IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.66 of 2015

The New India Assurance Company Limited, a body corporate constituted under the Companies Act, having its Head office at New India Assurance Building, 87, Mahatma Gandhi Road, Fort Mumbai 400023 and amongst others a Divisional Office at Poddar Complex, Mithanpura, District Muzaffarpur and represented through Dr. Sarita Mishra, the Manager at Regional Office, B.S.F.C., Building-VI Floor, Fraser Road, Patna-1, a duly constituted Attorney of the Company.

... ... Appellant/s

Versus

1. Dulo Devi W/o Late Sita Ram Das @ Sita Ram Sada
2. Ramakant Das.
3. Sanju Kumar.
4. Lalit Das
5. Uday Das
6. Chotu Das
7. Chandni Kumari
8. Sonali Kumari

Respondent Nos. 2 to 8 are minor children of Late Sita Ram Das under guardianship of mother Duli Devi, the respondent No. 1 who is their well wisher and next friend.

All residents of village- Badhauna, P.S. Vidyapati Nagar, District Samastipur.

9. Prabha Devi W/o Late Ram Kishore Kuwar.
10. Amarjeet Kumar
11. Sujeet Kumar (Both sons of Late Ram Kishore Kuer)
12. Braj Kishore Kuer
13. Shyam Kishore Kuer
14. Kaushal Kishore Kuer

Ss/o Late Ram Chalitar Kuer

All residents of village- Badhna, P.S. Vidyapati Nagar, District-Samastipur.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr.Raj Kishore Prasad Singh
For the Respondent/s : Mr.Sachchidanand Choudhary

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 06-05-2019

Heard the parties.

2. Aggrieved by the Judgement dated 07.11.2014 and

award dated 14.11.2014 passed by the M.V.A.C. Tribunal, Muzaffarpur, appellant New India Insurance Company Limited has filed this appeal against the judgement and award passed by the Claims Tribunal, directing to pay Rs. 4,42,000/- amount as compensation with 60% interest from date of filing of petition till realization to the claimant.

3. Briefly stated the facts of the case is that a claim petition was filed by the Dulo Devi widow of Late Sita Ram Das, who was travelling on 01.12.2002 by the offending tractor with trolley having registration no. BR-33A-1937 and BR-33A-1939 to attend funeral ceremony of his co-villager which was being driven by the driver in a rash and negligent manner and as a result of which the tractor and trolley turned turtle causing grievous injuries to the husband of the claimant and he was rushed to Sadar Hospital from where he was referred to D.M.C.H., Darbhanga, but he succumbed to his injuries sustained in the accident.

4. A Police Case was registered as Vidyapati Nagar P.S. Case No. 71 of 2002 against the driver of the offending vehicle under Section 279 and 304A of the Indian Penal Code and during investigation police found the allegation of rash and negligent driving by the accused driver to be true and submitted

charge-sheet against the driver of the offending vehicle.

5. It was stated in the claim case that deceased Sita Ram Das was aged about 39 years and was a *Raj Mistiri* and his monthly income was Rs.2,400 and due to his sudden demise in the accident the claimant suffered loss of dependency, loss of love and affection, loss of estate, loss of consortium and mental agony and prayed for compensation of Rs.3,16,700/- with interest. Appellant- Insurance Company as well as owner and driver of the offending vehicle were arrayed as opposite party No. 2 and opposite party No. 1 before the Tribunal.

6. Opposite party no.1 Prabha Devi, who is the widow of registered owner of the tractor namely, Ram Kishore Kuer, who died on 17.07.2013 has stated in her written statement that the tractor and trolley bearing registration No. BR-33A-1937 and BR-33A-1939 were insured with the appellant- New India Insurance Company on the date of accident and the tractor driver was having a valid and effective license. As such, the insurance company is liable to indemnify the tractor owner.

7. Opposite party no.2 present appellant New India Insurance Company had also filed a written statement and have pleaded protection under Sections 147 and 149 of the Motor Vehicle Act and on the basis of pleadings of the parties four

issues were framed by the trial court. Four witnesses were examined on behalf of the complainant and certified copy of the FIR, (Exhibit-1), copy of the charge-sheet (Exhibit-2) and original death certificate (Exhibit-3) were produced, in support of her claim that the offending vehicle was being driven by the driver in a negligent and rash manner resulting into the accident causing death of her husband.

