay Pd. Ram, resident of village Sehibari Sarai, P.O. & P.S. Tetarpur,
District Bhagalpur.
4. Barun Gorain, son of Sanatan Gorain, resident of village Rasikpur, P.O. & P.S.
Dumka, District Dumka (Jharkhand).
5. Md. Barakat, son of Dil Mohammad, resident of village Kumharpara, P.O. &
P.S. Dumka, District Dumka (Jharkhand).
6. The Branch Manager, the Oriental Insurance Co. Ltd. Court Compound, At P.O.,
P.S. & District Dumka (Jharkhand)-814101.
7. The Divisional Manager, the Oriental Insurance Com. Ltd. Near Kachahari
Chowk, At P.O., P.S. & District Bhagalpur.
8. Radha Krishna Jha, son of Late Jainarayan Jha, resident of village & P.O. Tetri,
P.S. Naugachia, District Bhagalpur.
9. Vinod Kumar Jha, son of Radha Krishna Jha, resident of University Campus,
village Dumka, P.O., P.S. & District Dumka (Jharkhand).
10. Pramod Kumar Jha, son of Radha Krishna Jha, resident of village & P.O. Tetri
& P.S. Naugachia, District Bhagalpur.
11. Kiran Devi, wife of Shashikant Jha, resident of village & P.O. Kataria, P.S.
Naugachia (Rangra), District Bhagalpur.
12. Suman Devi, wife of Barun Kumar Jha, resident of Quarter No.F.O.7, Village &
P.O. Chandrapura, District Bokaro (Jharkhand).

.... Respondents.

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Appearance :

For the Appellant : Mrs. Sarita Bajaj, Adv.

For the Respondent Nos.1 &2 : Mr. Raj Kumar Singh Vikram, Adv.

For the Respondent Nos.6 &7: Mr. Durgesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 29-11-2017

Heard learned counsel for the appellant and learned counsel
for the respondent nos.1&2 and respondent nos.6 & 7.

This miscellaneous appeal has been preferred against the
revised judgment dated 26.03.2014 and award dated 15.04.2014



passed by the Additional District Judge-I-cum-Additional Motor Accident Claim Tribunal-I, Naugachia (Bhagalpur) (hereinafter referred to as the 'Tribunal') in Claim Case No.121 of 2008, whereby the learned Tribunal directed the Oriental Insurance Company to pay Rs.1,92,500/- with interest at the rate of 8% per annum from 16.09.2011, the date of previous judgment, till its realization, deducting the amount of ad interim compensation of Rs.50,000/- out of which Rs.25,000/- shall be paid to the New India Assurance Company Limited who had paid Rs.25,000/- as ad interim compensation to the claimant.

The factual matrix of the case is that appellant-Manoj Kumar Jha filed Claim Case No.121 of 2008 under Section 166 of the Motor Vehicles Act for awarding compensation on account of death of his mother Sushila Devi @ Sheela Devi in a motor vehicle accident caused by a Bolero Jeep, bearing registration no.JH-04A-6979, due to rash and negligent driving of it by its driver on 05.05.2004 at about 10 AM at 3 kilometers south of Barahat P.S., opposite Bishangarh Pokhar on the left side of pucca road.

Opposite parties Oriental Insurance Company Limited and the New India Assurance Company Limited put their appearance in the case and filed their written statement.

After hearing the parties and perusing the record, the learned



Tribunal passed the judgment on 16.09.2011 and award on 15.10.2011.

Being aggrieved and dissatisfied with the aforesaid judgment and award, the appellant preferred Misc. Appeal No.38 of 2012 in this Court. After hearing the parties, this Court remitted back the case to the learned Tribunal with a direction to decide the case afresh after applying the multiplier 7 as applicable to the deceased aged about 65 years and considering the claim of the medical expenses in terms of bills submitted by the appellant of Rs.1,79,067/-, subject to establishing its genuineness by the appellant after affording the Insurance Company to place their case and contest the claim.

On receipt of the case, the learned Tribunal after giving opportunity to the Insurance Company and applying the multiplier of 7 and considering the medical bills furnished by the appellant passed the aforesaid judgment and award as detailed in earlier paragraph.

Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimant/appellant has filed this appeal.

It is submitted by learned counsel for the appellant that though the learned Tribunal has computed the amount of compensation by applying the multiplier of 7 but it has disbelieved the medical bills submitted by him albeit all the bills were duly proved by him. The appellant is also entitled to get the medical expenses made



by him on the treatment of his mother at various places.

On the other hand, it is submitted by learned counsel for the respondents that adequate amount of compensation has already been awarded to the appellant and the Oriental Insurance Company Limited has already paid the aforesaid amount of compensation to him. Hence, the appellant is not entitled to get any more amount of compensation. It is further submitted that the medical bills furnished by the appellant has not been duly proved by him, hence the said bills cannot be taken into consideration. It is also submitted that as the appellant happens to be major son of the deceased, he does not happen to be dependent of the deceased and is not entitled to get any compensation.

Learned counsel for the New India Assurance Company Limited (respondent nos.1 & 2) has submitted that the said Company is not under obligation to pay any amount of compensation to the appellant.

From perusal of the record, it appears that this Court vide order dated 05.07.2013 in the aforesaid miscellaneous appeal has directed the learned Tribunal to consider the bills to the tune of Rs.1,79,067/-, subject to establishing its genuineness and also after according the opportunity to the Insurance Company to place their case. From perusal of the record, it also appears that the said bills



were proved by CW-2, Pramod Kumar Jha. The said witness has proved each and every bill and receipt issued by the medical shop on purchasing the medicines and by the doctors receiving the fees and charges of anesthesia etc. by stating that the said bills and receipts were issued in his presence and he acknowledged the signature of the person issuing the same. He has also stated that he was all along with the deceased during her treatment. The said witness was not cross-examined by the respondents on the aforesaid aspect of the case. Hence, in my considered opinion, the aforesaid bills and receipts submitted by the appellant stands admitted and duly proved. Hence, the appellant is also entitled to get the aforesaid medical expenses made by him on treatment of deceased. But the learned Tribunal, without considering the genuineness of the bills, has wrongly held that the bills have not been proved by the appellant and refused to pay the compensation regarding medical expenses.

The submission of learned counsel of the respondents that the appellant is not entitled to get any compensation as he happens to be major son of the deceased does not appear to be tenable and acceptable as the respondents have not assailed the finding of the learned Tribunal regarding aforesaid aspect of the case by filing any appeal.

On addition of aforesaid amount of medical expenses made



on the treatment of the deceased the amount of compensation comes to the tune of Rs.3,71,567/-. The Oriental Insurance Company Limited is liable to pay the same, subject to the condition imposed by the learned Tribunal in the impugned judgment, deducting the amount already paid by it. However, the amount of medical bill shall not carry any interest. The Oriental Insurance Company Limited is also directed to pay Rs.25,000/-, if not paid earlier, to the New India Assurance Company Limited, the amount of ad interim compensation paid by him.

With the aforesaid modification in the impugned judgment and award this miscellaneous appeal is accordingly disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2017
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