IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.203 of 2013

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Oriental Insurance Company Ltd. Dehri-on-sone S/O Dy. Manager And Duly Constituted Attorney The Oriental Insurance Company Ltd., Regional Office Pier Mohani Kadam Kuan Patna

... ... Appellant/s

Versus

1. Ramjee Singh S/O Kanhaiya Singh Resident Of Village- Nasariganj Ward No. 4, P.S- Nasariganj, District- Rohtas
2. Pintoo Kumar Singh S/O Shiv Kumar Singh Resident Of Village- Amiawar, P.S- Nasariganj, District- Rohtas.
3. Parmanand Singh S/O Baijnath Singh Resident Of Village- Nasariganj, Ward No. 6, P.S- Nasariganj, District- Rohtas.
4. Kalawati Devi W/O Parmanand Singh Resident Of Village- Nasariganj, Ward No. 6, P.S- Nasariganj, District- Rohtas.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ashok Priyadarshi, Adv
For the Respondent/s	:	Mr. A.K. Shahi, Adv & Mr. A. Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 16-10-2019

Heard learned counsel for the parties.

This miscellaneous appeal has been filed under Section 173 of M.V. Act, 1988, by the Appellant-Insurance Company against the judgment and Award dated 13.08.2012/24.12.2012 passed by Motor Vehicle Claims Tribunal cum 1st Additional District Judge, Rohtas at Sasaram, in Claim Case No. 110 of 2000, awarding compensation of Rs. 1,54,500/- to the Claimant with interest @ 6 per cent per annum.

Claimants have filed an application for grant of compensation on account of death of their son Anil Kumar Singh aged about 15 years in a motor accident on 12.07.2000 while he was sitting in the SWARAJ Tractor which was being driven by the driver of the Tractor in a rash and negligent manner.

FIR was instituted giving rise to Nasriganj P.S. Case No. 95 of 2000 under sections 279 and 304A of the IPC against the driver of the offending Tractor and after investigation the police found the case to be true against the driver and submitted chargesheet against him. The offending Tractor was insured by Oriental Insurance Company Limited.

After notice appellant-insurance company O.P. No. 3 appeared but the owner and driver of the offending Tractor did not appear and case proceeded ex parte against them. Appellant-insurance company in their written statement denied their lability to pay the compensation as the said Tractor was insured with the appellant-insurance company for agricultural purpose and carrying the goods but at the time of accident same was being used as passenger carrying vehicle and as such there was violation of terms and conditions of insurance policy by the owner of the vehicle and as such appellant-insurance company is not liable to pay the compensation amount. It was fruther stated that the driver of the offending Tractor was not having valid and effective driving licence at the time of accident.

On the basis of rival pleadings Tribunal framed 5 issues for its consideration.

The Tribunal has held that deceased died on account of accident caused by rash and negligent driving by the driver of the Tractor and on the date of accident the offending vehicle was insured with the appellant-insurance company as such insurance company is liable to pay the compensation.

The Tribunal has assessed that Claimants are entitled for compensation of Rs. 1,54,500/- as the deceased was minor and non earning member of the family and has taken notional income of deceased as Rs. 15,000/- as per second schedule of the M.V. Act and has granted interest @ 6 per cent per annum from the date of filing of claim application till its payment.

Aggrieved by the Award passed by the Claims Tribunal the Appellant- insurance company has filed this appeal on the ground that as there was violation of terms and conditions of insurance policy, as such insurance company is not liable to pay the compensation amount as the breach of the policy was fundamental in nature.

As the Vehicle was insured by the appellant- insurance company, but since there was violation of terms and conditions of insurance policy between the insurer and the insured which are fundamental in nature, insurance company is granted liberty to recover the compensation amount from the owner of the offending vehicle after making payment of the compensation amount to the Claimant.

Cross objection has been filed on behalf of Claimant for enhancement of compensation amount in view of decision of Hon'ble Apex Court in the case of **Reshma Kumari & Ors vs. Madan Mohan & Ors since reported in (2013) 9 SCC 65,** which was approved in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.** since reported in **(2009) 6 SCC 121,** in which in cases of children below the age of 15 Years dying in motor accident the dependants are entitled for compensation which is to calculated using multiplier of 20 and notional income as Rs. 15,000/- per annum which makes the compensation amount as Rs. 3,00,000/- and thereafter Rs. 50,000/- is to be added under conventional heads and total compensation for which Claimants are entitled is Rs. 3,50,000/- with interest @ 6 per cent per annum from the date of filing of claim application.

Accordingly, the award of the Claims Tribunal is modified to the extent that Claimants are entitled for compensation of Rs. 3,50,000/- with interest @ 6 per cent per annum from the date of filing of claim application, till its realization.

The Award passed by the Tribunal is modified to the extent that Claimants/Cross Objectors are entitled for compensation of Rs. 3,50,000/- with interest @ 6 per cent per annum from the date of filing of claim application till its payment, which is to be paid by the insurance company within two months from the date of receipt/production of a copy of the order passed by this Court with right of recovery of the compensation amount paid from the owner of the offending vehicle.

The miscellaneous appeal is disposed of.

LCR of this case be returned to the court concerned forthwith.

The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company 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.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2020
Transmission Date	NA