IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.71 of 2013

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National Insurance Co. Ltd., Hospital Road, Deepak Hotel Madhubani represented through its Chief Regional Manager and the constituted Attorney Regional Office, National Insurance Company Limited, 4th Floor, Sone Bhawan, Birchand Patel Marg, P.S. Sachivalaya, District Patna.

.... Appellant.

Versus

1. Arhula Devi, wife of Late Sarwan Kumar Sah @ Shakti Singh.
2. Ajay Kumar Sah.
3. Bijay Kumar Sah.
4. Both sons of Late Sarwan Kumar Sah @ Shakti Singh.
5. All resident of village & P.O. Mahrail, P.S. Andhratharhi, District Madhubani.
6. Vishwanath Prasad, son of Ram Sajiwan, resident of village Itai Maida, P.O. Mahua Ibrahim, P.S. Utraula, District Balrampur (Uttar Pradesh) (Owner of the truck bearing reg. No. UP 24/4902).
7. Sanjay Kumar Sah, son of Late Sarwan Kumar Sah @ Shakti Singh, resident of vill. & P.O. Mahrail, P.S. Andhrathari, District Madhubani.

.... Respondents.

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Appearance :

For the Appellant : Mr. Raj Kumar Singh Vikram, Advocate.
For the Respondent 1 to 3 : Mr. Manoj Kumar Jha, Advocate.
Mr. Vishwaroop Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 24-07-2018

Heard learned counsel for the appellant and learned counsel for the respondent nos.1 to 3 on this miscellaneous appeal.

This miscellaneous appeal has been preferred against the judgment dated 10.02.2012 and award dated 13.09.2012 passed by the learned 1st Additional District Judge-cum-Motor Vehicles Accident Claim Tribunal, Madhubani (hereinafter in short referred to as the 'Tribunal') in Claim Case No.02 of 2004, whereby the learned Tribunal allowing the claim case directed the opposite party no.4-National Insurance Company Limited (hereinafter in short referred to as the 'Insurance Company') to make payment of compensation to the tune of Rs.2,71,500/- to the claimants within two months from the date of order, failing which the total amount should be recoverable under process of law along with the interest at the rate of 6% per annum from the date of institution of the claim case till its realization.

The factual matrix of the case is that claimants filed Claim Case No.02 of 2004 under Section 166 of the M.V. Act for awarding compensation on account of death of Sarwan Kumar Sah @ Shakti Singh with the case in succinct that on 23.07.2003. Said Sarwan Kumar Sah @ Shakti Singh was proceeding to Bahraich (U.P.) by motorcycle bearing registration no. UP 40B 5746 along with his brother, namely, Yogendra Sah. When he arrived at village Tirkauliya, P.S. Balrampur, he was taking side from the truck bearing registration no.UP 24 4902 but as the aforesaid truck was driven by its driver very rashly and negligently it hit the motorcycle causing serious injuries to the Sarwan Kumar Sah @ Shakti Singh who succumbed to his injury in the hospital during course of treatment. The deceased was aged about 45 years at the time of death. He used to earn Rs.5000/- per month by manufacturing dye for the ornaments.

Opposite party nos.1, 2 & 3 did not put their appearance in the case despite service of notice, hence the case proceeded *ex parte* against them while opposite party no.4 - Insurance Company filed its written statement. Both the parties adduced evidence in buttress of their 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 appellant-Insurance Company has preferred this appeal.

The appellant has preferred this appeal only on the sole ground that the Sanjay Kumar Sah was the registered owner of the motorcycle and the said motorcycle was insured in the name of the aforesaid Sanjay Kumar Sah. The said Sanjay Kumar Sah happens to be son of Sarwan Kumar Sah @ Shakti Singh. As the deceased was the father of the insured of the motorcycle, he stepped into the shoe of the insured and cannot be treated as a third party. Hence the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle.

On the other hand, it is submitted by learned counsel for the claimants-respondent nos.1 to 3 that admittedly the motorcycle was insured under compulsory personal accident cover, hence the Insurance Company of the motorcycle is liable to pay compensation to the tune of Rs.1,00,000/- to the claimants as per terms and conditions of policy and rest amount to the tune of Rs.1,71,500/- shall be payable by the owner of the aforesaid truck.

From perusal of the record, it appears that the offending vehicle i.e. the motorcycle in question was registered in the name of Sanjay Kumar Sah and it was insured by opposite party no. 4 in the aforesaid name. Thus, the said Sanjay Kumar Sah is insured of the aforesaid motorcycle. Admittedly, Sarwan Kumar Sah @ Shakti Singh, father of the aforesaid insured, was driving the said motorcycle at the relevant time of accident which was insured in the name of Sanjay Kumar Sah, thus he stepped into the shoe of the insured. From perusal of Ext.1 which is the personal accident (P.A. cover note) under Motor Policy and Ext.B which is the certificate of insurance of the motorcycle in question filed by the opposite party no.4/appellant before the Tribunal, it appears that the aforesaid motorcycle was insured under the compulsory personal accident cover of owner cum driver scheme for Rs.1 lakh and 100% of the aforesaid CSI is payable in case of death of the insured owner. As the deceased being the father of the aforesaid insured stepped into the shoe of the insured he became an insured as per the aforesaid terms and conditions of the policy and the appellant would be liable to pay Rs. 1 lakh to the claimants. So far as rest amount of compensation to the tune of Rs.1,71,500/- is concerned, as there is no finding of the learned Tribunal regarding the liability of the driver of the aforesaid truck in the accident rather the learned Lower Court has found that the claim of claimants is concerned only to the motorcycle was insured and claimants have not assailed the aforesaid finding of the learned Tribunal. Moreover, as the learned Tribunal has hold the appellant, who happens to be the insurer of the motorcycle in question liable to pay the aforesaid amount of compensation finding the driver of the said vehicle accountable for the said accident. Hence, the liability to pay the rest amount of compensation cannot be saddled on the shoulder of the owner of the truck in question.

In the facts and circumstances of the case and in view of discussions made by me hereinabove, the appellant is directed to pay compensation to the tune of Rs.1 lakh to the claimants with interest at the rate of 6% per annum from the date of filing of the claim case till its realization within two months from the date of this judgment. Accordingly, this appeal is partly allowed with the aforesaid modifications in the judgment and award passed by the learned Tribunal.

Let the statutory amount deposited by the appellant be sent back to the learned Tribunal in the name of claimants through cheque towards its adjustment in the amount of compensation.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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