IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.827 of 2016

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1. Priyanka Devi @ Priyanka Kuwar, Wife of Late Subash Chandra
2. Tushar kumar (Minor)
3. Pritam Kumar (Minor)
4. Rani kumari minor
   All minor son and daughter of Late Subash chandra.
5. Santi Devi Wife Of Sri Shivraj Singh
   All resident of village Tendua Dusadhi P.O. Pahleja,P.S-Dehri,District-Rohtas

... ... Appellant/claimant / plaintiff

Versus

1. M/s Y.k. Enterprises, Krishna Kunj Behind Krishna Apartment, Boring Road, Patna
2. The National Insurance Company Ltd. Branch Office Pandwai Boring Road, Patna, Bihar

Insurance Cop. Opposite parties / defendants / Respondent/s

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with

Miscellaneous Appeal No. 218 of 2016

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The Branch Manager, National Insurance Company Ltd., Sasram Branch through the Chief Regional Manager and the constituted Attorney, Regional Office, National Insurance Comp. Ltd.4th Floor, Sone Bhawan, B.C. Patel Marg, P.S. Sachivalaya, Dist- Patna

... O.P. No.2/ Appellant/s

Versus

1) Priyanka Devi @ Priyanka Kunwar, wife of late Subhash Chanra
2) Tusar Kumar
3) Pritam Kumar, Both sons of late Subhash Chandra
4) Rani Kumari, daughter of late Subhash Chandra, 2 to 4 are minor represented through their natural guardian mother Priyanka Devi
5) Shanti Devi, wife of Sri Shivraj Singh

All residents of village- Tendua Dusadhi, P.O. Pahleja, P.S. Dehri, Dist-Rohtas presently residing at Village- Banjari, P.S. and Dist- Rohtas

... Claimants / Respondent 1st set

6) M/s Y. K. Eneerprises, Krishna Kunj, behind Krishna Apartment, Boring Road, Patna- 800001

... O.P. No.1 / Respondent 2nd set

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Appearance :
(In Miscellaneous Appeal No. 827 of 2016)
For the Appellant/s : Mr.Rajesh Kumar Singh

For the Respondent/s : Mr.Raj Kumar Singh Vikram
(In Miscellaneous Appeal No. 218 of 2016)
For the Appellant/s : Mr.Raj Kumar Singh Vikram
For the Respondent/s : Mr. Rajesh Kumar Singh
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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 11-09-2019

Heard parties.

2. M.A. No.827 of 2016 has been filed on behalf of the appellants for enhancement of award granted by the Tribunal by its judgment and award dated 09.04.2015 / 30.04.2016 passed by 7th Additional District Judge-cum-Motor Accident Claims Tribunal, Rohtas, Sasaram by which compensation of Rs.7,96,000/- has been granted whereas M.A. No.218 of 2016 has been filed on behalf of the appellant-Insurance Company against the same judgment and award on the ground that excessive award has been awarded and since there was fundamental breach of terms and conditions of Insurance Policy, the Insurance Company is not liable to pay the compensation amount.

3. Claimant Priyanka Devi has filed claim case along with her minor children and mother of the deceased under Section 166 of the Motor Vehicle Act on account of death of her husband, Subhash Chandra in a motor accident. On 13.08.2011, the husband of claimant no.1 Subhash Chandra aged about 25 years along with his cousin, Dharmendra Kumar were going to

Akodhi Gola from his sister's home by a motorcycle and as they reached village, Jorwarpur Mor Pakki Sadak, a school bus bearing registration no.BR1P/9607 which was being driven in a rash and negligent manner and without blowing horn dashed against the motorcycle of Subhash Chandra as a result of which he died on the spot and his cousin Dharmendra Kumar sustained grievous injury. On the basis of fardbeyan, Karakat P.S. Case No.158/2011 dated 13.08.2011 was instituted under Sections 279, 338 and 304A of the Indian Penal Code against the driver of the offending bus and after investigation, police found the case of negligence and rash driving to be true against the driver of the offending vehicle and submitted the charge-sheet.

4. In her claim petition, the claimant claimed of compensation of rupees four lacs. Notices were issued to opposite party no.1, owner of the offending vehicle and opposite party no.2, the National Insurance Company. Even after valid service of notice, opposite party no.1 did not appear and claim case proceeded ex parte against him. Opposite party no.2, National Insurance Company appeared and filed their written statement along with a petition under Section 170 of the M.V. Act which was allowed. In its written statement, the Insurance Company accepted the policy of the offending vehicle to be

valid and effective on the date and time of accident, however, it was contended that the driver of the offending vehicle was not holding a valid and effective driving licence and also owner of the offending vehicle had not obtained road permit, tax token and other documents which are necessary for plying the vehicle in a public place. However, it was admitted that offending bus had obtained road permit for the purpose of school in Patna city from school to Fatuha Tediki Pool, Deedarganj Check Post etc. but accident took place on 13.08.2011 in Karakat, District, Rohtas. There is a breach of policy as such, Insurance company is not liable to indemnify the owner of the vehicle.

