

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.751 of 2011

1. Most. Inda Kuer Wife Of Late Achhey Lal Alias Bachey Lal.
 2. Kamalesh Yadav, Minor Son Of Late Achhey Lal Alias Bachey Lal.
 3. Akhilesh Yadav, Minor Son Of Late Achhey Lal Alias Bachey Lal.
 4. Mamta Kumari Minor D/O Of Late Achhey Lal Alias Bachey Lal.
 5. Sunita Kumari, Minor Daughter Of Late Achhey Lal Alias Bachey Lal.
 6. Sumita Kumari Minor Daughter Of Late Achhey Lal Alias Bachey Lal.
- All 2 To 6 Are Minors Son And Daughter Represented Through Their Mother And Natural Guardian Most Inda Kuer Wife Of Late Achhey Lal Alias Bachey Lal, Who Has No Adverse Interest Against Them.
7. Most. Sona Wife Of Rama @ Rama Singh Yadav, All 1 To 7 Are Residents Of Village-Itahara, Po And Ps Karanda, District Gazipur (up), At Present Residing At Mohalla Takiya (banda) Po And Ps Sasaram, District Rohtas.

... .. Claimants/Appellants

Versus

1. Tarkeshwar Nath Rai Son Of Nand Kishore Rai, Resident Of Village Kuju Hazaribagh (JHARKHAND), at present at Mohalla Takiya, PO And PS Sasaram, District Rohtas.

.....Owner of the Vehicle.

2. Branch Manager, National Insurance Company Limited, Branch At Anpurna House, G.T. Road, Sasaram(Rohtas)

..... Insurer of Vehicle.

... Opposite Parties/ Respondent/s

Appearance :

For the Appellant/s : Mr. Bajarangi Lal, Adv
For the Insurance Co. : Mr. Raj Kumar Singh Vikra, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-09-2019

I.A. No.8408 of 2014

Heard.

This interlocutory application has been filed for
condoning the delay of 1 year 4 months in preferring the



present appeal.

For the reasons mentioned in this interlocutory application, this Court is satisfied that the appellants were prevented for sufficient reasons from preferring this miscellaneous appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this miscellaneous appeal is hereby condoned.

M.A. No.751 of 2011:

Heard the parties.

This miscellaneous appeal has been filed on behalf of claimants/appellants for enhancement of compensation amount granted by the judgment/Award dated 30.03.2010/ 18.06.2010 passed by Additional District Judge-III-cum- Motor Vehicle Accident Claims, Tribunal, Rohtas in Claim Case No. 78 of 2003/ Trial No. 143 of 2003 by which compensation of Rs. 1,59,500/- has been awarded to the Claimants/appellants with interest @ 6 per cent per annum from the date of order.

Claimants are widow, sons, daughters and mother of deceased Achhey Lal @ Bachey Lal who died in an accident on 22.02.2003 while on duty in a Truck bearing registration no. HR-38C-6531 as an employee of owner of the offending vehicle and was co-driver in said Truck which met with head-on



collision with a Bus of U.P. Roadways bearing registration no. UP-34C-7055 resulting in spot death of the Acchey Lal @ Bachey Lal. Claimants have claimed compensation of Rs. 6,33,500/- in an application filed under Section 163-A of the M.V. Act, 1988.

Claimants claimed that deceased was getting salary of Rs.5,600/- per month from the owner of the offending vehicle and was aged 45 years and Claimants were fully dependant upon him.

Upon notice opposite party no. 1 the owner of the offending Truck and opposite party no. 2 National Insurance Company Ltd. appeared and filed their separate written statement.

Opposite party no. 2 National Insurance Company Ltd. in their written statement denied that deceased was Truck driver having valid and effective driving licence. They have also disputed the age as well as monthly income of the deceased. However, it is admitted that the offending Truck was insured on the date of accident by National Insurance Company Ltd. Petition under M.V. Act was not maintainable and claimants ought to have filed claim for compensation under the Workmen Compensation Act.



On the basis of rival pleadings, the Tribunal framed four issues for its determination.

The Claims Tribunal has held that accident took place due to rash and negligent driving by the driver of Truck No. HR-38C-6531 in which Acchey Lal @ Bachey Lal died on the spot, as such, claimants are entitled for grant of compensation.

Deceased was an employee of the owner of goods vehicle and died in motor accident while on duty as such he was entitled for grant of compensation under the Workmen Compensation Act as well as under the Motor Vehicle Act but the claimants filed application under Section 163-A of the M.V. Act, 1988 for grant of compensation according to Second Schedule of the Act in which claimants are not required to plead or prove any default, wrong or negligence on the part of owner, driver or any other person rather compensation is to be paid on principle of strict liability.

The tribunal has assessed the annual income of deceased to be Rs.15,000/- notional as claimants failed to provide any documentary evidence with respect to earning of deceased, however, oral evidence was led that monthly income of deceased was Rs.5,500/- per month. The tribunal has



incorrectly assumed the annual income of deceased as Rs.15,000/- as notional income as per second Schedule of M.V. Act although deceased was not a non-earning member but was a co-driver of the truck and his income was claimed to be Rs.5,500/-. Per month for which oral evidence was led.

The annual income of the deceased is assessed to be Rs.40,000/- which will be realistic, acceptable and proper from which 1/3rd is to be deducted towards his personal expenses and loss of dependency would be Rs.27,000/- and as deceased was 45 years, 15 would be appropriate multiplier and as such claimants were entitled for compensation of Rs.27,000/- x 15 = 4,05,000/-. The tribunal has awarded additional compensation under conventional heads as Rs.9,500/-, however, since the accident is of 2003, said compensation amount is not interfered with.

The award passed by the claims tribunal is modified to the extent that claimants are entitled for compensation of Rs.4,14,500/- with interest @ 6% per annum from the date of filing of claim application till its realization.

The Insurance company is directed to pay the remaining compensation amount to the Claimants after deducting the compensation amount already paid from Rs.



Rs.4,14,500/- and pay the remaining compensation amount with interest @ 6 per cent per annum from the date of application till its realization within two months from the date of receipt/production of a copy of the order passed by this Court.

The miscellaneous appeal is disposed of.

Let the LCR be returned forthwith to the court concerned.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.12.2019
Transmission Date	NA

