

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.566 of 2010

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1. Gaura Devi @ Gauri Devi, W/o- Sri Kishun Yadav Resident Of Village- Dībuar, P.S- Rajauli, District- Nawada.
 2. Kishun Yadav S/o Late Mangroo Yadav Resident Of Village- Dibuar, P.S- Rajauli, District- Nawada. Appellants.

Versus

1. The D.M., New India Assurance Company Ltd, Nagamatia Road, Gaya (Insurer of Truck No. A.P. 16T.U- 5409)
 2. Chandan Rai S/o- Kamakhaya Rai, Resident of D.N.O. 61-11-9 Bhawani Road, Ramben, Ganeshwar Nagar, Vijaoybaraha (owner of Truck No. A.P. 16T.U-5409).
 3. Kamakhaya Rai S/o..... Resident of D.N.O. 61-11-9 Bhawani Road, Ramben, Ganeshwar Nagar, Vijaoybaraha (owner of Truck No. A.P. 16T.U-5409). Respondents.
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Appearance :

For the Appellants : Mr. Sanjay Parasmani, Adv.

For the Respondent No. 1 : Mr. Sanjay Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 18-09-2018

Heard learned counsel for the appellants and learned counsel for the respondent no. 1- New India Assurance Company Ltd.

This miscellaneous appeal has been preferred against the judgment dated 22.03.2010 and award dated 10.05.2010 passed by the learned 4th Additional District Judge-cum-Motor Vehicle



Accident Claim Tribunal, Nawada (hereinafter in short referred to as the 'Tribunal'), in M.V. Claim Case No. 68 of 2006/56 of 2009 whereby the learned Tribunal directed the New India Assurance Company Ltd. to pay final amount of Rs. 35,000/- along with interest at the rate of 7% per annum from the date of filing the claim petition till its realization to the claimants.

The factual matrix of the case is that claimants filed M. V. claim case No. 68 of 2006/56 of 2009 under Section 166 of the Motor Vehicle Act on account of death of deceased Lalo Yadav in a Motor Vehicle accident with the case in succinct that on 13.10.2005 at about 2 PM the said Lalo Yadav was proceeding on the motorcycle bearing registration no. JH 10A 3813 along with Mahesh Yadav in normal speed from Phatepur to his house Dibour. As soon as he arrived at NH 31 near Lalu More a truck, bearing registration no. AP16TU 5409, coming from the opposite direction, being rashly and negligently driven by its driver, dashed the aforesaid motorcycle on the right side and resultantly the said Lalo Yadav died on the spot. Regarding the aforesaid accident, Rajauli P.S. Case No. 115 of 2005 was instituted under Section 279 and 304A of Indian Penal Code. The aforesaid accident took place due to rash and negligent driving of the offending truck by its driver. The deceased was aged about 25 years at the time of accident and



was a truck driver by vocation and used to earn to Rs. 4,000/- per month from the said vocation.

All the parties turned in the case and filed separate written statement. Claimants adduced ocular as well documentary evidence in buttress of their case.

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

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

It is submitted by learned counsel for the appellants that the deceased was a truck driver and used to earn Rs. 4,000/- per month and the accident is of 13.10.2005. The appellants have adduced consistent ocular evidence in buttress of their aforesaid case but the learned Tribunal turning down the aforesaid evidence has considered the notional income of the deceased as Rs. 15,000/- per annum, which is very paltry and meager. It is further submitted that the deceased was aged about 25 years so the multiplier of 18 ought to have been applied for awarding compensation but the learned Tribunal has wrongly applied 17 as multiplier to work out the compensation. It is further submitted that Rs. 50,000/- ought to



have been awarded by the Tribunal towards other traditional heads such as funeral expenses and loss of estate but the learned Tribunal has not awarded any amount in the said heads. It is further submitted that the specific case of the appellant is that the deceased was proceeding on the motorcycle in the normal speed and the truck, being driven rashly and negligently by its driver, coming from opposite direction dashed the aforesaid motorcycle on right side resulting into fatal accident. The aforesaid accident took place due to negligence of the driver of the offending truck and the deceased had not contributed in the said accident. The appellants have also adduced consistent ocular evidence who happens to be eye witnesses of the occurrence in this regard but the learned Tribunal ignoring the aforesaid case and evidence of the appellants has wrongly held it to be a case of contributory negligence and deducted the compensation awarded by it by 50% for the contributory negligence of the deceased.

On the other hand, learned counsel for the respondent no.1 submitted that the learned Tribunal considering the facts and evidence on record and finding the contributory negligence of the deceased in the accident has rightly passed the aforesaid judgment and award which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.



From perusal of record, it appears that the appellants have come with specific case that on the date of accident the deceased was travelling with his companion on motorcycle from Phatepur to his house in the normal speed and the offending truck coming from the opposite direction, being driven rashly and negligently by its driver, dashed on the right side of the motorcycle of the deceased resulting into fatal accident of the deceased. P.W. 2-Arjun Prasad Yadav and P.W. 3-Raj Kumar Prasad, who happen to be eye witnesses of the accident, have unanimously stated that at the time of accident the deceased was proceeding on motorcycle in the normal speed from Phatepur to his house and in the mean time offending truck, being rashly and negligently driven by its driver, coming from the opposite direction dashed the motorcycle of the deceased resulting into various injuries to the deceased which proved fatal. Moreover, P.W.3 has not been cross-examined by the respondents. Thus, the aforesaid statement of P.W.3 for want of his cross-examination stands admitted to the respondents. Thus, in the facts and circumstances of the case, I find that the accident took place due to rash and negligent driving of the offending truck by its driver, and the deceased has not contributed in the said accident and it is not a case of contributory negligence. Hence, the New India Assurance Company Ltd. is squarely liable to pay the entire amount



of compensation.

As the appellants failed to substantiate the fixed income of the deceased by adducing convincing and cogent documentary evidence regarding the vocation and income of the deceased and as the accident is of the year 2005 and the deceased was aged about 25 years at the time of accident, hence, considering the aforesaid aspect of the case, price inflation and prevalent economic era at the relevant time of accident, notional income of the deceased is considered as Rs.3000/- per month i.e. Rs.36,000/- per annum. As the deceased was 25 years old and was bachelor, hence half of the aforesaid income of the deceased i.e. Rs. 18,000/- is deducted towards personal expenses of the deceased which he would have made had he been alive and multiplier of 18 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs.3,24,000/-. In view of the decision of the Hon'ble Apex Court rendered in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (4) PLJR 261** Rs.50,000/- is awarded towards other traditional heads such as funeral expenses and loss of estate. On addition of the aforesaid heads of compensation, the total amount of compensation comes to Rs.3,74,000/-. Besides the aforesaid compensation, interest at the rate of 7% per annum on the



aforesaid amount of compensation, as awarded by the learned Tribunal and not assailed by the respondents by preferring appeal, is awarded from the date of filing of the claim case till its realization.

In the facts and circumstances, the respondent no.1-New India Assurance Company Limited is directed to make payment of the aforesaid amount of compensation and interest thereon to the appellants deducting the amount, if any paid by it, within two months from the date of this judgment.

Accordingly, this miscellaneous appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.09.2018
Transmission Date	24.09.2018

