IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.994 of 2011

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1. The Branch Manager, the Orientall Insurance Company Ltd. Katihar
2. The Divisional Manager, The Oriental Insurance Company Ltd., Kachahari Chaowk, Bhagalpur, Represented Through The Chief Regional Manager, The Oriental Insurance Company Ltd., Regional Office, Kadamkuan, Pirmuhani, Patna-3

... ... Appellant/s

Versus

1. Rajesh Paswan, S/O Shri Pulkit Paswan
2. Abhishek Raj, S/O Rajesh Paswan.
3. Nayan Raj S/O Rajesh Paswan
4. Nisha Raj D/O Rajesh Paswan
   2 & 3 (respondents) Minors, both are in guardianship of Rajesh Paswan
   All residents of Village- Chausa, P.O and P.S- Chousa, District- Madhepura.
5. Rajeev Kumar Choudhary S/O Subash Choudhary Resident Of Village and P.O- Singhia Makandpur, P.S- Gopalpur, District- Bhagalpur.
6. Mohan Choudhary S/O Sri Ramchandra Choudhary, Resident Of Village- Nayatola, P.O- Bhikhanpur, P.S and District- Bhagalpur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 1007 of 2011

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1. The Branch Manager, the Orientall Insurance Company Ltd. Katihar
2. The Divisional Manager, The Oriental Insurance Company Ltd., Kachahari Chaowk, Bhagalpur, Represented Through The Chief Regional Manager, The Oriental Insurance Company Ltd., Regional Office, Kadamkuan, Pirmuhani, Patna-3

... ... Appellant/s

Versus

1. KHUSBU KUMARI, D/o late Sugriv Harijan, resident of village & P.O. Amor, P.S. Balbadda, District, Godda Respondent (claimant)
2. Rahjeev Kumar Choudhary, son of Subash Choudhary, resident of village & P.O.- Singhia, Makanpur, P.S. Gopalpur, District, Bhagalpur Respondent (O.P. No.3)
3. Mohan Choudhary, son of Sri Ramchandra Choudhary, resident of village, Nayatola, P.O.- Bhikhanpur, P.S. & District, Bhagalpur Respondent (O.P. No.4)

... ... Respondent/s

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with

Miscellaneous Appeal No. 1008 of 2011

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1. The Branch Manager, the Orientall Insurance Company Ltd. Katihar
2. The Divisional Manager, The Oriental Insurance Company Ltd., Kachahari Chaowk, Bhagalpur, Represented Through The Chief Regional Manager, The Oriental Insurance Company Ltd., Regional Office, Kadamkuan, Pirmuhani, Patna-3

... ... Appellant/s

Versus

1. JAI PRAKASH YADAV, son of Moti Yadav @ Moti Das, resident of village & P.O. - Rajajan, P.S. Mansi, District, Khagaria Respondent (claimant)
2. Rajeev Kumar Choudhary, son of Subash Choudhary, resident of village & P.O.- Singhia Makanpur, P.S. Gopalpur, District, Bhagalpur ……….. Respondent (O.P. NO.03)

Mohan Choudhary, son of Sri Ramchandra Choudhary, resident of village, Nayatola, P.O.- Bihkhanpur, P.S. & District, Bhagalpur

.. Respondent (OP No.4)

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 994 of 2011)
For the Appellant/s : Mr.Bimlesh Kumar Jha
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 1007 of 2011)
For the Appellant/s : Mr.Bimlesh Kumar Jha
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 1008 of 2011)
For the Appellant/s : Mr.Bimlesh Kumar Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 10-07-2019

Heard parties.

2. M.A. No.994 of 2011(arising out of Claim Case No. 90 of 2008, Rajesh Paswan vs. Oriental Insurance Company Limited), M.A. No.1007 of 2011(arising out of Claim Case No. 95 of 2008, Khushbu Kumari Vs. Oriental Insurance Company Limited) and M.A. No.1008 of 2011(arising out of Claim Case No. 95 of 2008, Jai Prakash Yadav Vs. Oriental Insurance company Limited) have been filed by the appellant- Oriental

Insurance Company Limited against the judgment dated 16.07.2011 and award dated 12.09.2011 passed by ADJ-III-cum-Motor Accident Claims Tribunal, Naugachia, granting compensation of Rs. 4,53,337/-, Rs. 7,38,496/- and Rs. 10,0,2500 respectively with interest @ 6 per cent per annum.

3. Claimants / respondents are dependants of deceased who died in a motor accident on 13.06.2005 while travelling from Naugachiya to Bhagalpur on tempo bearing registration No. BR 10 D-6962. Deceased were passengers in said tempo which dashed against a tractor as a result of which tempo turned turtle in which deceased received grievous injuries and died.

