

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.349 of 2017

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Birendra Sah, Son of Jiyut Sah, Resident of Village and Post- Malawar, Police
Station- Sheosagar, District- Rohtas.

... .. Appellant/s

Versus

Laxmi Narayan Sah, Son of Late Ramsigasan Sah, Resident of Village- More,
Saray, Police Station- Sheosagar, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhaneshwar Prasad Gupta, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 31-07-2019

I.A. No. 2964 of 2017

Heard parties.

This interlocutory application has been filed for
condoning the delay of 06 months 19 days in preferring the
present appeal.

For the reasons mentioned in this interlocutory
application, this Court is satisfied that the appellant was
prevented from sufficient cause from preferring this appeal
within time.

As a result, this interlocutory application is allowed
and the delay in filing this appeal is hereby condoned.

M.A. No. 349 of 2017

Heard the parties.



2. Aggrieved by judgment dated 01.07.2016 and Award dated 16.08.2016 passed by learned 7th Additional District Judge-cum-Motor Vehicle Claims Tribunal Rohtas at Sasaram passed in M.V. Claim Case No. 146 of 2013, appellant owner of the offending vehicle has filed this miscellaneous appeal against grant of compensation of Rs. 5,07,400/- (rupees five lacs seven thousand four hundred) with interest @ 7% per annum from the date of filing of claim petition till its realization.

3. Claim petition has been filed under Section 166 of M.V. Act by the claimant/respondent who suffered injuries from the tractor which was owned by Birendra Sah and was having no registration number. Tractor was being driven in a rash and negligent manner as a result of which on account of fault of driver of the tractor claimant/respondent was injured and suffered multiple injuries and was admitted in a clinic at Sasaram on 17.03.2013 and was discharged on 30.03.2013 during which he was operated by the doctor and had to spent Rs. 10,68,900/- as medical expenses and his left leg was permanently disabled.

4. F.I.R. was instituted on the basis of statement made by claimant giving rise to Sasaram (Muffasil) P.S. Case No. 27 of 2013 dated 18.03.2013 under Section 279, 337, 338 &



427 of I.P.C. against the driver of the offending tractor and after completion of investigation police found the case to be true and submitted chargesheet against the driver Bijay Kumar Singh.

5. Age of the claimant is 30 years and he was an insurance agent and used to earn Rs. 6,000/- but due to said accident he became permanent disabled resulting in loss of earning. Claimant has claimed Rs. 5,60,000/- as compensation against the owner and driver of the offending tractor.

6. In spite of valid service of notice opposite party owner/driver did not appear and the case proceeded ex parte against him.

7. Tribunal framed three issues for its consideration and determination.

8. Three witnesses were examined on behalf of claimant and documentary evidences were also adduced which were marked as Exhibits by the tribunal. Exhibit- 1 to 1/C are bills of medicines and nursing charges. Exhibit-1/D, 1/E are cash receipt. Exhibit-2 is certified copy of F.I.R. Exhibit-3 is certified copy of chargesheet. Exhibit-4 is disability certificate. Exhibit-5 is L.I.C. agent license. Exhibit-6 is photo copy of sale certificate of Mahindra Tractor with owners name Birendra Sah. Exhibit- 6/1 is detail tax invoice of said tractor.



9. On the basis of oral and documentary evidences produced by claimant the tribunal had held the claimant got injured while returning to his home on 17.03.2013 on his bike and when he reached near Rajaram Petrol pump at about 9:00 P.M. tractor driver Bijay Kumar Singh of the offending tractor took a sudden turn as a result of which motorcycle of claimant collided and claimant suffered grievous and multiple injuries due to rash and negligent act of the driver of the offending tractor. He was admitted in clinic at Sasaram on 17.03.2013 where lot of expenses were made in his treatment and he became 40% permanent disabled from his right leg. The offending vehicle was not insured as such, owner of the vehicle was liable to pay the compensation amount for the rash and negligent act of his driver.

10. The tribunal has assessed the age of claimant as 30 years and his earning to be Rs. 4,500/- per months and due to 40% disability there is loss of earning of 40% i.e. Rs. 18,00/- and has applied multiplier 18 and assessed compensation to be Rs. 3,88,800/- and has also found Rs. 1,11,001/- spent on treatment for which he was entitled to be re-embursed and has allowed Rs. 10,000/- towards pain and suffering and Rs. 3,000/- for nutrition and Rs. 4,500/- as loss of income during period of



treatment and has calculated total compensation to be Rs. 5,07,400/- for which claimant is entitled with interest @ 7% per annum from the date of filing of claim petition till its realization.

11. Counsel for the appellant has argued that no proper notices were issued and served upon him as such, he could not appear and contest the matter. If the notice was not properly served upon the appellant he had the remedy of filing an application under Order 9 Rule 13 of C.P.C for setting aside of the ex parte award. However, when he has preferred an appeal against Award, same can be assailed on merit of the case and non-service of notice cannot be raised in appeal as such, appellant is precluded to raise said issue in this appeal.

12. It has been further submitted on behalf of counsel for the appellant that the tribunal did not consider the contributory negligence on behalf of deceased who was riding motorcycle, upon which three persons were sitting as such he also contributed in said accident, as such, 50% of Award should be reduced on account of contributory negligence of deceased.

13. The tribunal has applied wrong multiplier as age of deceased was 30 years and appropriate multiplier would be 17. The rate of interest should be 6%.



14. After hearing the parties and considering the materials available on record, in absence of appellant appearing and contesting the claim case and raising issue of contributory negligence before claims tribunal same cannot be permitted to be raised at appellate stage when there is neither any pleading nor any evidence nor any issue framed by the claims tribunal nor any finding recorded by it, in absence of which said ground of contributory negligence is not available to appellant in present appeal.

15. Claimant was 30 years of age as such the appropriate multiplier would be 17 and accordingly the award is reduced as Rs. 4,86,800/- and rate of interest is reduced from 7% to 6% from the date of filing of claim petition till its realization.

16. The award passed by the claims tribunal is modified to the extent that compensation amount will be Rs. 4,86,800/- with rate of interest as 6% per annum from the date of filing of claim application till its realization.

17. The amount of Rs. 25,000/- which was deposited by the appellant at the time of filing of appeal, a cheque for the same be prepared in the name of claimant/respondent and sent to the concerned tribunal for its payment to the



claimant/respondent and said amount is adjustable in the compensation amount.

18. This miscellaneous appeal is disposed of.

(S. Kumar, J)

Rajiv/-

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

