IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.602 of 2012

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The Oriental Insurance Co. Ltd. Divisional Office, Motijheel, Muzaffarpur. (Insurer of Maxi No. BR-06P- 8291)

... ... Appellant/s (O.P. No.4)

Versus

1. Md. Sabbir Ahmad @ Md. Sabir Ahmad Son of Md. Tahir of Mohalla and P.O. Bhagwanpur Chatti P.S. Sadar District- Darbhanga.
Claimant / respondent
2. Mr. Rakesh Kumar Thakur, Son of late Beaj Nandan Thakur, At Miripur, District- Muzaffarpur.
(Owner of Bus No. BR- 31A-0287)
(O.P. No.1) / respondent
3. Smt. Swita Dhawan, W/o Gobardhan Lal Dawan at New Road, P.S. Kazi Mohammadpur, District- Muzaffarpur.
(owner of Maxi No. BR-06P-8291)
O.P. No.2 / respondent
4. National Insurance Company Ltd, Lalbagh Tower Chowk, Darbhanga. (Insurer of Bus No. 31A- 0287). O.P. 3 / Respondent

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with

Miscellaneous Appeal No. 837 of 2017

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Md. Sabbir Ahmad @ Md. Sabir Ahmad, Son of Md. Tahir, Resident of Mohalla and P.O.- Bhagwanpur Chatti, P.S.- Sadar Muzaffarpur, District- Muzaffarpur.

... ... Appellant/s

Versus

1. Ramesh Kumar Thakur, son of Late Braj Nandan Thakur, Resident of Maripur, P.S.- Muzaffarpur, Dist- Muzaffarpur.
…... (Owner of Bus No. BR- 31A-0297) … O.P. 1st party
2. Smt. Sawita Dhawan, W/o Gobardhan Lal Dawan, Resident of New Road, P.S.- Kazi Mohammadpur, Dist- Muzaffarpur.
……. (owner of Maxi No. BR-061-8291)
…..opposite party 2nd party
3. National Insurance Company Ltd., Lalbagh, Tower Chowk, Darbhanga, P.S. and Dist- Darbhanga.
…………...Insurer of Bus No.31A/0287
……………. opposite party 3rd party
4. The Oriental Insurance Company Ltd., Divisional Office, Motijheel, Muzaffarpur.
…………….Insurer of Maxi No.BR – 06P/8291

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……………..Opposite party 4th party

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 602 of 2012)
For the Appellant/s : Mr.Sanjay Singh
For claimants/respondents : Mr. Mukesh Pd. Singh
For the Respondent no.4 : Mr.Durgesh Kumar Singh
(In Miscellaneous Appeal No. 837 of 2017)
For the Appellant/s : Mr.Mukesh Prasad Singh
For the Respondent no.4 : Mr.Sanjay Singh
For respondent no.3 : Mr. Durgesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 21-10-2019

Heard the parties.

2. M.A. No.602/2012 has been filed on behalf of the Oriental Insurance Company Limited against the judgment and award dated 14.02.2012/03.03.2012 passed by ADJ-I-cum-Accident Claims Tribunal, Darbhanga in Claim Case No.39/98 in which the Tribunal has directed the Insurance Company to pay a compensation of Rs.4,20,000/- with 9% interest from the date of filing of claim case till its realization.

3. It has been submitted on behalf of the counsel for the claimant/appellant that there was head-on collusion between two vehicles and Tribunal ought to have deducted 50% of the compensation amount on account of contributory negligence on part of the claimant.

4. M.A. No.837/2017 has been filed for enhancement of compensation amount on the ground that

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although there is 100% loss of earning, the Tribunal has granted only 40% disability compensation amount and has not granted any compensation for future prospect.

5. Counsel for the claimants-appellants has submitted that the Claims Tribunal has granted compensation under different heads on lower side whereas it should be enhanced in terms of judgment of Apex Court.

6. Claimant-appellant has filed claim case No.39/1998 under Section 166 of M.V. Act on account of injury sustained in a motor accident on 15.01.1998 resulting in permanent disability involving the Maxi having registration No. BR06 P-8291 which was insured by the Oriental Insurance Company Limited. Insurance company in its written statement has asserted that there was contributory negligence of the driver/claimant of the vehicle bearing registration No.BR31 A-8287 which was being driven by the claimant-appellant the Oriental Insurance Company Limited is liable to pay. 50% of compensation amount as claimant himself was also responsible for said accident due to his rash and negligence act as claimant/appellant was also chargesheeted by the police for reckless and negligent driving of the vehicle, as such 50% was required to be deducted as contributory negligence.

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7. The claim tribunal has assessed the age of claimant as 45 years and has suffered 40% of permanent disability on account of said accident. A certificate issued by the Chief Medical Officer, Muzaffarpur with regard to permanent disability of the claimant to the extent of 40% has been placed on record before the Tribunal. The claimant was a bus driver and he was paid Rs.250/- per day as well as Rs.50/- per day as daily allowance, as such, his income was Rs.3,00/- per day which comes to Rs.9,000/- per month. However, the claims tribunal has ascertained his monthly income to be Rs.5,000/- per month and annual income to be Rs.60,000/- and in terms of law laid down by the Apex Court in the case of Sarla Verma, claimant being 45 years of age, the Tribunal has applied 15 as multiplier and compensation amount comes to Rs.9,00,000/- since he has suffered 40% of permanent disability, the loss of income has been assessed to be Rs.3,60,000/- and, thereafter, Rs.25,000/- has been granted for medical treatment and Rs.10,000/- towards pain and suffering and Rs.25,000/- towards loss of earning and damages of the family and as such total compensation amount for which claimant is entitled has been ascertained as Rs.4,20,000/-.

8. Counsel for the claimant/appellant relies upon

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a judgment of Apex Court in the case of Jakir Hussein Vs. Sabir and ors. since reported in 2015 (7) SCC 252 in which the Apex Court has formed a guideline on the basis of which compensation has to be granted to the claimants who have suffered permanent disability on account of motor vehicle accident in which even though the permanent disability of the claimant was 30% still there was loss of earning of 100%, the Apex Court has granted compensation under loss of future earning as 100%, and further granted additional compensation under different heads.

9. In present case, the Tribunal has assessed the monthly income of claimants to be Rs.5,000/- which comes to Rs.60,000/- per year and thereafter 25% is to be added as future prospect, as such his annual income will be Rs.75,000/- and appropriate multiplier would be 15 as such loss of earning of the claimant/appellant is assessed as Rs.75,000/- x 15 = 11,25,000/-. as claimant himself was driving the vehicle and there was head-on collision between the two vehicles as such claimant is also responsible for said accident, accordingly, compensation amount has to be reduced by 50% on account of contributory negligence of claimant as such compensation amount for which claimant is found to be entitled will be Rs.5,62,500/-.

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10. Apart from said compensation, the claimant is also entitled for Rs.50,000/- for loss of income during period of treatment, Rs.1,00,000/- for pain and suffering, Rs.1,00,000/- for medical expenses and Rs.1,00,000/- for loss of amenities, happiness and enjoyment of life.

11. Claimant/appellant is entitled for compensation of Rs.9,12,500/- (nine lacs twelve thousand five hundred) and insurance company is directed to pay the compensation amount as assessed by this Court to the claimant/appellant with 9% interest from the date of claim application till its payment within three months from the date of receipt/production of copy of order passed by this Court.

12. The statutory amount of Rs. 25,000/- deposited by the appellant-Oriental Insurance Company Limited (M.A. No.602 of 2012) at the time of filing of 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.

13. Both the appeals are disposed of.

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

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2019
Transmission Date	NA

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