5. On the rival pleadings of the parties, the Tribunal framed three issues for its determination. Three witnesses were examined on behalf of the claimants who have supported the claim case. Witness no.1 in her deposition has stated that deceased was 25 years old and he was a Home Guard Driver in Bihar Grih Raksha Vahini and his monthly income was Rs.6,000/- per month and his allowance was Rs.4,000/- per month. She has submitted the salary slip of the deceased. Witness no.2 Avinash Kumar is an eye witness of the occurrence and in his deposition, he has stated that the bus was being driven in a rash and negligent manner which resulted in

accident and death of Shubash Chandar. Witness No.3 Raj Kumar is the brother of the deceased and he in his deposition has also supported the factum of the accident, the age and monthly income of the deceased. Apart from oral evidence, claimants have produced documentary evidence which has been marked as exhibits by the Tribunal. Ext. 1 is certificate issued by the District Commandant of Bihar of duty allowance. Ext.2 is the original certificate of deceased issued by the Bihar School Examination board. Ext.2/1 is mark-sheet of intermediate of deceased. Ext.2/2 is mark-sheet of B.A. Hons. Ext.2/3 is N.C.C. certificate of deceased. Ext.3 is certified copy of F.I.R. Ext. 4 is certified copy of charge-sheet. Ext. 5 is certified copy of postmortem report. Ext. 6 is G.T. of deceased. Ext.7 is photo copy of insurance policy. Ext. 8 is the owner book.

6. On behalf of opposite party no.2, Insurance Company, one oral witness Ajay Sharan has been examined who is an investigator. He has stated in his deposition that he conducted an enquiry with respect to driving licence of driver of the offending vehicle in which he has stated that photocopy of the licence is forged and report has been marked as Ext.B. The photo copy of permit no.132/2010 issued by the Deputy Transport Commissioner is marked as Ext.A.

7. After considering the oral and documentary evidences and materials placed on record, the Tribunal has held that the deceased was 25 years old and he was killed in a motor accident on account of rash and negligent act of driver of the offending vehicle and, as such, claimants are entitled for compensation. The Tribunal has further held that at the time and date of accident, the offending vehicle was insured with the National Insurance Company and the insurance policy was valid and effective as such, the Insurance Company is liable to indemnify the owner of the offending vehicle and pay the compensation amount. The tribunal has held that the deceased was 25 years old and has assessed his monthly income as Rs.4,000/- per month and has also granted 25% as future prospect. Dependents of deceased are 5 as such Tribunal has deducted 1/5th towards his personal expenses and has assessed loss of annual dependency as Rs.48,000/- and has applied 17 as the multiplier and has assessed the compensation amount to be Rs.8,16,000/-. Thereafter, the tribunal has granted compensation under conventional heads as Rs.10,000/- for loss of estate, Rs.10,000/- for loss of love and affection and Rs.10.000/- for funeral expenses and has quantified the amount of compensation to be Rs.8,46,000/- and after deducting Rs.50,000/- which was

paid as interim compensation, has directed the Insurance Company to make payment of Rs.7,96,000/- along with 6% interest per annum from the date of application till its payment.

8. On the basis of admitted facts and the law laid down by the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Ors. since reported in (2017) 16 SCC 680, the quantum of compensation is re-assessed by this Court:-

Annual Income	Rs.4000x12	= Rs. 48,000/-
future prospect	40%	= Rs.19,200/-
Total Income		= Rs. 67,200/-
Personal expenses 1/5th		=Rs.13,440/-
Loss of dependency (annual)		= Rs.53,780/-
Multiplier (17) =		=Rs.9,14,260/-
Conventional heads		=Rs.70,000/-
Total compensation		=Rs.9,84,260/-

9. The insurance company is directed to pay the compensation amount of Rs.9,84,260/- (rupees nine lakhs eighty four thousand two hundred sixty only) with interest at the rate of 6% per annum to the claimants from the date of filing of claim petition till date of payment within two months from the date of receipt/production of copy of order passed by

this Court.

10. The submission of the counsel for the insurance company that tribunal ought to have directed the owner of the offending vehicle to pay the compensation amount cannot be accepted in view of consistent view of the Apex Court on the issue that even if there is infringement of terms and conditions of policy of insurance, the insurance company has to pay the compensation to the claimant and, thereafter, can recover the same from the owner of the offending vehicle and same has been followed by the tribunal directing the insurance company to pay the compensation amount with a right of recovery from the owner of the offending vehicle.

11. Both the miscellaneous appeals are disposed of.

12. Let the LCR be returned forthwith to the court below.

13. The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company at the time of filing of appeal be remitted in the Bank account of claimant no. 1 through electronic mode upon furnishing the bank account details in the format to be provided by the Office to the learned counsel for the claimants, who shall fill the format and submit the same in the Office so that amount could be remitted in the

bank account of claimant no. 1 which shall be adjustable in the compensation amount.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2019
Transmission Date	NA