IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.809 of 2012

The Divisional Manager, United India Insurance Co. Ltd. Resident of Divisional Office, United India Insurance Co. Ltd., Bhagalpur

.... Appellant

Versus

1. Sarita Devi W/O Late Ram Chandra Mandal R/O Godanbari, Post Lakhoria, P.S. Sarwan, District - Deoghar
2. Shushila Devi W/O Sri Arjun Prasan Mandal R/O Godanbari, Post Lakhoria, P.S. Sarwan, District - Deoghar
3. Amit Kumar Mandal S/O Late Ram Chandra Mandal R/O Godanbari, Post Lakhoria, P.S. Sarwan, District - Deoghar
4. Ranjit Kumar Mandal S/O Late Ram Chandra Mandal, Minor Son Of Deceased And Is Represented By Claimant No.1 - Respondent No.1 R/O Godanbari, Post Lakhoria, P.S. Sarwan, District - Deoghar
5. Dinesh Prasad Yadav S/O Late Anup Lal Yadav R/O Chakjwara, P.S. Rajou, District - Banka
6. Srikant Yadav S/O Sri Mohan Yadav R/O Gonarchak, Post Gonarchak Batsar, P.S. Dhoaiya, District - Banka

.... Respondent/s

Appearance:

For the Appellant/s : Mr. Syed Quaisar Hasan, Advocate.

For the Respondent/s : Mrs. Sarita Bajaj, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 15-05-2018

Heard learned counsel for the appellant and learned counsel for the respondents on this Miscellaneous Appeal.

2. This Miscellaneous Appeal has been preferred against the judgment dated 20.07.2012 and award dated 03.08.2012 passed by Additional District Judge-I cum Motor Vehicle Accident Claims Tribunal, Bhagalpur in Claim Case No. 145 of 2010 whereby the learned Tribunal allowing the claim petition of the respondents directed the appellant-United India Insurance Company Limited to pay compensation to the tune of Rs. 2,09,500/- along with interest at the rate of 6% per annum from the date of filing claim case to the claimants.

3. Factual Matrix of the case is that claimants filed Claim Case No. 145 of 2010 under Section 166 of the M.V. Act for awarding compensation on account of death of Ram Chandra Mandal in motor vehicle accident who happened to be husband of Claimant no.1, son of Claimant No.2 and father of Claimant nos. 3 and 4 with the case in succinct that on 30.03.2009 the deceased Ram Chandra Mandal was travelling on the roof of the bus bearing registration no. NL 07A 1466. Driver of the said bus was driving the bus rashly and negligently and as soon as the bus arrived at Chalna More Saadpur, P.S.-Dhoraiya, District-Banka at around 4:40 PM, Ram Chandra Mandal fell down from the aforesaid bus and sustained injury which proved fatal. Aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Further case of the claimants is that the deceased was aged about 40 years at the time of accident. He was a cloth merchant and used to earn Rs. 7000/- per month from the said vocation.

4. The owner and insurer of the said vehicle put their appearance in the case and filed separate written statement.

Claimants adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, appellant-United India Insurance Company Limited has preferred this miscellaneous appeal. Claimants-respondents have also filed Cross Objection in this said appeal for enhancement of quantum of compensation.

7. The appellant has preferred this appeal only on the ground of extent of its liability towards payment of compensation claiming that as the deceased was travelling on the roof top of the bus and fell down from the said bus during the course of travelling and died, hence there has been contributory negligence of the deceased as well to the said accident, hence the appellant is not liable to pay entire amount of compensation to the claimants as directed by the learned Tribunal.

8. On the other hand, learned counsel for the claimants-respondents submitted that the deceased was travelling on the roof top of the bus and it was the duty of the driver and conductor of the bus to not allow the passenger to travel on the roof of the bus and as the deceased died falling from the roof of the bus during the course of travelling, there was utter negligence on the part of the driver and conductor of the bus and there is no contributory negligence of the deceased towards accident. Hence, insurance company is liable to pay entire amount of compensation as directed by the learned Tribunal.

9. From perusal of the record, it appears that it is admitted case of the parties that the deceased was travelling on the roof of the bus in question and fell down from the said bus during the course of travelling and died. It is not the case of the claimants that the deceased was travelling on roof top of the bus with the permission or consent or knowledge of the driver or conductor of the bus. The aforesaid case of the parties candidly indicates that the deceased was travelling on the roof top of the bus and fell down from the said bus during the course of travelling and sustained injury which proved fatal. Thus the deceased also appears to have contributed to the said accident and there has been contributory negligence on the part of the deceased as well in the accident, which in my considered opinion, is to the extent of 25%. Hence, the appellant is liable to pay only 75% of the compensation awarded by the learned Tribunal to the claimants.

10. So far as the Cross Objection filed by the claimants-respondents is concerned, from perusal of the record, it appears that the claimants-respondents have filed aforesaid cross objection for enhancement of quantum of compensation. Appellant-Insurance Company has neither challenged the quantum of compensation nor the loss of dependency nor the multiplier adopted in working out the compensation rather only extent of its liability towards payment of compensation claiming contributory negligence of the deceased in the accident. Hence, in my considered opinion, the Cross Objection filed by the claimants-respondents for enhancement of the quantum of compensation is not maintainable.

11. This Court in **The New India Assurance Co. Ltd. Vs. Maimun Nisha** and Ors. reported in **1996 (2) PLJR 848** has held that the Cross Objection preferred on behalf of the claimants-respondents for enhancement of quantum of compensation is not maintainable when the Insurance Company has only challenged the liability and not the quantum of compensation. Moreover, there is no challenge regarding the monthly dependency as fixed by the learned court below and using the multiplier of 10 considering the age of the deceased. In the facts and circumstances of the case, aforesaid Cross-Objection filed by the claimants-respondents is hereby dismissed as not maintainable.

12. Accordingly, this appeal is disposed of with the aforesaid modification in the judgment and award passed by the learned Tribunal. The appellant is directed to make payment of 75 % of the awarded amount of compensation along with the interest thereon as awarded by the learned Tribunal to the claimants-respondents within two months from the date of this judgment.

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

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.05.2018
Transmission Date	