

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.683 of 2014

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The Oriental Insurance Company Ltd. New Delhi Through Sri Niraj Kumar Cum
And Duly Constituted Attorney The Oriental Insurance Company, Ltd. Regional
Office Pir Mohani Kadam Kuan Patna (Opp. Party No. 4)

.... Appellant/s

Versus

1. Most. Meena Devi W/o - Late Satya Narain Singh
2. Mukesh Kumar Singh Son of Late Satendra Narain Singh
3. Bibha Kumari D/o Late Satendra Narain Singh
4. Anubha Kumari D/o Late Satendra Narain Singh
5. Priti Kumari D/o - Late Satendra Narain Singh
6. Babua Son of Late Satendra Narain Singh
7. Manpati Devi W/o - Ram Das Singh, M/o - Late Satendra Narain Singh All
Resident of Village - Pakari, P.O. - Kalyanpur And P.S. - Bihiya, Distt. -
Bhojpur.
8. M/S - Libra finance Pvt. Ltd. B2 Bhargava Lane Boulevard Raod Delhi 54
Another Address null M/S Libra Finance Pvt. Ltd. C/o K.S. Toor Transport
Company V.P.O. Ladwa Distt. (K.K. R.) Kurukshetra
9. Sh. Guddar Singh Son of Sh. Swara Singh Resident of House No. 110
Rayapura, Distt. -Patiyala Punjab.
10. Maluk Singh Son of Amarik Singh Resident of Village - Allimjara, P.S. -
Rayapura, Distt. - Patiyala, Punjab.

.... Respondents

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Appearance:

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate.
For the Respondent/s : Mr. Anish Chandra Sinha, Advocate.
Mr. Sangha Mitra Ghosh, Advocate.
Mr. Krishna Murari, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**
ORAL JUDGMENT
Date: 21-06-2018

Heard learned counsel for the appellant and learned
counsel for the respondent nos. 1 to 7 on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the
appellant-Oriental Insurance Company Limited against the judgment
and award dated 16.04.2014 passed by 3rd Adhoc Addl. District
Judge cum Motor Vehicle Accident Claim Tribunal, Bhojpur at Ara



in Claim Case No. 33 of 1998 whereby the learned Tribunal allowing the claim case of the claimants directed the appellant – Oriental Insurance Company Limited to pay compensation to the tune of Rs. 14,93,288/- along with the interest at the rate of 9% per annum from the date of filing claim case till its realisation to the claimants.

3. Factual matrix of the case is that claimant nos. 1 to 7 filed Claim Case No. 33 of 1998 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 15,00,000/- on account of death of Satyendra Narayan Singh who happened to be husband, father and son respectively of the claimants with the case that the said Satyendra Narayan Singh was constable in BMP 17(F) Company and was posted at Hazaribagh. On 03.02.1998 at around 11 AM he was on duty at village Maharajganj and during the course of vehicle checking at Barrier under P.S.-Bramhpur, District – Buxar during parliamentary election 1998, a L.P. Model Tata Truck bearing registration no. BR 37 1835 being driven rashly and negligently by its driver dashed him from rear side resulting into his death on the spot. Said Satyendra Narayan Singh used to draw salary of Rs. 3649/- per month and also used to earn Rs. 900/- per month from agriculture. He was aged about 35 years at the time of accident.

4. Only opposite party nos. 2 and 4 appeared in the case and filed their separate written statements despite valid service of notice on all the opposite parties. Both the parties adduced



evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the impugned judgment and award, opposite party no.4-Oriental Insurance Company Limited has preferred this miscellaneous appeal.

7. Appellant has preferred this miscellaneous appeal on four grounds. Firstly, it was not a case of accident rather was intentional murder as the deceased who was constable and was engaged in vehicle checking during parliamentary election at the vehicle checking barrier was intentionally run over by the driver of the truck when halted by him. Hence, the aforesaid claim case is not maintainable. Secondly as the deceased has died leaving behind him seven legal representatives and dependents, the maximum deduction of the income towards personal expense of the deceased must be $1/5^{\text{th}}$, but learned Tribunal has deducted $1/8^{\text{th}}$, thirdly as the deceased was aged about 35 years at the time of accident, the multiplier of 16 ought to have been adopted to work out the amount of compensation, but learned Tribunal has wrongly applied multiplier of 17 and fourthly as per the verdict given by Hon'ble Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** reported in **2017 (4) 261 PLJR**, only 70,000/- ought to have been



awarded towards traditional head by the learned Tribunal, but learned Tribunal has wrongly awarded Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of care and guidance for minor children, Rs. 50,000/- for Funeral and obsequies expenses and Rs. 25,000/- towards Pain, Loss and Sufferings.

