IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.276 of 2018

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Branch Manager, The New India Assurance Co. Ltd. Darbhanga, through Its Chief Regional Manager and the Constituted Attorney, Regional Office The New India Assurance Co.Ltd., 6th Floor, B.S.F.C. Building, Fraser Road, Patna-1,

...O.P. No.3 ... Appellant/s

Versus

1. Jivachhi Devi, Wife of Late Ram Chandra Das, Resident of Village -Karza Patti. P.S.-Kamraul, Dist.-Darbhanga.

..... Claimant/ Respondent 1st set

2. Arjun Yadav Son of Vimal Yadav Resident of Village-Ketuka, P.O.-Bariaul, P.S.-Sadar, Dist.-Darbhanga.(Driver of the Vehicle Bearing no. BR-07G-4625).
3. Vimal Yadav Son of Chalittar Yadav, Resident of Village- Kartuka (Ketuka), P.O.-Rarual (Bariaul), P.S.- Sadar, Dist.-Darbhanga (Owner of the Vehicle No. BR-07G-4625)

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

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Appearance :

For the Appellant/s : Mr.Raj Kumar Singh Vikram
For the Respondent no.3 : Mr.Sunil Kumar Karn

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 09-07-2019

Heard parties.

This appeal under Section 173 of M.V. Act has been filed by the appellant / the New India Assurance Co. Ltd. against the judgment and award dated 23.12.2017 passed by learned 5th Additional District Judge-cum- Motor Accident Claims Tribunal, Darbhanga in claim case No.109 of 2013 by which the claims tribunal has directed the appellant – insurance company to pay compensation amount of Rs.9,59,776/- to the claimant with 6% interest from the date of filing of application till its realization.

Claimant who is mother of deceased has filed claim application under Section 166 of M.V. Act for grant of compensation on account of death of her son Ram Sukal Das in a motor accident caused by offending vehicle bearing registration No. BR – 07G-4625 which was being driven in a rash and negligent manner by the driver of the offending vehicle. It has been stated that on 24.4.2013 at 7 p.m. said pick-up van was going to Bariaul from Kampaul and dashed against deceased Ram Sufal Das as a result of which, he was seriously injured and was brought to D.M.C.H. for treatment, however, he succumbed to his injures on 24.5.2013 at 3.30 p.m. Driver of the offending vehicle fled away after accident.

FIR was instituted giving rise to Kamtaul P.S. case no.45/2013 dated 25.4.2013 under Section 279, 337, 338, 304A of IPC and after completion of investigation, police found the allegations of rash and negligent driving to be true against the driver and submitted charge-sheet against him.

On notice being issued, opposite party no.1, the owner of the offending vehicle and opposite party no.2, the driver of the offending vehicle appeared and filed their written statement. Opposite party no.3 - appellant- Insurance Company also appeared and filed its written statement.

Opposite party no.1 and opposite party no.2 in their written statement have stated that the vehicle was issued certificate of fitness for plying as pick-up van and at the time of accident was insured with New India Assurance Co. Ltd. Vehicle was being driven by the driver in a careful manner and not in a negligent and rash manner and owner is not liable to pay any compensation amount to the claimant.

Opposite party no.3 /appellant/Insurance Company filed their written statement in which they have stated that the claimants have not pleaded rash and negligent driving of the vehicle by the driver and as such claim application is fit to be dismissed. The driving licence, registration book, road tax, road permit and insurance policy is to be produced by the owner of the offending vehicle.

On the basis of rival pleadings of the parties, seven issues were framed by the tribunal for its determination.

In support of her claim case, three witnesses were examined on behalf of claimants among them AW3 Baiju Ram was an eye-witness. Documentary evidences were also produced before the tribunal which have been marked as Exhibits. Ext. 1 is certified copy of FIR. Ext 2 is certified copy of charge sheet. Ext. 3 is the certified copy of postmortem report. Ext. 4 is photo copy of family member certificate. Ext. 5 is insurance policy of offending vehicle.

No evidence has been led on behalf of opposite parties.

On the basis of oral and documentary evidence, the tribunal held that deceased Ram Sufal Das died due to rash and negligent driving by OP2 -driver- Arjun Yadav. The tribunal has held that the vehicle was insured by the appellant – Insurance Company as such Insurance Company is liable to pay the compensation amount. The tribunal has held that the offending vehicle had valid permit and registration certificate and driver had valid and effective driving licence. The tribunal has assessed the daily income of deceased to be Rs.162/- per day on basis of notification issued under Minimum Wages Act regarding wages of unskilled labour in Bihar and accordingly the monthly income would be Rs.4,860/- and annual income would be Rs.58,320/-. The age of deceased has been assessed to be 19 years. As deceased was unmarried and five family members were dependant upon him as such the tribunal had deducted 1/3 towards his personal income in view of law laid down by Apex Court in Sarla Verma Versus Delhi Transport Corporation since reported in AIR 2009 Supreme Court 3104 and in case of National Insurance Company Ltd. Vs. Prnay Shetey and has accordingly assessed loss of dependency to be Rs.38,880/- and has applied 18 as multiplier as deceased was 19 years old and has assessed amount of compensation as Rs.6,99,840/- and, thereafter, has added 40% towards future prospect and has granted compensation under conventional heads as Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate and has quantified the compensation amount to be Rs.10,09,776/-. Rs.50,000/- has already been paid as an interim compensation as such, the tribunal has directed the insurance company to pay compensation amount of Rs.9,59,1776/- with interest @ 6% per annum from the date of filing of claim case till its realization.

After hearing the counsel for the appellant-insurance company and counsel for the claimants, this Court does not find any illegality or irregularly in the order passed by the claims tribunal and, accordingly, appeal filed by the appellant-insurance company is dismissed.

The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company at the time of filing of appeal, same may be remitted in the account of respondent no.1 /claimant through RTGS after name of the bank and saving account number of claimant is furnished by the counsel for the claimants/respondents, which shall be adjusted in the claim amount.

Let the LCR be returned forthwith to the court concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2019
Transmission Date	NA