4. Written statements were filed on behalf of the opposite parties - Oriental Insurance Company Limited stating therein that Insurance Company is not liable to pay compensation and the claim case was not maintainable. It has been further submitted that the owner and driver of the offending vehicle have not filed original insurance policy, driving licence of the driver, route permit, fitness certificate, tax token, RC book in order to establish that vehicle was authorized to run on public road. The tempo upon which deceased were travelling also contributed in said accident. Owner, driver and insurer of tractor have not been made party. There has been

violation of terms and conditions of insurance policy as such insurance company is not liable to indemnify the owner of the offending vehicle from making payment of compensation amount. Opposite party nos. 2 and 3 the driver and owner of the offending vehicle did not appear even after valid service of notice and claim case proceeded ex parte against them.

5. On the basis of rival pleadings, the Tribunal framed seven issues for determination.

6. Altogether 11 witnesses were examined on behalf of Claimants in order to establish their claim case. Documentary evidences have been produced by claimants which have been marked as exhibits by the Tribunal. Ext.1 is photos of deceased published in Hindustan Daily newspaper dated 14.06.2005. Ext 2 and 2A are salary certificates. Ext.3 is certified copy of F.I.R. Ext.4 series are photocopies of postmortem report of deceased. Ext.5 is photocopy of owner book. Ext.6 is photocopy of driving licence. Ext.7 is photocopy of fitness certificate. Ext. 8 is photocopy of route permit. Ext.9 is photocopy of insurance policy. Ext.10 is photocopy of tax token and Ext.11 is certified copy of charge-sheet.

7. No oral or documentary evidence has been adduced on behalf of the opposite parties.

8. Claim case No.90/08 (M.A. No.994 of 2011) has been filed by Rajesh Paswan with his minor sons, daughter who in his claim petition has stated that in said accident his wife Leela Devi died who was in private service and used to earn Rs.3,500/- per month.

9. Claim case no.95/08 (M.A. No.1007 of 2011) has been filed by Khusbu Kumari who in her claim petition has stated that in said accident, her father Sugriv Harijan died. The age of her father on the date of accident was 55 years and he was working as an accountant in Gramin Vikash Pramandal, Bhagalpur and his monthly income was Rs.13,000/- per month.

10. Claim case no. 123/08 (M.A. No.1008 of 2011) has been filed on behalf of Jai Prakash Yadav who has stated in his claim application that his mother Fula Devi died in said accident. She was aged about 45 years and her monthly income was Rs.9000-10,000/- from business.

11. Tribunal has held that due to rash and negligent driving by the driver of the offending tempo, accident took place when offending tempo collided against unknown tractor as a result of which it turned turtle and passengers in said tempo were grievously injured and subsequently died as such claimants are entitled for compensation from the owner of the offending

tempo and since offending vehicle was insured by the Oriental Insurance Company Limited, the Insurance Company is liable to pay the compensation amount.

12. In claim case No.90/08, filed by Rajesh Paswan on account of death of his wife Leela Devi in said motor accident, the Tribunal has assessed the age of deceased to be 32 years and has applied the multiplier of 17 as per Schedule II attached with Section 163 A of the M.V. Act and has assessed her annual income to be Rs.40,000/- and after deducting 1/3rd toward her personal expense has found claimant Rajesh Paswan to be entitled for compensation of Rs.4,53,337/-.

13. In claim case no.95/08 filed by Khushbu Kumari on account of death of her father in said motor accident, the Tribunal has assessed age of deceased to be 50 years and has applied 8 as multiplier and assessed the monthly income of deceased as Rs.11,539/- and after deducting 1/3rd towards his personal expenses, has found the claimant to be entitled for compensation of Rs.7,38,496/-.

14. In claim case no. 123 of 08, the Tribunal has assessed the annual income of the deceased to be Rs.1,00,000/- and has applied multiplier of 15 as the age of deceased was 45 years and after deducting 1/3rd towards his personal expense,

has assessed compensation amount to be Rs.10,02,500/-.

15. It has been argued on behalf of the counsel for the appellant- Insurance Company that there was violation of terms and conditions of policy of insurance as such the Tribunal ought to have granted liberty to recover the amount of compensation from the owner of the offending vehicle. However, from the perusal of the lower court records, it does not appear that Insurance Company had taken any such plea before the Tribunal or any such issue was framed and evidence led on behalf of Insurance Company to establish violation of any terms and conditions of insurance policy and in absence of which, no such liberty can be granted. It has been further argued that there had been contributory negligence on behalf of Driver of the offending Tempo resulting into accident but now it is well settled proposition of law that dependants can claim compensation from either of the tort-feasors or from both, as such said argument is devoid of any merit. Police also has found allegation against the Driver of the offending vehicle to be true and submitted chargesheet against him.

16. After hearing learned counsel for the parties and going through lower court records and after perusal of Award passed by the Tribunal, this Court does not find any illegality or

irregularity in the Award passed by the Tribunal.

17. Accordingly, all the miscellaneous appeals are dismissed.

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

19. The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company at the time of filing of appeal in all the miscellaneous appeal, be remitted to the claimants through electronic mode upon furnishing the details in the format to be provided by the Office to the learned counsel for the claimants, who shall fill the format and submit same in the Office so that amount could be transferred in the bank accounts of the claimants which shall be adjustable in the compensation amount.

Sanjay/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.10.2019
Transmission Date	NA