

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.176 of 2012

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The New India Assurance Co. Ltd through the Branch Office Purnea Near
Bus Stand, N.H.31, Purnea. Appellant.

Versus

1. Bibi Kuresha Khatoon W/O Late Md. Taslim @ Taso R/O Vill-Banbhag,
Chunapur-Air Force Road, P.S.-K.Nagar, P.O.-Parora, Distt-Purnea
 2. Md. Manowar Hussain S/O Late Md. Taslim @ Taso R/o Vill-Banbhag,
Chunapur-Air Force Road, P.S.-K. Nagar, P.O.-Parora, Distt-Purnea
 3. Md. Saddam Hussain S/O Late Md. Taslim @ Taso (Respondent No.2 And 3
Are Under the Guardianship of their Natural Guardian), R/O Vill-Banbhag,
Chunapur-Air Force Road, P.S.-K. Nagar, P.O.-Parora, Distt-Purnea
 4. M/S Maha Luxami Diesel N.H.31, P.S. K.Hat, Distt-Purnea
- Respondents.

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Appearance :

For the Appellant : Mr. Arun Kumar Singh, Advocate
For the Respondent No. 3 : Mr. Nishant Kumar Sinha, Advocate
For the Respondent No. 4 : Mr. Shashi Bhushan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date : 13-12-2018

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 08.08.2011 and award dated 27.09.2011 passed by the learned Additional District Judge-cum-F.T.C. No.8-cum-Motor Vehicle Accident Claim Tribunal (hereinafter in short referred to as the 'Tribunal'), Purnea in Compensation Case No.7 of 2007, whereby the learned Tribunal allowing the claim petition filed by the claimants directed the opposite party no.2-the New India Assurance Company Ltd. to pay compensation to the tune of Rs.1,89,000/- only to the claimants along with interest at the rate of 9% per annum from the date of the order till its realization.



3. Factual matrix of the case is that Compensation Case No.7 of 2007 was filed by the claimants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs.2,40,400/- along with interest at the rate of 12 % per annum on account of death of Tasmin @ Taso in the motor vehicle accident with the case in succinct that on 09.08.2006 Tasmin @ Taso along with his son Saddam Hussain was going to Purnea for his work. He was working as a private employee in Mahindra and Mahindra, Purnea. When they arrived near Chunapur more a half dala Mahindra truck, bearing registration no.BR 11 C-1391, hailing to Mahindra & Mahindra Company, which was proceeding from Bidya Bihar to Purnea arrived there. Tasmin @ Taso and his son boarded on the said truck and when the said truck travelled a bit distance a rickshaw puller abruptly came in front of the truck. The driver of truck turned the vehicle. Consequently, the deceased fell down and sustained serious injuries and succumbed to his injuries. The aforesaid accident took place due to rash and negligent driving of the offending truck by its driver at the time of accident. The deceased was getting Rs.1800/- per month out of aforesaid vocation. He was aged about 36 years at the time of accident.

4. Both the opposite parties put their appearance



in the case and filed their 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, the learned Tribunal passed the impugned judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the opposite party no.2-the New India Assurance Company Limited has preferred this appeal.

7. It is submitted by learned counsel for the appellant that the offending vehicle is hailing to Mahindra & Mahindra Company and deceased was neither the owner of the goods nor his authorized representative and was travelling on the offending vehicle merely as a gratuitous passenger and no premium of the person other than the owner of the goods and his authorized representative has been paid to the appellant. Hence, the appellant is not liable to pay any compensation indemnifying the owner of the vehicle. It is further submitted that the learned Tribunal has neither framed any issue on the aforesaid material aspect of the case nor decided the same. Hence, this case be remanded to the learned Tribunal for its decision on the aforesaid material aspect of the case.



8. On the other hand, learned counsel for the respondents submitted that the deceased happened to be an employee of the Mahindra & Mahindra Company and was proceeding by the aforesaid truck which is hailing to Mahindra & Mahindra Company to his work place and during the course of travelling the deceased met with an accident which proved fatal and the offending truck was insured by the appellant, hence the appellant is liable to pay the aforesaid awarded amount of compensation indemnifying the owner of the vehicle. It is further submitted by learned counsel for the respondents that the appellant has not raised the plea of gratuitous passenger in its written statement before the learned Tribunal, hence he cannot take this plea for the first time in appeal. It is further submitted by learned counsel for the respondent that in the case of remand the learned Tribunal be directed to decide the matter of quantum of compensation afresh.

9. From perusal of record, it appears that it is the case of the claimants that the deceased Taslim @ Taso was an employee of Mahindra & Mahindra Company at Purnea and on the fateful day he was proceeding from his house to his work place and when he arrived near the Chunapur more a half dala Mahindra truck bearing registration no.BR 11 C-1391, hailing to



Mahindra & Mahindra Company, proceeding from Bidya Bihar to Purnea arrived there. Deceased and his son boarded on the said truck and when the said truck travelled a bit distance a rickshaw puller abruptly came in front of the said truck. Driver of the truck turned the vehicle. Consequently, the deceased fell down and sustained serious injuries and succumbed to his injuries. Claimants have not taken the case that either the deceased was an owner of the goods or the authorized representative of the owner of goods in their petition. Though the appellant has also not taken the aforesaid plea of gratuitous passenger in its written statement but from the case of the claimants itself it appears that the deceased was travelling on the said vehicle not as an owner of the goods or his authorized representative rather merely as an employee of the Mahindra & Mahindra Company to which the offending vehicle was hailing. But despite presence of the aforesaid facts apparent on the face of the record, the learned Tribunal has not decided the said matter by framing any issue. In my considered opinion, even in the wake of admitted case of the claimant raising the liability of the opposite party towards payment of compensation, such matter ought to have been decided by the learned Tribunal in spite of not taking any such plea by the opposite party.



10. As the respondents have not assailed the quantum of compensation awarded by the learned Tribunal by filing any appeal. It has become final and no question of consideration of quantum of compensation by the learned Tribunal afresh arises.

11. In view of the facts and circumstances of the case, the impugned judgment and award passed by the learned Tribunal is set aside and the matter is remitted back to the learned Tribunal to frame and decide the issue of liability of the appellant Insurance Company towards payment of compensation within two months from the date of receipt/production of a copy of this judgment in view of the observations made by me herein above. Both the parties are expected to extend all sorts of cooperation in disposal of the case within the stipulated period.

12. Let the statutory amount deposited by the appellant-the New India Assurance Company Limited be returned to it through cheque.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2018
Transmission Date	19.12.2018

