IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.11 of 2015

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United India Insurance Co. Ltd. Municipal Chowk, Chapra.

... ... Appellant/s

Versus

1. Seema Kumari Late Gajendra Prasad @ Sadhu
2. Bandhan Kumari D/o Gajendra Prasad
3. Guddu Kumar S/o Gajendra Prasad, all are R/o village - Panchbhinda, P.O. P.S. Taraiyan, District – Saran.
4. M/s Madhucon Project Ltd., Hydrabad, Andhra Pradesh.
5. Ranjan Kumar Singh S/o Sudama Singh, Vill. +P.O. Kadhan, P.S. Keshariya, District - East Champaran.
6. Raj Kumar Prasad S/o Ram Sundar Prasad.
7. Shanti Devi W/o Raj Kumar Prasad, vill - Panchbhinda, P.O.+ P.S. Taraiyan, District – Saran.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramchandra Lal Das
For the Respondent/s	:	Mr. Shashi Shekhar Tiwary, Adv.
	:	Mr. Devesh Shankaran, Adv.
	:	Mr. Chandra Moleshwar, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 27-06-2019

Heard the parties.

2. Aggrieved by Judgment dated 17.09.2014 and Award dated 15.10.2014 passed by learned Additional District Judge IV-Cum Motor Vehicle Accident Claims Tribunal, Saran at Chapra in Claim Case No. 5 of 2011. Appellant United India Insurance Company, Ltd. has filed this appeal against the grant of compensation to the claimants by the Tribunal.

3. Claimants are the widow and children of deceased

Gajendra Prasad @ Gajanand Prasad who died on 29.07.2010 in a motor accident caused by Teepar bearing Registration No. BR-32C-4210 which was driven by the driver of the offending vehicle in a rash and negligence manner resulting in accident in which deceased was run over by the offending vehicle while he was sleeping by the side of the road.

4. FIR was instituted giving rise to Bhairo Asthan P.S. Case No. 55/10 against the driver of the offending vehicle and after investigation police found the case of negligent and rash driving to be true against the driver of the offending vehicle and submitted charge sheet against him.

5. Notices were issued to opposite party Nos. 1 who is owner of the offending vehicle and opposite party No. 2 who is the Manager in which deceased worked as driver of Volvo and they appeared and filed their written statement and stated that driver of the offending vehicle had valid and effective driving licence and permit was also granted of the vehicle which was insured by opposite party No. 3 and Rs. 2 lacs was paid to the claimants by the company in which he was working. The vehicle was insured as such compensation is to be paid by the Insurance Company.

6. Opposite party No. 3 Insurance Company has also

filed its written statement in which it has denied the claim of claimants. Deceased died due to his own neglect act, as such his heirs are not entitled for any compensation. Driver has not made party.

7. On the basis of pleadings of parties, the tribunal framed four issues for its determination. Two witnesses were examined on behalf of claimants. Witness No. 1 is claimant No. 1 and witness No. 2 is Mukesh Kumar Patel who in their deposition have supported the claim case. Apart from oral evidence documentary evidence has been adduced on behalf of claimants which has been marked as Exhibits by the Tribunal. Exhibit-1 is the FIR, Exhibit-2 is the charge sheet, Exhibit-3 is the postmortem report, Exhibit-4 is the photocopy of Insurance Policy, Exhibit-5 is the photocopy of driving licence, Exhibit-6 is fitness certificate, Exhibit-7 is photocopy of permit, Exhibit-8 is photocopy of training certificate of deceased, Exhibit-9 is registration Number, Exhibit-10 is the photocopy of matriculation certificate, Exhibit-11 is pay slip.

8. On the basis of oral and documentary evidence, the tribunal has held that due to rash and negligent driving by the driver of the offending vehicle, the accident took place in which deceased died, as such, claimants are entitled for grant of

compensation.

9. The tribunal has found the age of deceased to be 34 years at the time of death on the basis of matriculation certificate and his monthly income as Rs. 11,800/- on the basis of pay slip issued by the company. Tribunal has deducted 1/3rd of his income for his personal and living expenses and has found Rs. 94,400/- as loss of dependency and has applied 17 as multiplier and has assessed the compensation to be 16,04,800/- in addition to said compensation tribunal has granted additional compensation under conventional heads, Rs. 2000/- as funeral expenses, Rs. 2,500/- as loss of estate and has ascertained just compensation to be Rs. 16,09,300/- for which claimants are entitled.

10. The Award passed by the Tribunal is assailed by the appellant Insurance Company on the ground that at the time of accident, the driver of offending vehicle was not having a valid and effective driving licence. Secondly, the pay slip on basis of income of deceased has been calculated has not been proved. Opposite party No. 2 who is the manager of Company in which deceased was working has not disputed the income or pay slip issued by the Company. Driver was having valid driving licence was never disputed before the Tribunal, as such said defence is

not available to the Insurance Company in appeal. Even assuming that on the date of accident, as claimed by Insurance Company, the licence of the driver of the offending vehicle was not renewed, still Insurance Company is liable to pay the compensation amount to the claimants.

11. After hearing the parties and going through the LCR, evidences and materials available on record, this Court does not find any infirmity or error in the Judgment and Award passed by the Tribunal, accordingly the present miscellaneous appeal is without any merit and is accordingly dismissed.

12. Let L.C.R. be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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