

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.891 of 2011

Branch Manager, The New India Assurance Company Ltd, Harthar Mahadev Chowk, Begusarai, P.S. and District- Begusarai, represented through Shri Prabhakar Pradhan, Deputy Manger and dully constituted attorney of the New India Assurance Company Ltd. having its Regional Office at 6th and 7th Floor, B.S.F.C. Building, Frazer Road, P.S. Kotwali, District- Patna.

... .. Appellant/s

Versus

1. Neelam Devi, wife of Late Arjun Yadav,
2. Nitish Kumar,
3. Manish Kumar, Both sons of Late Arjun Yadav,
4. Kumari Puja,
5. Kumari Arti, both daughter of late Arjun Yadav,
All resident of village Keshabe, P.S. Barauni, District- Begusarai.
6. Jagdish Singh, son of Surendra Singh, resident of village Keshabe, P.S. Barauni, District- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar, Advocate
For the Respondent/s	:	Mr. Vivekanand Vivek, Adv.
	:	Mr. Debesh Kumar Poddar, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 19-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed under Section 30(1)(a) of Workmens Compensation Act, 1923 by the New India Assurance Company Ltd. for setting aside the judgment and order dated 11.08.2011 passed by Deputy Labour Commissioner-cum-Presiding Officer, Labour Court in Begusarai Case No. 10 of 2007 by which the learned court has granted compensation of Rs. 4,77,000/- with interest @ 12% p.a. from 14.06.2005 as well as 50% penalty on compensation



amount to the claimant/respondent.

3. Briefly stated, the facts of the case is that claimant/respondent Neelam Devi and other dependents of deceased Arjun Yadav have filed present case before the Commissioner of Workmen's Compensation for grant of compensation on account of death of Arjun Yadav in a motor accident which arose out of and in course of his employment while working as a driver on the vehicle which was owned by opposite party No. 1 and insured by opposite party No. 2.

4. In her claim case submitted on prescribed format it was stated that deceased Arjun Yadav was aged 32 years and died in course of his employment while being employed as driver of opposite party No. 1. Deceased on 14.05.2005 took truck No. BR/5251 to Majhwe river to load sand on it where he died in the motor accident. Deceased was getting salary of Rs. 2000/- per month and Rs. 100/- as daily allowances and his total monthly income was Rs. 5000/-, accordingly, under the workmen Compensation Act, 1923 claimants are entitled for compensation of Rs. 5,09,624/-.

5. Opposite party No. 2/appellant New India Assurance Company Ltd in their written statement stated that claim of applicant is not maintainable and they are not entitled



for grant of any compensation. It was denied that deceased Arjun Yadav died in course of his employment. Opposite party No. 1 Jagdish Singh had denied that deceased was employed as driver on truck No. BR/5251 and he died in course of his employment. As per FIR the truck involved in accident was BR5231 which was not insured with opposite party No. 2/appellant.

6. Opposite party No. 1 Jagdish Singh in his written statement has stated that present case is not maintainable and claimants are not entitled for any compensation. The deceased Arjun Yadav husband of claimant No. 1 was not a permanent workman and was engaged for last one week on daily basis. It is further stated that truck No. BR1D/5251 was being driven by deceased Arjun Yadav and same was insured by New India Assurance Company Ltd. on the date of accident.

7. On the basis of rival pleadings, the court framed nine issues for its determination.

8. In support of case of claimant, three witnesses have been examined who are Anil Yadav, Bipin Yadav and claimant Neelam Devi herself. Apart from oral evidence documentary evidence were also adduced on behalf of claimant which has been marked as Exhibits by the court. Exhibit-1 is the



death certificate, Exhibit-2 is the FIR, Exhibit-3 is the charge sheet, Exhibit-4 is the driving licence and Exhibit-5 is the inquest report.

9. On behalf of opposite party No. 2/appellant one witness Satrugan Kumar, Investigator has been examined and his investigating report has been marked as Annexure-A. No oral evidence was adduced on behalf of opposite party No. 1, however, policy of insurance has been produced by opposite party No. 1 which has been marked for identification as X and X1.

10. The Commissioner for Workmen's Compensation has held that deceased Arjun Yadav was employed by opposite party No. 2 Jagdish Singh as driver of truck No. BRD/5251 who died in the motor accident on 14.05.2005 which arose out of in course of his employment and who was serving as driver on the date of accident, as such, there was relation of employer and employee existing on the day of accident.

11. The Commissioner for Workmen's Compensation has held that case is maintainable and on the date of accident the truck was insured by the New India Assurance Company and as such Insurance Company is liable to pay the compensation amount. The Commissioner for Workmen's Compensation has



disbelieved the investigating report submitted by Investigator that deceased was killed in a dispute arising out of brokerage in sand business whereas claim of claimant is supported by FIR and charge sheet submitted by the police in which it is stated that deceased died in a motor accident when truck No. BR52/3179 met an accident with truck No. BR1D/5251, as a result of which deceased died.

12. The Commissioner for Workmen's Compensation has assessed the monthly income of deceased to be Rs. 4000/- and his age as 32 years and has worked out compensation to be Rs. 4,77,000/- and interest shall be payable on said amount @ 12 % p.a. after one month of death i.e. 14.06.2005.

13. The Commissioner for Workmen's Compensation has directed the New India Assurance Company Ltd., as the vehicle was insured by it, to pay compensation of Rs. 4,77,000/- with interest @ 12% p.a. from 14.06.2005 and if same is not deposited within one month then 50% of compensation amount would be realized as penalty.

14. The counsel for the appellant submits that in view of judgment and order passed by Apex Court in case of Ved Prakash Garg Vs. Premi Devi and Ors. Since reported in 1997(8) SCC 1, Insurance Company is not liable to pay the 50%



penalty amount. Accordingly, the Award passed by Commissioner for Workmen's Compensation is modified to the extent that appellant Insurance Company will pay to the claimant the compensation amount of Rs. 4,77,000/- with interest @ 12% p.a. from 14.06.2005 till its payment.

15. Miscellaneous appeal is dismissed subject to above modification in the Award. It is however, clarified that the claimant shall be at liberty to recover the amount of penalty and interest in accordance with law from the employer.

16. Let the LCR be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.12.2019
Transmission Date	N.A.

