

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.514 of 2009

1. Smt. Rekha Devi w/o Late Ram Karan Bhagat
2. Aditya Kumar
3. Avisekh Kumar, Both s/o Late Ram Karan Bhagat under the guardianship of natural mother, appellant No.1. All r/o of Village-Rupauli Ghat, P.O. & P.S.- Bishanpur, District- Darbhanga. At present C/o Shri Shambhu Kishore Prasad, Advocate cousin brother of appellant No.1, Mohalla- Mohddipur, P.O.- Munger, P.S.- Kashim Bazar, District- Munger.

... .. Appellant/s

Versus

1. Shyam Sunder Singh s/o Pheru Singh, r/o Delhi Road, P.O. + P.S. & District- Gaziabad (U.P.).
2. Dilbar Singh s/o Kauwar Singh, r/o Mohalla- Doghat, P.O. & P.S.- Doghat, District- Bagpat (U.P.).
3. The National Insurance Company Ltd. having its Divisional Office at Khalifabagh Chowk, Bhagalpur.
4. The National Insurance Company Ltd. having its Office at Baraut, Distric Bhagpat (U.P.).
5. The National Insurance Company Ltd. having its Branch Office at Town Hall Road, P.S.- Kotwali, District- Munger.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arvind Kumar Tewary, Advocate
Mrs. Rashmi Kumari, Advocate
For the National Insurance Company : Mr. Ashok Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-01-2019

Heard learned counsel for the parties.

2. This appeal has been preferred, under Section 173 of the Motor Vehicles Act, 1988, against the judgment dated 18.05.2009 and award dated 02.06.2009, passed by the learned 1st Additional District Judge-cum-Motor Vehicles Accident Claim Tribunal, Munger in Claim Case No.71 of 2002.



3. The wife and children of *Late Ram Karan Bhagat* filed Claim Case No.71 of 2002, claiming compensation of Rs.3,60,000/- (Rupees Three Lacs and Sixty Thousand) for death of *Ram Karan Bhagat* in a motor vehicle accident. The accident was allegedly caused by a truck bearing Registration No.HR-38f-3707 on 03.04.2002 at 11.30 P.M. at N.H.31 near Begusarai Jail.

4. By the impugned judgment passed by the learned Additional Motor Vehicle Accident Claim Tribunal, Munger, prayer for compensation was refused on the ground that no material has come on the record to substantiate that the victim died in a motor vehicle accident.

5. For the aforesaid conclusion, a separate issue No.2 was framed by the Tribunal, as to whether *Ram Karan Bhagat* died due to motor vehicle accident on N.H.31 near Begusarai Jail, vide Begusarai Police Station Case No.86 of 2002.

6. Submission of the learned counsel for the appellants is that Begusarai Town Police Station Case No.86 of 2002 was registered on 04.04.2002 on the statement of *Havaldar, Raj Kumar Singh* was recorded, wherein he stated that the truck bearing Registration No.HR-38F-3707 was found turned turtle and the coal loaded on that had scattered in the ditch by the side of the road. The aforesaid F.I.R. was marked as ***Exhibit 1*** by the



Tribunal. **Exhibit 2** is postmortem report of *Ram Karan Bhagat*. The postmortem examination was performed on 05.04.2002 at 11.40 A.M. The doctor found that the death was due to *asphyxia*, as a result of smash of face by cold dust. **Exhibit 5** was charge sheet submitted in the aforesaid case. The driver of the truck had lodged Begusarai Town Police Station Case No.87 of 2002 on 04.04.2002 for the same occurrence, which was brought on the record as **Exhibit B**. In the F.I.R., the driver simply alleged the authorities of raiding party, who had taken over the truck were responsible for the accident.

7. On the basis of the aforesaid documents and oral evidences coming on the record, the learned Tribunal came to the conclusion that there is no material to substantiate that *Ram Karan Bhagat* had died in that accident.

8. Contention is that the Tribunal failed to exercise powers and jurisdiction vested in it, which resulted in miscarriage of justice rather denial of justice to the appellants. If, the Tribunal would have called for case diary of Begusarai Town Police Station Case No.86 of 2002, as empowered under Section 169(2) of the Motor Vehicles Act, 1988 or the Investigating Officer would have sent a report to the Tribunal, as required by



sub-section (6) of Section 158 of the Motor Vehicles Act, 1988, the entire discrepancy could have been cleared.

9. Section 158(6) reads as follows:-

As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.

10. The case diary revealed that during investigation it had come that the unknown dead body which was found from beneath the truck was of *Ram Karan Bhagat*. If the Police would have reported the matter to the Tribunal, the impugned judgment would not have been passed.

11. Further Sub-section (2) of Section 169 of the said Act empowers the Tribunal as follows:-

The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to



be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

12. If the Tribunal would have exercised this power for calling the case diary, entire inconvenience would have been resolved. A copy of the case diary of Begusarai Town Police Station Case No.86 of 2002 has been produced by the appellants which reveal that two dead bodies were recovered from beneath the said truck. One body was of constable *Ashok Kumar Singh* and the other was of unknown person. At the postmortem room, the unknown dead body was identified by the family members, as that of *Ram Karan Bhagat*.

13. Learned counsel for the respondents-the National Insurance Company Limited has opposed the prayer. However, he does not dispute the factual position of this case and submits that if the matter would be remitted back, the interest, if any, be calculated from the date of remand because no fault of insurer is there in early disposal of the matter.

14. From the discussions made above, it is evident that the learned Tribunal failed to exercise jurisdiction in calling for the case diary which would have made it clear that in fact *Ram Karan Bhagat* had died in the referred motor vehicle accident and the prayer of the claimant for compensation could not have been



rejected on this score only. If, the impugned order would be allowed to stand, it would cause failure of justice. Hence, in my view this is a case of remand for substantial justice in this case with direction to the tribunal to proceed according to law.

15. Accordingly, the impugned judgment is hereby set aside and the matter is remitted back to the Tribunal to decide the matter according to law expeditiously within a period of three months.

16. The Tribunal shall record its own finding on the claim of interest on the amount awarded without being prejudiced by any submission of learned counsel for the respondents herein.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
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