IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.461 of 2015

==

Divisional Manager New India Assurance Company Ltd, A.P. Colony, Police Station- Rampur, District- Gaya.

... ... Appellant

Versus

1. Ramashray Prasad Yadav, son of late Balli Yadav
2. Sharda Devi, Wife of Ramashray Prasad Yadav, Both resident of Village- Larankiya, Police Station - Khizersarai, district Gaya.
3. Vijendra Kumar Singh, son of Amresh Kumar Singh, 100, Bada Telpa Chapra, Saran.

... ... Respondents

==

Appearance :

For the Appellant	:	Mr.Arun Kumar Singh, Adv.
For the Respondents	:	Mr.Ravindra Kumar Sinha, Adv.

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 22-10-2019

Heard the parties.

This appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of appellant/New India Assurance Company Ltd. for setting aside the judgment and award dated 19.06.2015 passed by 9th Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Gaya, in M.A.C.T. Case No. 03 of 2015/25 of 2014.

Claimants are parents of deceased who have filed claim application for grant of compensation on account of death of their son in an motor accident. Deceased Nagina Kumar was a cleaner and on 02.07.2013 at about 7:00 A.M. while he was going on *Thela* and as he reached near Budhua Mela, one truck bearing registration no. BR-04J/9708, which was being driven in a rash and negligent manner dashed against him as a result of which he suffered grievous injury and died during treatment on 06.07.2013.

F.I.R. was instituted giving rise Khizersarai P.S. Case No. 165 of 2013 under Sections 279 and 304(A) of the Indian Penal Code and after investigation the police found the allegation against the driver of the offending vehicle to be true and submitted chargesheet against him.

Deceased was unmarried and was having monthly income Rs. 5,000/- per month and claimants have claimed a compensation of Rs. 7,68,000/-.

Opposite party no. 1 is the appellant/New India Assurance Company Ltd. and opposite party no.2 is the owner of the offending vehicle. Appellant/New India Assurance company Ltd. appeared and filed their written statement and have denied their liability to pay the compensation on the ground that the driver of the offending vehicle was not having a valid and effective driving license at the time of accident and vehicle was being plied on road without any valid permit and since the owner had violated the terms and conditions of insurance policy as such the insurance company is not liable to indemnify the owner from payment of compensation to the claimants. The offending vehicle was insured on the date of accident was admitted by the appellant/insurance company.

Opposite party no.2 owner of the offending vehicle also appeared, but did not contest or file any written statement.

On the basis of rival pleadings the tribunal framed 7 issues for its determination.

The appellant-insurance company has challenged the award passed by the Claims Tribunal on the ground being excessive as well as on the ground that since there was violation of terms and conditions of insurance policy, appellant Insurance Company was not liable to pay the compensation amount although the vehicle was insured has been accepted by the appellant/insurance company.

Claims Tribunal has assessed the age of deceased to be 18 years on the basis of postmortem report and has applied multiplier of 18 for determining the quantum of compensation and has assessed the annual income of deceased to be Rs. 54360/- on the basis of his daily income of Rs. 151/- thereafter 50% has been added for future prospects which makes the annual income as Rs. 81540/- and as deceased was unmarried has deducted 50% of the annual income toward his personal expenses and has assessed the loss of dependency to be Rs. 40540/- and applying the multiplier of 18 has ascertained the compensation amount to be Rs. 7,33,860/- and thereafter has awarded compensation under conventional heads as Rs. 2500/- for loss of estate, Rs. 2500/- for loss of consortium and has quantified the total compensation amount to be Rs. 7,41,360/- as just and reasonable for which the claimants are entitled and after making deduction of Rs. 50,000/- paid as a interim compensation, directed the insurance company to pay Rs. 6,91,360/- with 9 % interest from the date of filing of claim application till its realization.

After hearing the parties and considering their submissions, this court does not find that ascertainment of the annual income of deceased by claims tribunal is excessive or on higher side rather it appears to be reasonable and realistic as he was a cleaner in a vehicle. The tribunal has also taken 18 as a right multiplier as the age of deceased was 18 however the future prospect as per judgment and order passed by the Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. Since reported in (2017) 16 SCC 680,*** should be 40% whereas the tribunal has granted 50% as future prospect. However as per law laid down by the Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. (Supra)*** claimants are entitled for grant of Rs. 70,000/- under conventional heads but only 7,500/- has been granted under conventional heads.

Considering the award passed by the claims tribunal, this court is not inclined to interfere in the amount of compensation as determined by the claims tribunal accordingly the miscellaneous appeal is dismissed.

Since there is allegation of violation of terms and conditions of insurance policy by the owner of the offending vehicle, the insurance company shall pay the compensation amount to the claimant with liberty to appellant Insurance company to recover claim amount from owner/driver of the offending vehicle in a separate proceeding in which Insurance Company will have to establish that there was violation of terms and conditions of policy of Insurance which are fundamental in nature and same was within the knowledge of owner of the offending vehicle.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.12.2019
Transmission Date	NA