IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.433 of 2015

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Most. Lagni Devi, w/o late Manoj Kumar @ Munna Rai, resident of village, Harshamchak, P.S. Akilpur, Dist.- Patna ... Appellant/s/ Claimants-1

Versus

1. Renuka Devi (O.P, No.1) Owner, Resident of Uttari Mandiri P.S.- Kotwali, District, Patna

Respondent no.1/owner, opposite party no.1

2. Bajaj Allianz General Insurance Co. Ltd. (O.P. No.-2) Exhibition Road, Patna at present residing at House No. NA/7 Chitragupt Nagar, Kankarbagh, Munna Chowk, District, Patna

Respondent no.2/Insurance , Opposite party no.2 s

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Appearance :

For the Appellant/s : Ms.Archana Sinha @ Archana Shahi
For the Respondent/s : Mr.Rajesh Chandra Narayan

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 02-07-2019

Heard.

2. This miscellaneous appeal has been filed for enhancement of amount of compensation passed in Claim Case No.463/10 passed by the Motor Vehicle Accident Claims Tribunal, Patna which has directed for payment of compensation amount to the appellant of Rs.11,45,300/- with 9% interest per annum and same has been paid to the claimant / appellant by the Bajaj Allianz General Insurance Company Limited.

3. Claimant had filed a claim case under Section 166 of the Motor Vehicle Act on account of death of her husband Manoj Kumar @ Munna Rai who died on 31.12.2009 while driving a tempo bearing registration No. BR-1PA-6074 which turned turtle while being driven and husband of the

claimant (driver) received grieveous injury and subsequently died.

4. Claimant is the widow of said Manoj Kumar @ Munna Rai who died in an accident at the age of 30 years in Patna while driving the said tempo which was owned by Renuka Devi (opposite party no.1) and insured by opposite party no.2 Bajaj Allianz General Insurance Co. Ltd. The tempo was taken on hire by the deceased from its owner Renuka Devi to ply it as a passenger vehicle.

5. F.I.R. was lodged being Patna Traffic P.S. Case No.02/10 under Sections 279, 304 IPC. In support of her claim case, four witnesses have been examined on behalf of claimant. Apart from oral evidences, claimant has also adduced documentary evidences. Ext. 1 is charge sheet with respect to Patna Traffic P.S. Case No.02/10. Ext. 2 is photo copy of FIR. Ext.2/1 is photo copy of insurance policy. Ext. 3 is the postmortem report. Ext. 5 is original driving licence of deceased. Other documents which were produced were photo copy of driving licence of deceased in which date of birth is recorded as 02.11.1980, certificate of registration of said vehicle, photo copy of authorization to drive transport vehicle.

6. Written statement has also been filed on behalf

of the Insurance company- opposite party no.2 stating therein that claim petition was not maintainable as the claim petition is not with respect to death of any third party as deceased himself was driver of the vehicle and accident took place due to negligence and rash driving of deceased himself and his heirs are not entitled to claim compensation and take advantage of wrong done by the deceased. Children and parents have not been made party although they were necessary party. Police after investigation has found deceased to be guilty for the accident. The offending vehicle had no permit and owner had earlier been fined for said offence. Insurance policy was valid on the date of accident. Claim was not maintainable under Section 166 and it ought to have been filed under Section 163 A of the Act and there has been statutory violation of terms and conditions of policy.

7. Documentary evidence produced by opposite party no.2 is photo copy of MVI report of offending tempo as Ext. X and photo copy of fine record of offending tempo.

8. On pleading of the parties, the Tribunal has framed six issues and on behalf of the claimant, four witnesses were examined and all the witnesses have supported the claim case of claimant. Claimant who herself has been examined as

witness no.4, has stated that deceased was a tempo driver and who used to ply tempo from Bans Ghat to Gandhi Maidan and he left behind four children and one widow who were fully dependent upon his income. The owner of the vehicle was Renuka Devi who had permitted the deceased to drive the tempo and vehicle was insured by the respondent – opposite party – Insurance Company.

9. On behalf of opposite party, Krishna, Executive Legal of Bajaj Allianz has been examined who has stated in his deposition that owner of tempo Renuka Devi was covered by insurance at material time and said policy was under commercial vehicle package policy and said vehicle did not possess the valid permit as such, company is not liable to indemnify the owner of the offending vehicle. Company investigator had not verified the permit.

10. After considering the material available on record, the Tribunal has found that at the time of accidental death, deceased was 30 years having income of Rs.6,000/- per month and as such annual income would be Rs.72,000/- and 1/3 of which has been deducted as his personal expenses as such loss of dependency would be Rs.48,000/- and multiplier of 17 has been applied and Rs.8,16,000/- will be compensation

amount. Additional compensation under conventional head of loss of consortium, funeral expense and loss of estate for which Rs.70,000/- has been added which makes total compensation amount to be Rs.8,81,000/- and further 30% has been added for future prospect and total compensation amount comes to Rs.11,45,300/- and since interim compensation of Rs.50,000/- has already been paid, Rs.10,95,300/- was directed to be paid with 9% interest per annum from the date of filing of the case to its realization.

11. It has been submitted on behalf of the learned counsel for the respondents that the said amount has already been paid to the claimant.

12. After going through the Award passed by the Tribunal and material available on record, this Court does not find any error in determining the gross amount of compensation to the appellant as such, the appeal filed by the appellant for enhancement of compensation amount is without any merit and is, accordingly, dismissed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2019
Transmission Date	NA