IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.763 of 2013

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Reliance General Insurance Company Limited, 570, Rectifier Naigaun Cross Road, Wadala (W), Mumbai-400031. Appeal And Appellant through The Branch Manager and Authorized Signatory, Reliance General Insurance Company Limited, 3rd Floor, Kaushalaya Estate, Bunder Bagicha, Dak Bunglow Chauraha, Patna.1

... ... Appellant/s

Versus

1. Moti Rani, W/O Lt. Ramdhir Kumar @ Sonu Kumar Resident Of Bagahi Madhopur, P.S- Runisaidpur, Distt- Sitamarhi.
2. Aayush Raj, S/O Lt. Ramdhir Kumar @ Sonu Kumar Resident Of Bagahi Madhopur, P.S- Runisaidpur, Distt- Sitamarhi.
3. Renu Kumari, W/O Nagendra Choudhary Resident Of Bagahi Madhopur, P.S- Runisaidpur, Distt- Sitamarhi.
4. Vipul Ranjan, S/O Ramayan Mishra Resident Of Village- Andahra, P.O- Madanpur, Distt- Sitamarhi.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Durgesh Kumar Singh
For the Respondent No.1 &2: Mr. Bindeshwar Sah
For the respondent No.4 : Uday Kumar

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 19-11-2019

Heard the parties.

This Appeal has been filed on behalf of Reliance General Insurance Company Ltd. against the Judgment and Award dated 27.05.2013 and 28.11.2013 passed by learned Adhoc Additional Sessions Judge-IInd cum- Adhoc Additional Motor Accident Claims Tribunal, Sitamarhi in Claim Case No.8 of 2008 by which compensation amount of Rs.5,53,500/- has been awarded to the claimant and Insurance Company have been directed to pay compensation amount with six per cent interest.

Claimants are widow daughter of deceased Randhir Kumar @ Sonu Kumar, who died in an accident on 06.06.2008 while performing his duty, as a conductor in the bus bearing Registration No.BR-06P-4093. It had been stated in the claim application that on 06.06.2008, Randhir Kumar who was employed as conductor in said bus had gone along with Mini bus to village as a Barat Party and when the bus reached village Chandauli, the bus came in contact with 11000 volt of electric wire, as a result of which bus caught fire and it was found that the conductor of the bus was lying dead near the bus.

Deceased had a monthly income of Rs.5,000/-. The claimants claimed compensation of Rs.7,32,500/-. Notices were issued to Opposite Party, however, even after valid service of notice upon Opposite Party No.1 and 3, they did not appear and the case proceeded ex.-parte against them. Appellant-Opposite Party No.2-Reliance General Insurance Company Ltd. appeared and filed their written statement denying the claim of the claimant. The insurance company have not denied the occupation and monthly income of the deceased. However, it has been pleaded that deceased died due to his negligent act, as such he is not entitled for any compensation. It has been further stated in written statement that deceased was traveling on the roof of the bus and came in contact with the electric wire and got electrocuted. There is violation of terms and conditions of policy of insurance and they have applied their claim in different form, i.e., under Section 167 of the Motor Vehicle Act.

On the basis of rival pleadings of the parties, the Tribunal framed 6 issues for determination in which one of the issues was that whether the deceased died due to his own negligent act.

In support of his case, four witnesses have been examined on behalf of claimant who have supported the case of claimant. They have also stated that deceased used to earn Rs.5,000/- per month and all the claimants were dependent upon him. At the time of accident, deceased was aged 25 years and the vehicle was insured with Reliance General Insurance Company Ltd. The owner of the bus has also been examined as claimant witness No.4 who has deposed that deceased was conductor in his bus and he used to pay him Rs.117 per day which comes to Rs.5100/- per month.

Apart from oral evidences, documentary evidences were also adduced on behalf of claimants which have been marked as exhibits by the Tribunal which included income certificate, learning conductor license, institution of U.D. case, registration book of the bus, death certificate, insurance policy of the bus, post-mortem report as well as inquest report and fardbeyan with respect to unnatural death case.

While deciding issue No.3, Tribunal has held that deceased died while on duty as a conductor in a bus which was an accidental death. It has been further held that deceased came accidentaly in contact of high voltage electric transmission line and died and as such, it cannot be concluded that he died on account of any of his negligent act.

The Tribunal has further held that on the date of death of deceased, the vehicle was insured with the insurance company. It has further been held that neither the driver of the bus nor the deceased committed any negligent act as a result of which accident took place in which deceased died. There is no violation of any terms and conditions of insurance policy. Since the bus was insured by the insurance company, as such they are liable to pay compensation to the claimant.

Deceased was an employed as a conductor in the bus and died while on duty, as such, his dependents were entitled for compensation either under the Workmen's Compensation Act 1923 or Motor Vehicles Act 1988 in view of Section 167 of M.V. Act. Dependents of deceased applied for compensation under Motor Vehicles Act, 1988. Deceased died due to his own negligent act is to be established by Insurance Company by leading evidence with respect to negligence or contributory negligence and same cannot be assumed or presumed by the claims tribunal, no such evidence was led on behalf of Insurance Company that deceased died due to his negligent act. The police in its report submitted in U.D. case has also not reported that deceased had committed any negligent act causing his death by electrocution. Tribunal held that deceased met accidental death while performing his duty as a conductor on said bus, as such, the tribunal has rightly found that claimants are entitled for compensation from the Insurance Company.

The Claims Tribunal has assessed the monthly income of the deceased to be Rs.4,000/- per month and Rs.48,000/- per year and has deducted 1/3rd of the amount towards his personal expenses and has assessed loss of dependency to be Rs.32,000/- and has applied multiplier 17 and compensation has been worked out to be Rs.5,44,000/- and has further granted additional compensation under conventional heads of Rs.2,000/- for funeral expenses, 2,500/- for loss of estate and Rs.5,000/- for loss of consortium and quantified compensation amount as Rs.5,53,500/-

and directed appellant/opposite party No. 3 Insurance Company to pay the compensation amount with 8 per cent interest per annum from the date of framing of the issue, i.e., 07.06.2012.

Having gone through the order passed by the Claims Tribunal, this Court does not find any error or infirmity in the order passed by the Tribunal requiring any interference by this Court.

Miscellaneous Appeal is disposed of with a direction to appellant/Insurance Company to pay the compensation amount to the claimant/respondent in terms of Award passed by claims tribunal within two months from the date of receipt/production of a copy of order passed by this Court

Let LCR be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2020
Transmission Date	04.02.2020