

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.925 of 2011

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1. Poonam Devi W/o Late Motilal Sahu.
 2. Pallavi Priya D/o Late Motilal Sahu (Minor)
 3. Pryanka Priya D/o Late Motilal Sahu (Minor)

Appellant nos. 2 and 3 are minor daughters of late Motilal Sahu and as such, filed the present appeal under the natural and legal guardianship of their mother Poonam Devi who is appellant no. 1 in the present Memo of Appeal. All are R/o Mohalla-Sristi Nagar, Vihar Colony, South East of Bhagwat Milan Mandir, P.S.-Agamkuan, P.S. Kumhrar, District-Patna. (Claimants in the claim case).

.... Appellant/s

Versus

1. Ajay Ram, S/o Ram Swaroop Ram R/o Village-Patoura, P.S. & District-Motihari (O.P. no. 1) (Driver of Truck no. WB-25/6371).
2. Suresh Giri, 512 Railway Quarter, Kashipur, Kolkata, District-Kolkatta (West Bengal). (Opp. Party no. 2) (Owner of Truck no. WB-25/6371)
3. The Regional Manager, The New India Assurance Company Ltd., 6th floor, Finance Building (BSFC Building), Frazer Road, Patna (Opp. Party no. 3).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prakash Kumar
For the Respondent no. 3 : Mr. Arun Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 08-12-2017

Heard learned counsel for the appellants and learned counsel for the respondent no. 3 on this miscellaneous appeal and perused the record.

2. This miscellaneous appeal has been filed against the judgment dated 25.09.2010 and award dated 26.07.2011 passed by



learned Additional District Judge-III-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case no. 288 of 2007 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the opposite party no.3 (The New India Assurance Company Ltd.) to pay compensation to the tune of Rs. 14,47,213/- along with interest @ 6% per annum from the date of filing of the claim case till its realization.

3. Factual matrix of the case is that the Claim Case no. 288 of 2007 was filed by the claimants under Section 166 of the M.V. Act for awarding compensation on account of death of their husband and father respectively, namely, Motilal Sahu in the motor vehicle accident with the case in succinct that on 08.07.2006 said Motilal Sahu along with his colleague Arun Kumar was proceeding to Bank of Baroda and when they reached near cold storage Gardanibagh bypass, a truck bearing registration no. WB-25 6371 being rashly and negligently driven by its driver dashed both of them, resultantly they died on the spot. Regarding the said incident, Traffic P.S. Case no. 106 of 2006 was instituted under Sections 279 and 304A of the Indian Penal Code. The deceased was aged about 48 years at the time of accident and was clerk in the Bank of Baroda and used to draw salary of Rs. 21,000/- per month from the said vocation. He has died leaving behind his widow and daughters who are claimants in the



case as his legal representatives/dependants.

4. The Opposite Parties put their appearance in the case and filed their written statement. The claimants adduced ocular and documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred the present appeal.

7. At the very outset of the argument, learned counsel for the respondent no. 3 relying upon the verdict of this Court in ***Veena Devi and Others Vs. Ram Nandan Prasad and Others reported in 2013(2) PLJR 123*** has submitted that as the claimants had already filed a claim case under Section 166 of the M.V. Act vide Claim Case no. 118 of 2006 and had received 50,000/- as interim compensation, hence another claim application under Section 166 MV Act is barred. He has further submitted that the respondents have taken the aforesaid plea specifically in their written statement, but learned Tribunal did not frame any issue and decided the aforesaid matter rather decided the claim case filed under Section 166 of MV Act on merit.

8. On the other hand, learned counsel for the appellants



submitted that certainly the claimants had filed application under Section 140 MV Act earlier to filing claim case under Section 166 MV Act and they had received Rs. 50,000/- as interim compensation, but learned Tribunal considering the aforesaid aspect of the case as mentioned in the judgment has decided the case on merit, hence the aforesaid submission of learned counsel for the respondents is not tenable at this stage.

9. From perusal of impugned judgment, it appears that claimants-appellants had earlier filed the claim case under Section 140 MV Act vide Claim Case no. 118 of 2006 and had received Rs. 50,000/- as interim compensation regarding the said accident and now after receiving the said compensation, they have filed the present Claim Case no. 288 of 2007. This Court in Veena Devi (supra) has held that when the claimants choose to come forward under Section 140 independently not as a composite application, they are not only debarred from proceeding under Section 163A for structural compensation on the principle of no fault but also under Section 166. The respondent Insurance Company has taken the aforesaid case in the written statement but the learned Tribunal appears to have not framed any issue and decided the said matter rather decided the case on merit.

10. Considering the facts and circumstances of the case,



the impugned judgment passed by learned Tribunal is set aside and the case is remitted back to the learned Tribunal for deciding the case fresh, considering the aforesaid aspect of the case in accordance with law. Accordingly, this miscellaneous appeal is disposed of. The learned Tribunal is directed to dispose of the case as expeditiously as possible preferably within two months from the date of receipt/production of a copy of this order.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	12.12.2017
Transmission Date	N.A.