8. The surveyor was also examined on behalf of the insurance company, who has proved the inquiry report (Exhibit-A) and the insurance certificate (Exhibit-B). Witnesses examined on behalf of the claimant have supported the case of claimant regarding negligent and rash driving by the driver of the tractor, as a result of which tractor met with an accident resulting in death of husband of the claimant. All the oral witnesses are the eyewitnesses of the occurrence and the Tribunal has held that on the basis of ocular evidence as well as documentary evidence adduced before the Tribunal, the claimant has been successful in proving that the tractor was driven by the driver in rash and negligent manner resulting in accident and death of the husband of claimant.

9. The Tribunal has found that it had territorial jurisdiction over the matter. The witnesses on behalf of the

opposite party/appellant Dhruv Kumar Pandey, Surveyor-cum-investigator has proved that the tractor and trolley were insured by New India Insurance Company on the date of accident and the policy certificate was also proved by him and on the basis of income of the deceased the Tribunal has come to a finding following different parameters for deciding the compensation amount of Rs. 4,32,000/- to be just compensation to be paid to the claimant. Apart from this it has also awarded additional compensation of Rs.5,000/- on loss of consortium, Rs.2,500/- on funeral expenses, Rs.2,500 on loss of estate and calculated total compensation as Rs.4,42,000/- for which the claimant was found to be entitled and directed payment of said amount with interest at the rate of 6 per cent per annum from the date of filing of the petition till its realization.

10. The Judgement and Award passed by the Tribunal has been challenged by the appellant- insurance company on the ground that on the date of accident the deceased was a gratuitous passenger sitting on the trolley of the tractor and same was not covered under the insurance policy and as such appellant Insurance Company is not liable to indemnify the vehicle owner.

11. It has been further submitted that insurance policy

was limited to the liability of driver and the owner, and tractor was insured for agricultural purpose only and as such there is breach of terms and conditions of the policy and the deceased being not covered under the policy for which the vehicle was insured.

12. It has been further submitted that order dated 22.10.2005 passed by Tribunal under Section 140 of M.V. Act to pay Rs. 50,000/- on no fault liability and Insurance Company deposited Rs. 56,140/- on 30.11.2006 with interest by cheque No. 019505 which was not deducted by the tribunal in the final award amount of Rs. 4,42,000/- as such final award ought to be Rs. 3,92,000/- and interest ought to have been calculated on Rs. 3,92,000/-. It has been further submitted that appellant deposited Rs. 25,000/- as statutory amount on 16.02.2015 in order to file present appeal, as such interest on Rs. 25,000/- will also not be payable w.e.f 16.02.2015.

13. After hearing the parties and considering the materials available on record, this Court does not find any infirmity or error in the order passed by the M.V.A.C. tribunal, Muzaffarpur, accordingly this miscellaneous appeal is dismissed. However, appellant Insurance Company is at liberty to realize the compensation amount from the owner of offending

vehicle, if there has been violation of any terms and conditions of Insurance Policy.

14. The judgement and award is modified to the extent that claimant/opposite party Nos. 1 to 8 shall be paid compensation amount after deducting Rs. 50,000/- from the final award as same was deposited by the Insurance Company as interim award from the date of filing of application till its realization with 6% interest per annum. The statutory amount of Rs. 25,000/- deposited in this Court of which a cheque shall be prepared in the name of Dulo Devi opposite party No. 1 by the office and shall be handed over to counsel for the claimant/opposite party No. 1 which will be adjusted against the final compensation amount.

15. The contention on behalf of appellant that interest is payable only on pecuniary loss and not on the compensation amount made under the head of funeral expenses, loss of estate, loss of consortium, totalling Rs. 10,000/- and interest is payable on the amount of loss of dependency of Rs. 3,82,000/- is not acceptable in facts of present case as under those heads the additional compensation has been awarded on the lower side. The further submission of the counsel for the appellant is that the Insurance Company is liable to pay compensation of Rs.

3,92,000/- from date of filing of petition till 15.02.2015 @ 6% per annum and since Insurance Company has deposited Rs. 25,000/- in the High Court on 16.02.2015 as such interest would be payable from 16.02.2016 on the amount of Rs. 3,77,000/- till its realization appears to be correct and appellant Insurance Company is directed to calculate the final compensation amount with interest to be calculated as indicated above and paid to claimants within three months from the date of receipt/production of a copy of order passed by this Court.

16. This miscellaneous appeal is dismissed subject to modification in the judgement and award to the extent as indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.05.2019
Transmission Date	N.A.