

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.172 of 2004

- =====
1. Bihar State Road Transport Corporation through Chairman now (Administrator) Bihar State Road Transport Corporation, Patna.
 2. Managing Director now (Administrator), Bihar State Road Transport Corporation, Patna, having its head office at Paribahan Bhawan, Sultan Palace, Birchand Patel Path, Patna.

.... Appellants.

Versus

1. Satyendra Kumar Mishra, son of Late Yogesh Chandra Mishra.
2. Asha Devi,
3. Sangita Devi,
4. Ranjan Devi,
5. Kanchan Kumari,
6. Papal Kumari,
7. Putul Kumari,

Respondent nos.3 to 8 are daughters of Late Yogesh Chandra Mishra and respondent no.3 is wife of Braj Bhushan Ojha of village Jaithar, P.S. Mashrak, District Saran, respondent no.4 daughter of Late Yogesh Chandra Mishra, wife of Manoj Kumar Mishra of village Godana, P.S. Reviloni, District Saran, respondent no.5 daughter of Late Yogesh Chandra Mishra, wife of Babu Ojha of village Ratanpur, P.S. Bhagwan Bazar, District Saran. All residents of village Datadarpur, P.S. and P.O. Dariganj, District Saran, respondent nos.6 to 8 are minor daughters of Late Yogesh Chandra Mishra represented through their mother Raj Kumari Devi and natural guardian.

.... Respondents.

=====

Appearance :

For the Appellants : Mr. P.K. Verma, Sr. Adv.
Mr. Arvind Kumar, Adv.

For the Respondents : Mr. Rajesh Kumar Singh, Adv.
Mr. Anant Kumar Bhaskar, Adv.
Mr. Sanjay Kumar Jha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 14-05-2018

Heard learned counsel for the appellants and learned
counsel for the respondents on this miscellaneous appeal.

2. The appellants-Bihar State Road Transport Corporation has preferred this appeal against the judgment dated 28.02.2004 and award dated 19.03.2004 passed by 9th Additional



District Judge-cum-Motor Vehicle Accident Claim Tribunal, Saran at Chapra (hereinafter in short referred to as the 'Tribunal') in Claim Case No.26 of 1996/11 of 2002, whereby the learned Tribunal allowing the claim petition directed the appellants-Bihar State Road Transport Corporation to pay compensation to the tune of Rs.5,08,600/- along with interest at the rate of 9% per annum from the date of filing of application till 31.03.2002 and thereafter at the rate of only 8% interest per annum on the said amount till the realization of amount to the claimants-respondents.

3. The factual matrix of the case is that claimants-respondents filed Claim Case No.26 of 1996/11 of 2002 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs.5,25,800/- on account of death of Yogesh Chandra Mishra, who happens to be husband of claimant-Raj Kumari Devi and father of the claimant nos.2 to 7 (during pendency of the appeal the said Raj Kumari Devi passed away), with the case in succinct that on 10.02.1996 deceased Yogesh Chandra Mishra was proceeding along with a pillion rider from Muzaffarpur to Hajipur by his motorcycle and when he reached near the bridge at Madhaul 30 K.M. away from Turki O.P., District Muzaffarpur, a bus, bearing registration no.BRD 6713, hailing to Bihar State Road Transport Corporation, being driven rashly and negligently by its driver, dashed the said motorcycle



resulting into the death of Yogesh Chandra Mishra on the spot. The bus driver managed to escape. Regarding the aforesaid incident Kurhani (Turki) O.P. P.S. Case No.31 of 1996 was instituted against the driver of the aforesaid bus. The aforesaid incident took place due to rash and negligent driver of the offending bus by its driver at the relevant time of accident. Further case of the claimants is that the deceased was S.I. and was in charge of Riga P.S., District Sitamarhi. He was getting salary of Rs.7200/- at the time of death and he was aged about 51 years at that time.

4. Opposite party put its appearance in the case and filed written statement in the case. Claimants adduced ocular and documentary evidence in buttress of their case, while appellants examined the driver of the offending bus, namely, Ramanand Singh as OPW-1 in buttress of its case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the appellants have preferred this appeal.

