

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.205 of 2012

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Brij Nandan Yadav, S/o Sri Baldeo Yadav @ Gauri Yadav, R/o Vill-Tetaru, P.S. Atari, P.S. Tetar, District-Gaya. Appellant.

Versus

1. United India Insurance Company Ltd through its D.M. A.P. Colony Gaya (Insurer of the Bus bearing Registration No.Br-27-6399).
 2. Sri Birendra Singh, S/o Sri Bani Singh, R/o Vill-Dakhin Gawn, P.S.Wazirganj, Distt-Gaya (owner of the offending Bus Bearing Registration No.Br-27-6399) Respondents.
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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Sinha, Advocate.

For the Respondent No.1 : Mr. Ashok Priyadashi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 06-08-2018

Heard learned counsel for the appellant and learned counsel for the respondent no.1 None turned up on behalf of respondent no.2, despite putting appearance in the case.

This miscellaneous appeal has been preferred against the judgment dated 21.07.2011 and award dated 18.02.2012 passed by the learned 2nd Additional District Judge-cum-Motor Accident Claim Tribunal (hereinafter in short referred to as the 'Tribunal'), Gaya in M.A.C. No.56 of 2011/155 of 2008, whereby the learned Tribunal finding the contributory negligence of the jeep in question in the accident directed the respondent no.1 to pay Rs.47,500/- along with interest @ 6% per annum from date of filing claim case to the claimant/appellant.



The factual matrix of the case is that claimant filed M.A.C. No.56 of 2011/155 of 2008 under Section 166 of the Motor Vehicles Act for awarding compensation on account of the injury inflicted to him in the motor accident with the case in succinct that on 17.03.2005 while he was regressing to his home by Jeep bearing registration no.WB 02 N 9507 and when the said jeep arrived near village Bairiya on Gaya-Nawadah road a bus bearing registration no.BR 27 6399, being rashly and negligently driven by its driver, coming from opposite direction dashed the said jeep inflicting injury to the passengers of the said jeep including the claimant. The claimant/appellant was treated in A.N.M.C.H, Gaya. Regarding the said accident Wazirganj P.S. Case No.38/2005 was instituted. The claimant/appellant was aged about 39 years at the time of accident. The aforesaid bus was insured by respondent no.1-United India Insurance Company Limited. He has claimed his income not less than Rs. 3,000/- per month from the business of sale and purchase of cattle but finally claimed Rs. 15,000/- per annum as notional income for want of documentary proof.

Opposite party no.1 of the said case filed its written statement and contested the same, while opposite party no.2 did not turn up despite service of notice. Claimant/appellant adduced ocular as well as



documentary evidence in buttress of his case.

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

Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimant has preferred this appeal.

It is submitted by learned counsel for the appellant that the jeep in question was in static condition as it was standing on the road side at the relevant time of accident and the offending bus coming from opposite direction dashed the aforesaid static jeep. Hence, there was no question of contributory negligence on the part of the jeep. The aforesaid accident took place only due to negligence of the driver of the offending bus and after investigation of the case, the I.O. has submitted chargesheet against the driver of the offending bus finding him responsible for the said accident. Hence, the entire amount of compensation ought to have been saddled on the shoulder of the respondent no.1 but the learned Tribunal illegally and wrongly finding the contributory negligence of the jeep in the accident has directed respondent no.1 to pay 50% of the compensation to the claimant. It is further submitted that the amount of compensation awarded by the learned Tribunal is inadequate. The learned Tribunal



has not awarded just and proper compensation to the appellant.

On the other hand, learned counsel for the respondent no.1 has submitted that as per Ext.1 the jeep in question was having 21 passengers on board at the time of accident and as per A.W.1 it was head on collision between the jeep and the bus. Hence, there was contributory negligence of the jeep as well in the accident and the learned Tribunal finding the contributory negligence of the jeep in question in the accident to the extent of 50% has rightly directed the respondent no.1 to pay only 50% of the amount of compensation to the appellant. It is further submitted that the owner, driver and insurer of the Jeep has not been made party in the case and it is the owner and insurer of the jeep who can challenge the liability of payment of 50% of the compensation to the claimant but as the said driver, owner and insurer of the Jeep have not been made party in the case, hence the claimant cannot take benefit of his aforesaid laches.

From perusal of the F.I.R. marked as Ext.1, it appears that there were 21 passengers on the jeep at the time of accident and it is the case of the claimant/appellant that when the jeep carrying the passengers including the appellant arrived at village Bairiya in the meantime a bus coming from the opposite direction, being rashly and negligently driven by its driver, dashed the jeep inflicting injury to the



appellant and several other persons on board in the jeep. A.W.1 (appellant) in para-2 of his examination-in-chief, has stated that on the date of occurrence at around 8 PM while he was proceeding to his village and arrived at village Bairiya on Gaya-Nawadah Road, a bus coming from the opposite direction dashed the said jeep resultantly he and several persons sitting in the said jeep were injured. The aforesaid aspects of the case eloquently indicates that there was contributory negligence on the part of the jeep as well in the said accident as the aforesaid jeep was overloaded and 21 passengers was on board in the jeep at the time of accident. Both the vehicles were moving in opposite direction at the time of accident and there was head on collision between the two vehicles and the learned Tribunal has rightly assessed the aforesaid contributory negligence on the part of the jeep to the extent of 50% in the said accident.

From perusal of the record, it also appears that the claimant was 39 years of age at the time of accident. The appellant has not succeeded to establish his vocation and income therefrom as claimed in the claim petition, hence, considering the aforesaid aspect of the case, price inflation and prevalent economic era at the relevant time of accident, I think it proper to assess the notional income of the appellant as Rs.100/- per day, i.e. Rs.3000/- per month i.e.



Rs.36,000/- per annum. As the claimant was 39 years of age at the time of accident, hence, the multiplier of 16 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to Rs.5,76,000/-. As the appellant has suffered 45% of disability due to the said accident, hence, the 45% of the aforesaid amount i.e. Rs.2,59,200/- is awarded as compensation. Beside the aforesaid compensation of Rs.7000/- is awarded towards pain and suffering and Rs. 5,000/- is awarded towards medical expenses made by the appellant during the course of his treatment as awarded by the learned Tribunal and not assailed by the respondent no.1. On addition of the aforesaid head of compensation the total amount of compensation comes to Rs. 2,71,200/-. As there was contributory negligence of the aforesaid jeep to the extent of 50% in the accident hence, the respondent no.1 who happens to be insurer of the bus in question is only liable to pay 50% of the aforesaid amount of compensation i.e. Rs.1,35,600/- to the appellant.

In the facts and circumstances respondent no.1-United India Insurance Company Limited is directed to make payment of the aforesaid amount of compensation to the tune of Rs. 1,35,600/- along with interest at the rate of 6% per annum from the date of filing of the



claim case till its realization, after deducting the amount, if any, paid by the respondent no.1 within two months from the date of this judgment.

Accordingly this appeal stands disposed of with the aforesaid modification in the impugned judgment and award.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.08.2018
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