IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.716 of 2017

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Rampreet Gupta, S/o Batekhar Gupta, r/o village Bankatia, P.S. Kateya, District- Gopalganj.

... ... Appellant/s

Versus

1. The Branch Manager, Oriental Insurance Company Ltd. Branch Brahm Chauk, District, Gopalganj.

2. Ishwar Singh, S/o Ramjatan Singh, r/o village Singhatole Tarwa, PS Mirganj, District Gopalganj, owner of the Vehicle.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Chandra Kant, Adv.
For the Respondent no.1 : Mr. B imlesh Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed for enhancement of compensation amount by the claimant/appellant awarded by the judgment dated 03.03.2016 and award dated 17.03.2016 passed by 6th Additional District

Judge-cum- Motor Accident Claims Tribunal, Gopalganj, passed in Claim Case No. 01 of 2008 by which the learned tribunal has granted Rs. 1,54,000/- as compensation on account of death of son of claimant.

3. Briefly stated the case of claimant is that his son died in a motor accident on 01.05.2002 and at that time he was aged 10 years. The offending vehicle was a Mahindra Jeep, bearing registration No. BR-28L 8751 and due to rash and negligent driving by the driver of the offending vehicle, accident took place causing death of the son of claimant. The F.I.R. was instituted being Kateya P.S. Case No. 51 of 2002 under Sections 279 and 304-A of I.P.C. and after investigation, police found the case to be true against the driver and submitted chargesheet against him.

4. Notices were issued to opposite party nos. 1 and 2, who appeared and filed their written statement in which they have denied the claim of claimant/appellant.

5. Opposite party no.2 insurance company also appeared and denied the claim of claimant. It has been further stated in written statement that the accident was not result of rash and negligent driving by the driver of the offending vehicle. It is also admitted that on the date of accident the

vehicle was insured by the insurance company.

6. On the basis of pleadings of parties four issues were framed by the Tribunal for its determination.

7. Two witnesses were examined on behalf of claimant and apart from oral evidence, seven documentary evidences were produced which were marked as Exhibits by the Tribunal. Exhibit- 1 is the F.I.R. Exhibit-2 is the inquest report. Exhibit-3 is the chargesheet. Exhibit-4 is the post mortem report. Exhibit- 5 is the registration certificate. Exhibit- 6 is the driving license and Exhibit-7 is the insurance policy.

8. On the basis of oral and documentary evidence the tribunal found that due to rash and negligent driving by the driver of the vehicle the accident took place resulting in death of son of claimant. The tribunal has found that at the time of death the age of deceased was 10 years and as per schedule-II of Section 163(A) of Motor Vehicle Act has taken notional income as Rs. 15,000/- per annum and further deducted 1/3rd of the amount towards personal expenses and has found loss of dependency as Rs. 10,000/- and thereafter applied 15 as multiplier and assessed Rs. 1,50,000/- as compensation and further awarded Rs. 2,000/- for funeral

expenses, Rs. 2500/- for loss of estate and quantified Rs. 1,54,500/- to be just and proper compensation.

9. This court re-assesses the amount of compensation for which claimants are entitled in terms of judgment and order passed by the Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. Since reported in (2017) 16 SCC 680.***

10. Rs. 15000/- is taken as notional income and 20 to be multiplier and as such claimant/appellant are entitled for Rs. 3,00000/- (three lacs) and apart from the said amount additional compensation under conventional heads is granted as Rs. 40,000/- for loss of love and affection, Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate and accordingly a sum of Rs. 3,70,000/- is assessed as just and proper compensation for which claimant is entitled with an interest @ 6 per cent per annum from the date of claim application till its payment.

11. It has been submitted by learned counsel for the insurance company that claim amount as determined by the tribunal has already been paid to the claimant with interest as such the remaining amount which is to be paid to the claimant will be made after deducting the amount already

paid from Rs. 3,70,000/-.

12. In view of the above, it is directed that the remaining compensation amount be paid to the claimant after deducting the amount already paid to the claimant from Rs 3,70,000/- with interest @ 6% Per annum on remaining compensation amount from the date of application till the date of payment within three months from the date of receipt/production of a copy of order passed by this Court.

13. The right of recovery granted to the insurance company from the owner of offending vehicle after paying the compensation amount is not interfered with.

14. This miscellaneous appeal is allowed to the extent as indicated above.

(S. Kumar, J.)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2019
Transmission Date	NA