

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.356 of 2014

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Oriental Insurance Company Sasaram through Sri V.K. Jha, Deputy Manager
cum and Duly constituted Attorney The Oriental Insurance Company Ltd.
Regional Office Pir Mohani Kadam Kuan, Patna

... ... Opposite Party No. 3 Appellant
Versus

1. Ramesh Kumar Upadhaya, Son of Ram Nath Upadhaya, Resident of village
Osanw, P.O. Osanw, Sub-Division Bikramganj Rohtas..
2. Anup Kumar Gadia, Son of Ram Nath Gadia, Resident of Bhagalpur Road
At & P.O. Godda Jharkhand
3. Anandi Devi, Wife of Dayanand Jha, Resident of Mohalla Belasi Town
Deoghar District - Deoghar Jharkhand

... ... Claimant
... ... Opp. Party No. 1

... ... Respondent/s

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Appearance :

For the Appellant : Mr. Ashok Priyadarshi, Advocate
For the Respondents : Mr. Bajarangi Lal, Advocate
Mr. Alexander Ashok, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 06-03-2019

Heard learned counsel for the appellant and learned
counsel for the claimant-respondent. No one appears in spite of
service of notice in respect of the owner of the vehicle who are
respondent herein.

2. This miscellaneous appeal has been preferred,
under Section 173 of the Motor Vehicles Act, 1988, against the
judgment dated 29.11.2013 and award dated 23.12.2013 passed by
the Motor Accident Claim Tribunal-cum-Adhoc Additional
District Judge-IV, Rohtas at Sasaram in Claim Case No. 49 of
2005.

3. Oriental Insurance Company, the insurer of one



of the buses, involved in the accident has challenged the award of the Tribunal. Respondent No. 1-Ramesh Kumar Upadhyaya was a passenger from Deoghar to Godda of bus bearing registration no. BHJ 3877. On the date of accident, another bus bearing registration no. BR-40-9440 was coming from opposite direction. The drivers of both the buses were rash and negligent which resulted in head on collision. The aforesaid fact would be evident from the FIR which was registered for the aforesaid occurrence bearing Mohanpur P.S. Case No. 106 of 2004 on the statement of one of the injureds Arun Kumar Sah. In the accident, three persons had died and other passengers sustained injuries including the claimant-Ramesh Kumar Upadhyaya. On the date of accident, the claimant was employed in the office of Executive Director, Narmada at Patna and was getting Rs.3,500/- (three thousand five hundred) per month from his employer. The claimant was working as Pariyojna Padadhikari (Project Officer). Due to accident, the claimant sustained injuries which resulted in permanent amputation of right hand during course of treatment. The Doctor certified that claimant had sustained 85% disablement. At the time of accident, the claimant was aged about 40 years.

4. In para 13 of the judgment, the Tribunal has



recorded that the two buses dashed against each other in a head on collision wherein the claimant sustained injury and his right hand was amputated by the Doctor during course of treatment.

5. The appellant herein has challenged the award only to the extent that in the case of contributory negligence liability of the appellant in the capacity of insurer of one of the bus involved in the accident was to the extent of 50% of the amount awarded by the Tribunal. The Tribunal has shown mercy in favour of the claimant beyond the law in saddling the appellant with the liability to pay the entire awarded amount only on the ground that another vehicle was not insured.

6. After hearing the parties, I find substance in the submission of learned counsel for the appellant that in the facts and circumstances of this case when the accident was result of head on collision of two buses, the contributory negligence of both the buses in proportionate of 50% is proved in the case. If one of the buses was not insured i.e. Puja Bus bearing registration no. BR-40-9440, the liability to pay 50% of the compensation would be of the owner of Puja Bus and the appellant shall compensate 50% of the awarded amount.

7. Learned counsel for the respondent-claimant has raised the issue that the compensation award has not been



properly calculated as such just and reasonable compensation was not awarded by the Tribunal and this Court can well rectify the errors. Reliance has been placed on the case of **Raj Kumar vs. Ajay Kumar** reported in **2011 (1) SCC 383** wherein the Hon'ble Supreme Court has issued guidelines for consideration of grant of compensation in the case of injury as well as in the case of permanent disablement.

8. Indisputably, the present one is a case of permanent disablement of right hand of the claimant to the extent of 85%. Since the source of earning of the claimant was right hand and the amputation of right hand deprived him of such capacity. This is a case of 100% loss of future prospect in the sense of future employment.

9. The Tribunal has awarded following compensation against medical expenses for one year Rs.1,00,000/- (one lac), attendant charges, for the same period of one year Rs.24,000/- (twenty four thousand), loss of earning during the period of treatment i.e. $3500 \times 12 = 42,000/-$ (forty two thousand) and loss of future earning on account of permanent disability as 42,000/- (forty two thousand) multiplied by 16.

10. Learned counsel for the appellant has drawn



attention of the Court that in case of age of 40 years of the injured the appropriate multiplier would be of 15.

11. I find substance in the aforesaid submission in the light of judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.** reported in 2009(6) SCC 121.

12. The judgment of the Tribunal stands corrected to the extent that for loss of future earning on account of permanent disablement Rs.42,000/- (forty two thousand) should be multiplied with 15 and not 16. Thus, the amount comes to Rs.6,30,000/- (six lacs thirty thousand). The Tribunal has also awarded Rs.1,00,000/- (one lac) for physical and mental pain. The rate of interest of 9% would be the same as was awarded by the Tribunal.

13. In the result, the claimant-opposite parties would be entitled to get Rs.6,30,000/- (six lacs thirty thousand) + Rs.1,00,000/- (one lac) for medical expenses + Rs.1,00,000/- (one lac) for pain and suffering + Rs.24,000/- for attendant's assistance + Rs.42,000/- (forty two thousand) as loss of earning during period of treatment. Total comes to Rs.8,96,000/- (eight lacs ninety six thousand) along with interest @ 9% from the date of filing of the claim case till realization.



14. With the aforesaid modification, this appeal stands disposed of.

15. Registry is directed to remit back the statutory amount deposited by the appellant in the name of the claimant through cheque for payment and adjustment against the final payment.

16. The appellant shall deposit his liability of 50% within three months.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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