

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.278 of 2015

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The Branch Manager New India Assurance Co Ltd, Rohtas at Sasaram represented through the Chief Regional Manager, New India Assurance Co. Ltd., 6th Floor, BSFC Building, Fraszter Road, patna-1.

... .. Appellant/s

Versus

1. Binda Devi, W/o Late Sanjay Singh
2. Suraj Kumar Singh, Minor S/o Late Sanjay Singh
3. Deepak Kumar Singh, Minor S/o Late Sanjay Singh Both 2 and 3 Minor sons are represented through their mother and natural guardian Binda Devi, R/o Village Mahaura, P.O. Khairahan, P.S. Dehri, District Rohtas at Sasaram.
4. Shail Kuer, W/o Late lalan Singh, Mother of the deceased, Sanjay Singh, R/o Village Manaura, P.O. and P.S. Dehri, District Rohtas at Sasaram.
5. Ram Niwas Tiwary, S/o Late Tirathnath Tiwary R/o New Gangauli, P.O. and P.S. Dalmi Nagar Dehri, District Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Raj Kumar Singh Vikram, Adv.
For the Respondent no. 1 to 4 : Mr. Siddhath Harsh, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 25-06-2019

Heard the parties.

2. This miscellaneous appeal has been filed for setting aside the judgment dated 05.05.2014 and Award dated 16.06.2014 passed by Additional District Judge 4th-cum-Motor Accident Claims Tribunal Sasaram, Rohtas in Claim Case No. 47 of 2010 by which compensation of Rs. 8,11,400/- has been directed to be paid with 10 % simple interest per annum.

3. Claimants are widow and children of Sanjay Singh who died in a road accident on 29.03.2010 while he was



travelling on City Ride Bus bearing registration No. BR-24-P/1076 which dashed with the divider of the road and turned turtle in which Sanjay Singh got seriously injured and who was admitted in a Clinic and died during treatment. Bus was driven by the driver of the offending bus in a rash and negligent manner resulting in the accident.

4. Appellant New India Assurance Company on notice appeared and filed written statement denying the claim of claimant however it was admitted that on the date of accident the offending vehicle was insured by them.

5. On the basis of pleadings of the parties the Tribunal framed four issues for adjudication and determination.

6. Three witnesses were examined on behalf of claimant namely, CW-1 Binda Devi (claimant), CW.2- Rabindra Kumar Singh and CW-3 Nagendra Singh, who supported the claim case of claimant that on 29.03.2010 the offending vehicle dashed with the divider of the road due to rash and negligent driving by the driver of bus as a result of which bus turned turtle in which Sanjay Singh was seriously injured and was taken to clinic where he died during treatment. Deceased Sanjay Singh was earning Rs. 7,500/- per month and was aged about 35 years at the time of death. Beside oral evidence documentary



evidence were also produced by the claimants Exhibit- 1 is income certificate, Exhibit-2 is certified copy of FIR, Exhibit-3 is certified copy of chargesheet, Exhibit-4 is attested copy of postmortem report, Exhibit-5 is photocopy of owner book, Exhibit-6 is insurance policy. No witness was examined on behalf of opposite party nor any documentary evidence was produced.

7. On the basis of oral and documentary evidence the Tribunal has held that offending bus was driven in a rash and negligent manner resulting in accident in which Sanjay Singh got seriously injured and died in the clinic during treatment. The tribunal has further held that the age of deceased Sanjay Singh was 35 years and he was earning Rs. 6,000/- per month and has assessed the annual income to be 72,000/- and after deducting 1/3 as personal expenses has found 18 to be the correct multiplier and has quantified the compensation to be Rs. 8,0,6400/- (eight lacs six thousand four hundred) and thereafter has awarded additional compensation of Rs. 5,000/- for funeral expenses and total compensation comes to Rs. 8,11,400/- (eight lacs eleven thousand four hundred) which has been directed to be paid within two months and if same is not paid within two months, the amount shall carry an interest of 10 % thereafter.



8. The appellant insurance company has assailed the judgment and award passed by the tribunal on the ground that claim petition suffers from non-joinder and miss-joinder of necessary party as the driver of the offending vehicle has not been made party in the claim case. Claimants have filed a forged certificate regarding income of the deceased as such the claim case should be rejected as on the basis of inquiry made by the appellants the alleged income certificate was found to be forged. The amount of compensation is excessive and a wrong multiplier of 18 was applied whereas it should be 17. The tribunal has not granted any liberty to the insurance company to realize the compensation amount from the owner of the offending vehicle.

9. After hearing the parties and considering the materials available on record it is apparent that tribunal has not relied upon the income certificate of deceased as produced by the claimants but has assessed the income of deceased to be Rs. 6,000/- per months which appears to be reasonable and realistic. The vehicle was insured by the Insurance Company and there is nothing on record that there was any violation of any terms and conditions of policy of insurance on basis of which liberty can be granted to the Insurance Company to realize the



compensation amount from the owner of the offending vehicle. Driver is not a necessary party and as such not adding him as a party respondent in the claim case will not vitiate entire claim proceeding. Owner was made party but in spite of valid service of notice he did not appear and claim case proceeded against him ex parte.

10. This court does not find any merit in this appeal filed by Insurance company, Accordingly, this miscellaneous appeal is dismissed.

11. The insurance company is directed to pay the compensation amount as determined by the Claims Tribunal within two months from receipt/production of a copy of the order passed by this Court.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2019
Transmission Date	NA

