IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.145 of 2014

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Divisional Manager, National Insurance Co. Ltd. Patna through Sri Dipak Kumar Gupta A.O. Cum and Duly constituted Attorney National Insurance Company Ltd. Regional Office 4th Floor Sone Bhawan B.C. Patel Road P.O. G.P.O., P.S. Sachiwalaya Patna District Patna.

... ... Appellant/s

Versus

1. Sujata Singh Wife of Satish Chandra Alias Satish Chandra Singh(claimant No.1)
2. Satish Chandra Alias Satish Chandra Singh H/O Sujata Singh (claimant No. 2) Both Residents of Village And P.O. Ram Nagar Via Athri Natwar P.S. Runnisaidpur District Sitamarhi At Present Resident At C/O Eng. Rameshwar Singh Ram Krishna Path North Sri Krishnapuri 13/4E Patna.
3. Satish Kumar Papnoi Son of Late Ishwari Dutt, Resident At Pathways World School Sohna Road Gurgaon 122001.

... ... Respondent/s

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with

Miscellaneous Appeal No. 789 of 2014

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1. Sujata Singh wife of Satish Chandra @ Satish Chandra Singh
2. Satish Chandra @ Satish Chandra Singh S/o Late Chaturbhuj Singh All are permanent resident of Village P.O. - Ram Nagar , Via Athri, P.S. Runnisaidpur, District- Sitamarhi, All are resident of, C/o - Eng. Rameshwar Singh , Ram Krishna Path, North Sri Krishna Puri, 13/4E , Patna. Claimants in the Claim Case.

... ... Appellant/s

Versus

1. Satish Kumar Papnoi S/o Late Ishwari Dutt, Resident at Pathways World School, Sohna Road, Gurgaon - 122001, Haryana. (Owner of Alto Car bearing No. HR- 26AD/ 5280)
2. Divisional Manager, National Insurance Co. Ltd. Divisional Office - 1, Arunachal Bhawan, Exhibition road, Patna-1

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 145 of 2014)

For the Appellant/s : Mr.Ashok Priyadarshi, Adv.

For the Respondent/s : Mr.

(In Miscellaneous Appeal No. 789 of 2014)

For the Appellant/s : Mr.Mukesh Prasad Singh, Adv.

For the Respondent/s : Mr.Ashok Priyadarshi, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
Date : 26.07.2019

Heard learned counsel for the parties.

2. This miscellaneous appeal 145 of 2014 has been filed by appellant United Indian Insurance Company Ltd. for setting aside the judgment dated 24.04.2013and award dated 20.09.2013 by which the claims Tribunal has directed National Insurance Company Ltd. to pay the compensation amount of Rs. 14,16,060/- to the claimant alongwith interest @ 6% per annum from date of filing of the claim petition till its payment whereas M.A. No. 789 of 2014 has been filed on behalf of claimant/appellant for enhancing the compensation amount granted by the Claims Tribunal.

3. Briefly stated, the facts of the case as disclosed in claim petition by the claimants are that claimants are parents of deceased Subhash Chandra aged about 22 years who was a physically education teacher at Pathways World School, Gurgaon (Haryana) having income of Rs. 16,184/- died in a motor accident on 02.06.2008 while returning from Tripoli Garden to his residence when he was driving a car and all of a sudden a Nilgay came on the road and he lost control of his car which fell into a ditch and dashed against a Mazar, as a result of which he died.

4. An FIR bearing Sahbor Gurgaon P.S. Case No. 37 was instituted and after investigation police submitted final report. Notices were issued to opposite party No. 1 who is the owner of the vehicle and opposite party No. 2 is the insurer of the vehicle.

5. In its W.S. filed by the opposite party No. 2 appellant/Insurance Company stated that claim against them is not maintainable. Deceased was not owner of the offending vehicle and he was driving the vehicle as unauthorized person, as such Insurance Company is not liable to pay any compensation to the claimant. Deceased himself was guilty and responsible for the accident. Opposite party No. 1 (owner) did not appear and the claim case proceeded ex parte against him.

6. On the basis of pleadings of the parties, the Claim Tribunal framed seven issues. In support of their claim case three witnesses were examined. A.W. 1 is Satish Chandra Singh, Claimant. A.W. 2 Sujata Singh Claimant and A.W. 3 who is eye witness has deposed that deceased Subhash Chandra was returning after party and was driving Alto Car No. HR-26AD-5280 and he was also returning after the party in another car when all of a sudden Nilgay came and Subhash Chandra lost control of the vehicle and car fell into ditch and dashed against

Mazar and he died on the spot. He is an eye of the occurrence. FIR was instituted by the School Management.

