IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.286 of 2012

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Birendra Kumar, son of Bihari Mahto, resident of village Jamuama, P.S. Wazirganj, District Gaya. .... Applicant/Appellant.

Versus

1. Surya Nath Vaidh, son of Late Vipat Vaidh, resident of Hesatu, Panki, Lohassi, Palamu, Jharkhand (owner of the offending vehicle no.Jh-03D/3878).
2. Bajaj Allianz General Insurance Company Limited, G.E. Plaza, Air Port Road, Yarvada, Pune-411006, Insurer of the Offending Vehicle No.JH-03D/3878.

.... Opposite Parties/ Respondents.

WITH

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Miscellaneous Appeal No. 612 of 2012

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Bajaj Allianz General Insurance Company Limited, G.E. Plaza, Air Port Road, Yarvada, Pune-411006 through the Legal Officer & Constituted Attorney Kaushal Kishore Mishra Legal Officer, Bajaj Allianz General Insurance Co. Ltd., 504 Mahabir Tower, 5th Floor, Opposite Church Complex Main Road, Ranchi.

.... Opposite Party/Appellant.

Versus

1. Birendra Kumar, son of Bihari Mahto, resident of village Jamuama, P.S. Wazirganj, District Gaya.
2. Surya Nath Vaidh, son of Late Vipat Vaidh, resident of Hesatu, Panki, Lohassi, Palamu, Jharkhand.

.... Opposite Parties/Respondents.

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Appearance :

(In MA No.286 of 2012)

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

For the Respondent No.1 : Mr. A.K. Singh Tarun, Advocate.

For the Respondent No.2 : Mr. Durgesh Kumar Singh, Advocate.
Mr. Rajesh Chandra Narayan, Advocate.

(In MA No.612 of 2012)

For the Appellant : Mr. Durgesh Kumar Singh, Advocate.
Mr. Rajesh Chandra Narayan, Advocate.

For the Respondent No.1 : Mr. Ravindra Kumar Sinha, Advocate.
For the Respondent No.2 : Mr. A.K. Singh Tarun, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 30-08-2018

Heard learned counsel for the appellants and respondents of both the appeals.

2. As both the appeals arise out of the common judgment, hence, both these appeals are being heard together and disposed of by this common judgment.

3. Both these appeals have been preferred against the judgment dated 26.09.2011 and award dated 04.02.2012 passed by the learned 3rd Additional District Judge-cum-Motor Accident Claim Tribunal, Gaya (hereinafter in short referred to as the 'Tribunal') in M.A.C. No.206 of 2009/7 of 2010, whereby the learned Tribunal directed the opposite party no.2 of the aforesaid case, namely, Bajaj Allianz General Insurance Company Limited (hereinafter in short referred to as the 'Insurance Company') to pay compensation to the tune of Rs.1,57,000/- along with interest at the rate of 6% per annum from the date of filing claim case i.e. 24.12.2009 to the claimant with a liberty to recover the same from the owner of the offending vehicle after its payment.

4. The factual matrix of the case is that claimant-Birendra

Kumar filed M.A.C. Case No.206 of 2009/7 of 2010 for awarding compensation to the tune of Rs.2,00,000/- on account of permanent disability of Beauti Kumari due to motor vehicle accident with the case in succinct that on 20.07.2009 at around 11 AM Beauti Kumari was regressing from the school of village Ganja (Wazirganj) vide Wazirganj-Gaya Road. In the meantime a Bolero, bearing registration no.JH 03D/3878, being driven very rashly and negligently by its driver, dashed her. Resultantly, she suffered grievous injury in her right leg resulting into permanent disablement and she is not in a position to go to school or to walk without any support. After the said accident, she was rushed to Primary Health Centre, Wazirganj and thereafter to Dr. Manoj Kumar at Gaya who referred her to Patna for better treatment. She was treated at Spine Hospital Limited, Patna for a long time but ultimately she could not get cured and became permanently disabled and lost her earning capacity for her whole life and her study was badly hampered. The aforesaid vehicle was insured by opposite party no.2-Insurance Company and it was hailing to opposite party no.1. The deceased was aged about 7 years at the time of accident. She was a school going girl.

