

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.542 of 2011

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1. The New India Assurance Company Ltd. Regional Office, Patna (Bihar).
 2. The Divisional Manager, the New India Assurance Company Ltd. Chandra Lok Complex, Ghantaghar Chowk, Bhagalpur, Bihar.
- Appellants.

Versus

1. Kalyani Devi, W/O Late Manish Prakash Bharti Resident Of Village Tetri, P.S. Naugachia, District Bhagalpur.
2. Baby Shivani D/O Late Manish Prakash Bharti Minor through Compliment No. 1 her Mother and Natural Guardian Resident Of Village Tetri, P.S. Naugachia, District Bhagalpur.
3. Md. Afroj, S/O Md. Mehmood Resident Of Mohalla Hussainbad, P.S. Jojahidpur, District Bhagalpur, Bihar (Owner And Driver of the Vehicle Br 10E 9115).
4. The Reliance General Insurance Co. Ltd. Regional Office, Patna, Bihar.
5. That Reliance General Insurance Co. Ltd. Regd. Office, Reliance Centre, 19 Walchand Hirachan Marg, Balland Estate, Mumbai, Maharashtra.
6. Birendra Yadav S/O Mahendra Prasad Yadav Resident Of Mohalla Parabhatti, Nayabajar, Bhagalpur Parabatti, Nayabajar, Bhagalpur Bihar, (Owner of Vehicle Br 10 P 1610).
7. Suman Kr. Poddar S/O Kishun Poddar Resident Of Mohalla Chunihari Tola, P.S. Kotwali, District Bhagalpur (Driver of Br 10P 1610).
8. Raj Kumari Devi W/O Kameshwari Prasad Thakur Resident of Village Tetari, P.S. Naugachia, District Bhagalpur.

.... Respondents.

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Appearance :

For the Appellants : Mr. Bimlesh Kumar Jha, Advocate.

For the Respondent Nos.1 &2 : Mrs. Sarita Bajaj, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 14-05-2018

Heard learned counsel for the appellants and learned counsel for the claimants-respondent nos.1 & 2 on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 23.12.2010 and award dated 02.02.2011 passed by the Additional District and Sessions Judge



4th-cum-Additional Motor Vehicle Accident Claim Tribunal 4th, Naugachia, District Bhagalpur (hereinafter in short referred to as the 'Tribunal') in Claim Case No.92 of 2008, whereby the learned Tribunal allowing the claim petition worked out the amount of compensation to the tune of Rs.15,09,500/- and considering the case as that of contributory negligence directed the appellants-the New India Assurance Company Limited (hereinafter in short referred to as the 'Assurance Company') to pay 50% of the awarded amount i.e. Rs.7,54,750/- to the claimants while the rest 50% was saddled on the Reliance General Insurance Company Limited along with interest at the rate of 9% per annum from the date of filing of the claim case.

3. The factual matrix of the case is that claimants-respondent nos.1 & 2 filed Claim Case No.92 of 2008 under Section 166 of the M.V. Act for awarding compensation on account of death of Manish Prakash Bharti in motor vehicle accident, who happens to be husband of claimant no.1 and father of claimant no.2, with the case in succinct that on 04.06.2008 Manish Prakash Bharati was travelling in tempo bearing registration no.BR 10P 1610 and when the said tempo arrived near the Vikramshila Hotel at around 6 PM another tempo bearing registration no.BR 10E 9115, being driven rashly and negligently by its driver, dashed the former tempo. The said Manish Prakash Bharti and three other commuters of the said tempo were



seriously injured. They were rushed to the hospital to accord them medical aid but Manish Prakash Bharti succumbed to his injury during the course of treatment in the hospital. Regarding the aforesaid accident Parbatta P.S. Case No.29 of 2008 was instituted under Section 279, 337, 338 & 304-A of the Indian Penal Code against drivers of both the aforesaid tempo. It is claimed by the claimants that the aforesaid accident leading to the death of deceased Manish Prakash Bharti was caused due to rash and negligent driving of the tempo, bearing registration no.BR 10E 9115, by its driver at the relevant time of accident. Further case of the claimants is that the deceased was Sales Promotion Supervisor in Jeewan Sri Impex and used to get a salary of Rs.12,500/- per month from the said vocation. Further case of the claimants is that tempo bearing registration no.BR 10P 1610 was insured by Reliance General Insurance Company Limited while BR 10E 9115 was insured by the appellants-Assurance Company.