7. Documentary evidence were also placed by the claimants Exhibit-1 is certified copy of FIR, Exhibit-2 is final report, Exhibit-3 is certified copy of postmortem report, Exhibit-4 certified copy of death report, Exhibit-5 photocopy of R.C. Book, Exhibit-6 is Insurance Policy, Exhibit-7 is driving licence of deceased and Exhibit-8 is salary certificate of deceased.

8. The Tribunal held that accident took place as deceased lost control at the time of driving due to sudden arrival of Nilgay. The tribunal held that vehicle at the time of accident was insured with opposite party No. 2 appellant National Insurance Company Ltd. and opposite party No. 1 was the owner of the vehicle and deceased was driving the vehicle having a valid driving licence, as such opposite party No. 2 Insurance Company is liable to pay the compensation amount as vehicle was insured by it. Tribunal has found the age of deceased to be 22 years and he was unmarried and has taken the age of mother for purpose of multiplier and her age being 43 years has held appropriate multiplier to be 15 as per second schedule of the M.V. Act. Income of deceased was Rs. 16,184/- and has deducted 50% as personal expenses and has assessed

loss of dependency to be 14,56,560/- and thereafter under conventional head has awarded Rs. 5000/- for loss of love and affection. Rs. 2000/- for funeral expenses and Rs. 2,500/- for loss of estate and since 50,000/- has already been paid as interim award has directed Insurance Company to pay compensation amount Rs. 14,160,60/- alongwith 6% interest per annun from the date of filing of the claim petition till payment within one month from the date of judgment and award and aggrieved from said order appellant National Insurance Company as well as claimant has preferred two separate appeals.

9. It has been submitted on behalf of appellant Insurance Company that deceased cannot be treated as a 3rd party as he himself was driving the car and stepped into the shoes of owner, as such his dependents are not entitled for compensation. In an accident in which the vehicle was driven by the deceased he cannot be considered as 3rd party. It has been further submitted that in terms of Insurance policy claimants could only be considered for grant of compensation in terms of Insurance Policy of sum assured and premium paid for personal accident.

10. The counsel for the Insurance company has relied upon a judgment and order passed by this Court dated

29.01.2019 passed in Miscellaneous Appeal No. 674 of 2013 which is based upon judgment of Apex Court and the relevant paragraph Nos. 4 is quoted below:-

> “Learned counsel for the claimant/respondent does not dispute the aforesaid factual position. In ***National Insurance Company Ltd Vs. Ashalata Bhowmik and Ors, reported in Supreme Today 2018 0 Supreme (SC) 858***, the Hon’ble Supreme Court held that when the accident is caused due to negligence of the owner-cum-driver, wherein the driver died, the insurer shall be liable to the extent of sum assured for personal accident.”

11. Although in the present case, accident did not take place due to any negligent or rash act of the deceased but he lost control over the vehicle as all of a sudden a Nilgay came on the road resulting in the accident causing his death. However, in such circumstances also the Insurance Company is liable to pay to the extent of sum assured for personal accident which according to counsel for the appellant is Rs. 2 Lacs.

12. Accordingly, the impugned award is not sustainable and is set aside and it is directed that the insurance company shall pay only Rs. 2 Lacs alongwith 8% interest which is sum assured and premium paid for personal accident from the date of filing of the claim petition. Since, 50,000/- has already been paid as interim maintenance, Rs. 1,50,000/- remains to be paid

to the claimant along with interest @ 8 per cent per annum.

13. For the reasons as stated above, M.A. 145 of 2014 filed by appellant Insurance Company is partly allowed and judgment and award passed by the Tribunal is set aside. M.A. 789 of 2014 filed on behalf of claimant is dismissed.

14. Statutory amount of Rs. 25,000/- which was deposited by the appellant at the time of filing of appeal, a cheque of which be prepared by the Office in the name of claimant no. 1 be sent to the concerned Tribunal for its payment to the claimant no. 1 and such payment is adjustable in the compensation amount to be paid to the claimant by the insurance Company.

Both miscellaneous appeals are disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	07.05.2019
Uploading Date	27.07.2019
Transmission Date	N.A.