7. Learned counsel for the appellants have assailed the aforesaid judgment and award only on the ground that preceding to occurrence there was rain at the place of occurrence and the



deceased was tripling on motorcycle. The bus was plying on the left side of the road while the deceased was overtaking a car and motorcycle skidded due to rain water. Resultantly, the deceased entered beneath the bus and died on the spot. The aforesaid accident took place due to contributory negligence of the deceased. He has further submitted that OPW-1 Ramnandan Singh examined in this case has also supported the aforesaid case of the appellants and the widow of the deceased AW-1 has herself denied the negligence of the driver of the bus in the said accident in her deposition given before the learned Tribunal.

8. On the other hand, it is submitted by learned counsel for the claimants-respondents that there was no rain at the time of accident and moreover it was not a rainy season so there was no occasion for any rain at that time. It is further submitted that the deceased was travelling on the motorcycle with a pillion rider on the left side of the road and the driver of the bus rashly and negligently driving the aforesaid bus dashed the deceased coming on the left side of the road. He was not overtaking any car at that time. Hence, the aforesaid accident took place due to rash and negligent driving of the offending bus by its driver and not due to contributory negligence of the deceased.

9. From perusal of the record, it appears that the



F.I.R., marked as Ext.1, was lodged in the case on the basis of fardbeyan of Chaukidar Ram Baran Rai. From perusal of the aforesaid F.I.R., it appears that the aforesaid informant has reported that the driver of the bus driving it rashly and negligently dashed the motorcycle at the place of accident resulting into death of deceased Yogesh Chandra Mishra on the spot while driver of the bus managed to escape. The aforesaid case was investigated by the police and on conclusion of the investigation finding the negligence on the part of the driver of offending bus, namely, Ramnandan Singh, I.O. submitted chargesheet against the aforesaid driver of the offending bus.

10. AW-2 Yogendra Kumar Mishra has stated in his testimony that at the time of accident he was proceeding on the other bus from his house to Muzaffarpur on the date of occurrence. Deceased Yogesh Chandra Mishra was proceeding on his motorcycle on the left side of the road and the bus, being driven rashly and negligently by its driver, dashed the Yogesh Chandra Mishra at the place of accident, resulting into his death on the spot. In his cross-examination, he has denied the rash and negligent driving of the motorcycle by the deceased at the time of accident. He has also denied overtaking of the car by the deceased resulting into the aforesaid accident.



11. On the other hand, OPW-1 Ramnandan Singh, who happens to be driver of the offending bus and accused in the aforesaid case, has only been examined by the appellants in buttress of their case and the appellants have neither examined any more witness in corroboration of the statement of the said accused nor adduced any other documentary evidence. As the OPW-1 happens to be accused in the case and interested person and his evidence do not stand corroborated by any other ocular or documentary evidence it would not be safe to rely upon his evidence in substantiation of the case taken by the appellants. Though the deceased claimant-Raj Kumari Devi in her cross-examination on suggestion given by the appellants, has admitted that the aforesaid accident did not take place due to carelessness of the driver of the bus but from perusal of her evidence given in earlier paragraph-3 of her examination-in-chief it appears that she has candidly stated that the aforesaid accident took place due to rash and negligent driving of the said bus by its driver. The subsequent statement of the Raj Kumari Devi made in response to the suggestion given by the appellants appears to be mere slip of pen of the Court in recording the statement.

12. In view of the facts and circumstances of the case and the discussions made by me hereinabove, I find and hold that the appellants have utterly and miserably failed to prove the contributory



negligence of the deceased in the said accident by establishing that preceding to the accident there was rain and deceased was tripping on the motorcycle and overtaking car and in course of overtaking he dashed the bus of the appellants and entered beneath his chasis due to his own negligence. On the other hand, claimants respondents by adducing ocular and documentary evidence appears to have corroborated their case that the aforesaid accident took place due to rash and negligent driving of the offending bus by its driver at the relevant time of accident. Thus, the finding of the learned Tribunal in consonance of my aforesaid finding does not appears to be suffering from any illegality or impropriety and is hereby upheld. Accordingly, this appeal is dismissed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2018
Transmission Date	16.05.2018