4. Opposite party nos. 3, 4 & 5 did not turn up in the case and contested the same despite service of notice, while opposite party nos.6 & 7, though put their appearance in the case but did not contest the case by filing the written statement, therefore, the case proceeded ex parte against the aforesaid opposite parties. Opposite party nos.1 & 2 and opposite party nos.5 & 8 filed their separate



written statement appearing in the case. Claimants adduced ocular and documentary 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 earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the opposite party nos.1 & 2/appellants have preferred this appeal.

7. The appellants have assailed the aforesaid judgment and award on two grounds. Firstly that the deceased was not a Sales Promotion Supervisor in Jeewan Sri Impex and also did not use to earn Rs.12,500/- per month as claimed by the claimants-respondents and there is no evidence on record to substantiate the aforesaid case of the claimants. Secondly, the rate of interest as awarded by the learned Tribunal i.e. 9% per annum from the date of filing claim petition is highly exaggerated and exorbitant; instead it should be 6% per annum.

8. On the other hand, learned counsel for the claimants-respondents submitted that the claimants have filed salary certificate of the aforesaid Jeewan Sri Impex indicating that the deceased was Sales Promotion Supervisor in the said Firm and he used to get Rs.12,500/- as salary. There is also ocular evidence in this



regard of the claimants but the appellants have not adduced any evidence in rebuttal of the aforesaid case of the claimants. It is further submitted that interest at the rate of 9% awarded on the aforesaid amount from the date of filing of claim case is also just, proper and appropriate. Relying upon the recent verdict of the Hon'ble Apex Court in **Ramrao Lala Borse and another Vs. New India Assurance Company Limited and another** reported in **2018 ACJ 973**, she has submitted that recently in the aforesaid case the Hon'ble Apex Court has awarded interest at the rate of 9% per annum from the date of filing claim case on the awarded amount of compensation.

9. From perusal of the record, it appears that the claimants-respondents have filed salary certificate of the deceased Manish Prakash Bharti issued by the Proprietor of Jeewan Sri Impex dated 14.03.2009 marked as Ext.1. Vide the said certificate the said Proprietor has certified that the aforesaid deceased was working in the aforesaid Firm as Sales Promotion Supervisor from 1st May, 2007 to 31st May, 2008 and he used to pay consolidated salary of Rs.12,500/ per month. AW-3, namely, Navin Kumar, who happens to be packer in the stock section of the said firm, has also corroborated the aforesaid aspect of the case by deposing before the Court that the said Manish Prakash Bharti was working as Sales Promotion Supervisor in the said Firm and used to get salary of Rs.12,500/-. Appellants have



not adduced any ocular or documentary evidence in rebuttal of the aforesaid evidence of the claimants. Considering the aforesaid facts and circumstances, I find and hold that the deceased Manish Prakash Bharti was working as Sales Promotion Supervisor in Jeewan Sri Impex and used to get a consolidated salary of Rs.12,500/- from the said vocation at the time of his death and the amount of compensation worked out by the learned Tribunal basing upon the aforesaid income of the deceased appears to be correct and proper and does not warrant any interference of this Court in the appeal.

10. So far as the rate of interest awarded by the learned Tribunal is concerned, it appears that the Tribunal has awarded interest at the rate of 9% per annum on the awarded amount of compensation from the date of filing of claim petition. Hon'ble Apex Court in the case of **Ramrao Lala Borse (supra)** has been pleased to award interest at the rate of 9% per annum on the awarded amount of compensation from the date of filing of the claim case recently. In view of the aforesaid case law of the Hon'ble Apex Court, the aforesaid rate of interest awarded by the learned Tribunal appears to be just, proper and appropriate.

11. In view of the facts and circumstances of the case, the impugned judgment and award passed by the learned Tribunal is hereby upheld and this miscellaneous appeal is dismissed.



Let the statutory amount deposited by the appellants be sent down to the learned Tribunal through cheque in the name of claimant no.1, who happens to mother and natural guardian of claimant no.2, to be adjusted towards the awarded amount of compensation. The appellants-Assurance Company is directed to pay the awarded amount of compensation and interest thereon within two months from the date of this judgment.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2018
Transmission Date	17.05.2018