8. On the other hand, it is submitted by learned counsel for the respondent nos. 1 to 7 that it is not a case of murder rather death of the deceased had taken place in the motor vehicle accident due to rash and negligent driving of the vehicle by its driver. There was no intention to eliminate the deceased by its driver rather primary intention of the driver was to flee away with the vehicle and in the course of said attempt, he had run over the deceased. It is further submitted that the appellant has raised the aforesaid plea of maintainability before the learned Tribunal by filing petition, but learned Tribunal vide order dated 11.02.2011 turned down the aforesaid prayer and has held the case maintainable finding it to be a case of accidental murder and not murder simpliciter. The aforesaid order of learned Tribunal has not been assailed by the appellant, hence said order has become final and binding upon the appellant and it cannot be reiterated.

9. From perusal of the record, it appears that it is admitted case of the parties that the deceased Satyendra Narayan Singh was a constable and was posted at BMP 17 (F) Company,



Hazaribagh. On the date of occurrence, he was on duty during the Parliamentary election 1998 at Village – Maharajganj, P.S.- Bramhpur, District – Buxar and was indulged in checking the vehicle at Ara-Buxar road at the barrier. It is also admitted case of the parties that the deceased has died on duty being crushed by the L.P. Model Tata Truck bearing registration no. BR 37 1835. It is further admitted to the parties that the deceased was aged about 35 years at the time of accident and used to draw salary of Rs. 3649/- per month.

10. Though from perusal of the F.I.R. filed by the appellant marked as Exhibit-A, it appears that during the course of vehicle checking, the offending vehicle arrived at the barrier and the driver of the vehicle tried to drive away the vehicle rashly when the deceased gave signal to halt the vehicle in a bid to escape and crushed the deceased under the vehicle and escaped away along with the vehicle eliminating the deceased Satyendra Narayan Singh. But from perusal of the judgment of S.Tr. No. 246 of 1998 / 193 of 1998 passed in connection with the aforesaid P.S. case marked as Exhibit-E, it appears that the aforesaid case ended into acquittal as all the witnesses including the informant turned hostile and not supported the occurrence of murder of the deceased by the accused Madan Singh, driver of the offending vehicle, in the incident. Thus the case of the intentional murder as taken by the appellant does not stand established and moreover, from perusal of the record, it appears that



the appellant has raised the aforesaid plea of non-maintainability of the claim petition on the ground that it was not a case of accidental death of the deceased due to rash and negligent driving of the vehicle rather case of intentional murder before the learned Tribunal and after hearing the parties, learned Tribunal vide order dated 11.02.2011 turned down the aforesaid prayer of the appellant and the appellant has not assailed the aforesaid order of the learned Tribunal as yet. Hence, aforesaid order of the Tribunal has become final and binding upon the appellant and it cannot be reiterated.

11. Hon'ble Apex Court in Smt. Rita Devi & others v. New India Assurance Co. Ltd. & another reported in **2001 (1) PLJR 30 (SC)** has been pleased to observe that there is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a “murder” which is not an accident and a “murder” which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such



murder is an accidental murder.

12. From perusal of the record, it appears that the driver had crushed the deceased under the vehicle resulting into his death not with intention to commit his murder as there was no animosity between the parties and both the deceased and the driver are from the different states rather driver has crushed the deceased under the vehicle in the course of escaping with the vehicle when it was stopped by the deceased during the course of vehicle checking on the occasion of parliamentary election and thus the intention of the driver was to simply escape from the dragnet of the police for the reason best known to him.

13. In the facts and circumstances of the case, I also find that it was not a case of intentional murder or murder simpliciter rather accidental murder, hence the claim case under Motor Vehicles Act regarding death of the deceased in the aforesaid accident is quite maintainable.

14. From perusal of the record, it appears that the learned Tribunal has assessed the income of the deceased as Rs. 4550/- per month including income from agriculture and on addition of the 50% of the aforesaid income as future prospect has worked out the loss of income as Rs. 6825/- per month. As the deceased has died during the service leaving behind him his seven legal representatives and dependents, hence $\frac{1}{5}^{\text{th}}$ of the aforesaid income i.e. Rs. 1365/-



would be deducted as personal expense of the deceased which he would have made had he been alive. On deduction of the aforesaid personal expense of the deceased, the loss of dependency comes to the tune of Rs. 5460/- per month i.e. Rs. 65520/- per annum. As the deceased was aged about 35 years at the time of death, hence in view of the verdict of Hon'ble Apex Court delivered in **National Insurance Company Ltd. Vs. Pranay Sethi (Supra)**, multiplier of 16 would be applied to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 10,48,320/-. Besides the aforesaid amount of compensation, Rs. 70,000/- is awarded towards other traditional heads such as loss of consortium, funeral expense, loss of estate, etc. in view of the verdict of the Hon'ble Supreme Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi (Supra)**. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 11,18,320/-. Besides the aforesaid amount of compensation, I also think it proper and appropriate to award interest at the rate of 7% per annum on the aforesaid amount of compensation from the date of filing claim case till its realisation.

15. Hence, appellant- Oriental Insurance company Limited is directed to pay the aforesaid amount of compensation and



interest thereon to the claimants-respondents within two months from the date of this judgment after deducting the amount, if any, paid by it.

16. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and award.

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

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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Transmission Date	30.06.2018