5. Opposite party no.2 puts its appearance in the case and filed its written statement while the owner of the vehicle did not. Both the parties adduced evidence in buttress of their case.

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

7. Being aggrieved and dissatisfied with the aforesaid judgment and award passed by the learned Tribunal the claimant/appellant has preferred M.A. No.286 of 2012, while the opposite party no.2-the Insurance Company has preferred M.A. No.612 of 2012.

8. It is submitted by learned counsel for the claimant-appellant of M.A. No.286 of 2012 that the deceased was a minor, aged about 7 years and she was school going girl. She had suffered permanent disablement to the extent of 52% and she is not in a position to walk without any support. Due to the aforesaid accident, her study has been badly hampered. Said accident has adverse impact on her career future prospect and marriage as well. Hence, the notional income of the injured to the tune of Rs.15,000/- per annum as considered by the learned Tribunal is paltry and meager. It is also submitted that compensation awarded in the head of pain and suffering and medical expenses is also very paltry.

9. On the other hand, it is submitted by respondent no.2 of M.A. No.286 of 2012 and appellant of M.A. No.612 of 2012 that as the claimant is minor and she is not working person, hence the notional income of Rs.15,000/- per annum as considered by the learned Tribunal is just and proper. It is further submitted that the certificate issued by the Medical Board is not as per the rule and more over it had not been proved by its author, hence it cannot be relied upon for allowing the compensation. It is also submitted that the driving licence filed by the appellant is fake and forge one as after verification of the said driving licence the licensing authority vide Ext.- B has reported that no such licence has been issued in the name of Sahdeo Ram, driver of the offending vehicle. Hence, there is violation of terms and conditions of the policy and the Insurance Company is not liable to pay any compensation to the claimant. It is also submitted that the offending vehicle was being plied by its owner without any valid permit, hence on this ground also the Insurance Company is not liable to pay any compensation. It is further submitted that the amount awarded by the learned Tribunal is excessive and exorbitant.

10. It is submitted by learned counsel for the respondent no.1 of M.A. No.286 of 2012 and respondent no.2 of M.A. No.612 of 2012 i.e. the owner of the offending vehicle that the driver of the offending vehicle had valid driving licence at the time of accident and the claimant has filed the aforesaid driving licence, hence there is no violation of terms and conditions of the policy and the Insurance Company, being the insurer of the offending vehicle, is solely liable to pay compensation to the claimant and the learned Tribunal has wrongly given the liberty to the Insurance Company to recover the amount of compensation from the owner of the offending vehicle after its payment.

11. At the outset of the finding, without going into the merit of the case, I find that it is a case of bodily injury arising out of the use of Motor Vehicles filed under Section 166 of the M.V.

12. Act. As per Section 166 of the M.V. Act, an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made by the person who has sustained the injury or by the owner of the property or where death has resulted from the accident, by all or any of the legal representatives of the deceased of by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

13. The claimant Birendra Kumar does not happen to be injured of the case rather father of the injured. There is also no authority letter on record authorizing the claimant to file the claim case on behalf of injured as her agent. Hence, in my considered opinion, the claimant has no locus standi to file the claim case under Section 166 of the M.V. Act for the said cause. However, the aforesaid aspect of the case has not been considered by the learned Tribunal in delivering the aforesaid judgment and award. Hence, in the facts and circumstances of the case, the aforesaid judgment and award passed by the learned Tribunal is set aside and the case is remitted back to the learned Tribunal to decide it afresh on the issue discussed by me hereinabove after affording opportunity to all the parties to adduce their evidence in this regard within four months from the date of receipt/production of copy of this judgment fixing 28.09.2018 as first date for appearance in the case.

14. Learned counsel for all the parties present before the Court undertakes to extend their all sorts of cooperation in early disposal of the case within the stipulated period.

15. With the aforesaid observations and directions, both these appeals stand disposed of.

16. The statutory amount deposited by the appellant of M.A. No.612 of 2012 i.e. the Insurance Company be returned to it through cheque. Office is directed to send down the lower Court's record to the learned Tribunal at the earliest.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.09.2018
Transmission Date	06.09.2018