

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.211 of 2016

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The New India Assurance Company Ltd. through the Manager (Legal Deptt.), Regional Office, B.S.F.C. Building Fraser Road, Patna (for the New India Ass. Co. Ltd. through the D.M., Noor Compound-Opp. Civil Lines, P.S. Kahcari Road, Gaya.

... O.P. No.1 ... Appellant/s

Versus

1. Satendra Chaurasia,, S/o Pyare Chaurasia
2. Baby Devi, W/o Satendra Chaurasia
Both residents of village - Rauna, P.S. Konch, District – Gaya.
....Claimants / Respondents
3. Lal Deo Yadav, S/o Late Bhagwat Yadav, resident of village - Bikan Bigha, P.O. - Dusad Bigha, P.S. - Konch, District - Gaya Owner of the tractor bearing no. - BR-02M-2148.

O.P. No.2 / Respondent

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Appearance :

For the Appellant/s : Mr. Mukteshwar Prasad Singh, Advocate
For the Respondent/s : Mr. Ravindra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 27-08-2019

Heard parties.

2. This miscellaneous appeal has been filed under Section 173 of the Motor Vehicle Act by the appellant – Insurance Company against the judgment and award dated 09.02.2015 passed by Motor Accident Claims Tribunal -cum- ADJ- VII, Gaya in claim case No.29/14 / 67/12 by which the learned Claims Tribunal has granted compensation of Rs.2,35,000/- to the claimants with 8% interest per annum from the date of application till its realization.

3. Claimants are parents of deceased who filed an



application before the Claims Tribunal for grant of compensation as their daughter Sweety Kumari who was three years old died in a motor accident caused by a tractor bearing registration No. BR 0 2M-2148 which was being driven in a rash and negligent manner as a result of which, deceased was run over by the said tractor and she died on the spot.

4. F.I.R. was instituted giving rise to Konch P.S. Case No.151/11 instituted for the offences under Sections 279 and 304 A of the IPC against the driver of the offending tractor. Inquest report was prepared and, thereafter, dead body was sent to the ANMCH, Gaya for postmortem which was conducted in the said hospital.

5. Offending tractor was insured with opposite party no.1, New India Assurance Company Limited at the time of accident and the Tribunal has held that deceased died due to rash and negligent act of the driver of the offending tractor and since the offending tractor was insured by opposite party no.1, the Insurance company is liable to pay the compensation amount.

6. Opposite party no.2, owner of the offending tractor also appeared but did not file any written statement.

7. The deceased was three years old at the time of



death and taking notional income as Rs.15,000/- under Schedule II of the Act and 15 as multiplier, the Tribunal has assessed the compensation amount to be Rs.2,25,000/- and, thereafter under conventional heads has awarded Rs.10,000/- and has assessed Rs.2,35,000/- to be just and proper compensation for which claimants are entitled from the date of claim application with interest @ 8% per annum till its payment.

8. The only point raised by the counsel for the appellant is that they have taken a specific plea that the driver of the offending tractor had no valid and effective driving licence on the date of accident which resulted into death of the three years old girl. They have verified and found that driving licence which was produced was a fake and forged as such, Tribunal ought to have fastened liability to pay compensation on the owner of the offending tractor as same was being driven in violation of terms and conditions of insurance policy.

9. After hearing learned counsel for the parties and perusing the judgment and award passed by claims tribunal, it appears that although driving licence of the driver was found to be fake on the date of accident but there is no material on the record to suggest that same was within the knowledge of the



owner of the vehicle as such the Tribunal has rightly denied liberty to the Insurance Company to pay and recover the compensation amount from the owner of the offending vehicle.

10. This Court does not find any illegality, error or infirmity in the order passed by the Tribunal as such, present miscellaneous appeal is dismissed.

11. 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2019
Transmission Date	NA

