

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.684 of 2012

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Smt. Maratunnissa, wife of Late Khafil Ahmad, resident of village-Ghusia Kalan,
P.S. Bikraganj, District-Rohtas

.... Appellant/s

Versus

1. Divisional Manager, Bihar State Road Transport Corporation, Bankipur, Patna
(Bihar)
2. United India Insurance Corporation Limited through Branch Manager, Palace
Hotel Building South Gandhi Maidan, Patna

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Bajarangi Lal, Advocate
Mr. A.K. Ghosh, Advocate

For the Respondent/s : Ms. Seema Kumari, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the appellant and learned
counsel for the respondents and perused the record.

2. This appeal has been preferred against the judgment
dated 14.05.2012 and award dated 15.06.2012, passed by the
Additional District Judge, F.T.C.-1-cum-Motor Vehicles Accident
Claim Tribunal, Rohtas at Sasaram in M.V. Claim Case No. 93 of
2009, whereby the learned Tribunal awarded compensation to the tune
of Rs. 1,54,500/- along with interest @ 6 per cent per annum from the
date of filing of Claim Case till final payment in favour of the
claimant and directed the United India Insurance Company Limited to
pay the aforesaid amount of compensation to the claimant and in the
case the owner of the vehicle fails to produce valid driving license and



road permit, the Insurance Company will be at liberty to recover the same from the owner.

3.Factual matrix of the case is that the claimant Smt. Maratunnissa has filed Motor Vehicle Claim Case No. 93 of 2009 under Section 166 of the Motor Vehicles Act for awarding compensation to the tune of Rs. Five lacs along with interest of 18 per cent per annum against the owner and insurer of the vehicle with the case in succinct that on 04.10.2008 at about 5:00 P.M. her son Imteyaz Khan along with his brother Faruk Ahmad Khan boarded a bus bearing Registration No. B.R.-3P-0372 of Bihar State Road Transport Corporation at Ara for proceeding to Maliabagh. The conductor of the bus issued ticket and instructed them to sit on the roof of the bus as there was no accommodation in the bus. Complying aforesaid instruction of the conductor, Imteyaz Khan and his brother sat on the roof of the bus. The driver was driving the bus very rashly and negligently without taking care of tree and electric line even knowing the fact that the passengers were travelling on the roof of the bus. When the said bus arrived near Bhadhar More on N.H.-30, the head of the deceased dashed with the branch of a tree resultantly he sustained grievous injuries and fell down on the roof of the bus. On hulla the driver of the bus halted the bus. Imteyaz Khan was rushed for medical treatment to a local doctor who finding his



condition precarious, giving him first aid and referred him for better treatment at Ara but he succumbed to his injuries on the way to Ara. Further case of the claimant is that the deceased was aged about 22 years at the time of his death and was unmarried. He used to earn Rs. 5,000/- per month by teaching in a private school and he was also earning money from agriculture.

5. The Insurance Company filed the written statement while the owner of the offending vehicle though appeared in the case did not file any written statement.

6. After hearing the parties and perusing the record, learned Tribunal passed the impugned judgment and award. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimant has filed this Miscellaneous Appeal.

7. Learned counsel for the appellant assailed the aforesaid judgment and award on the ground that there has been no contributory negligence on the part of the deceased in the accident rather the deceased was travelling on the roof of the bus as per instructions of the Conductor of the bus as there was no sit available inside the bus and the said fact was within the knowledge of the driver of the vehicle but despite it, the driver was driving the vehicle negligently and rashly without taking care of the bus passengers travelling on the roof of the bus and resultantly the deceased met the



accident not due to his own negligence rather due to negligence of the driver. He also assailed the said judgment on the ground that the extent of contributory negligence assessed by the Court is excessive and unfounded and learned lower court has decided the aforesaid case of contributory negligence without framing of any issue. The amount of compensation awarded by the learned court is also inadequate.

8. On the other hand, learned counsel for the respondents submitted that there has been contributory negligence on the part of the deceased in the accident as the deceased was a teacher, he should have allotted a seat inside the bus to avoid any accident but instead of that he sat on the roof of the bus at his own risk. He thus has contributed to the aforesaid negligence. The learned tribunal has rightly finding contributory negligence on the part of the deceased, has assessed the extent of his contribution as 50 per cent and accordingly awarded the compensation. Learned lower court has decided the case considering all aspects of the case after framing the issues and awarded the adequate amount of compensation considering the certificate of income filed by the claimant herself.

9. From the perusal of the record, it appears that it is admitted case of appellant that the deceased Imteyaj Khan was travelling on the roof of the bus and sustained injuries as he dashed



with the branch of the tree in the course of journey which proved fatal. It is also the case of appellant that there was no seat available inside the bus to accommodate the deceased and his brother so they were travelling on the roof of the bus as per instructions of the Conductor of the bus and within the knowledge of the driver of the vehicle so it is the driver who ought to have taken care in driving the vehicle to avoid any accident to the passengers sitting on the roof of the bus. But he did not take such care rather drove the bus negligently and rashly resulting into the aforesaid accident and death of the deceased.

10. From perusal of the record, it appears that Faruk Ahmad Khan (AW-2) who happens to be own brother of the deceased and was accompanying the deceased at time of the accident has nowhere deposed in his statement that the deceased and he himself was travelling on the roof of the bus as per the instruction of the Conductor of the bus and within the knowledge of the driver of the vehicle rather in para-8 of his cross-examination he has stated that after dashing with the branch of the tree, his brother fell down on the roof of the bus and on alarm made by him, the driver halted the bus. The aforesaid statement of the companion of the deceased itself rule out the aforesaid case of the appellant that the driver of the bus was driving it rashly and negligently as the driver appears to have



immediately halted the bus responding the alarm made by the brother of the deceased. As the deceased was a private teacher he must have at least such a wisdom and understanding that sitting on the roof of the bus might be fatal. But despite it he took the risk and met the accident and in such a way, he has certainly contributed to the accident.

11. From perusal of the impugned judgment, it appears that learned lower court decided the case after framing of issues and the controversy of contributory negligence was discussed while deciding the Issue No. 2 & 3 regarding the accident and the quantum of compensation, respectively. The learned tribunal finding the contributory negligence of the deceased in the said accident to the extent of 50 per cent has deducted the amount of compensation by 50 per cent and awarded compensation accordingly which in my considered opinion appears to be correct and proper.

12. So far as quantum of compensation is concerned, learned tribunal has assessed the income of the deceased at Rs. 2500/- per month relying on the salary certificate (Exhibit-7) filed by the claimant herself.

13. From perusal of the record, it appears that though the claimant has taken the case that the deceased also used to earn money from the agriculture but the claimant has failed to substantiate



her aforesaid case by adducing the evidence in this regard. Hence, the quantum of compensation awarded by the learned Tribunal also appears to be adequate.

14. In view of the aforesaid facts, the impugned judgment and award passed by the learned Tribunal appears to be correct and legal and does not warrant any intervention and accordingly it is upheld and this appeal being devoid of any merit and substance, is dismissed.

(Prakash Chandra Jaiswal, J)

S.Sb/-

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CAV DATE	
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