

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.690 of 2010

1. The Branch Manager, National Insurance Company Ltd. Giridih.
2. Divisional Manager, National Insurance Company Ltd. Bhikhanpur Chowk
P.S. Kotwali, District- Bhagalpur both represented through Shri Anjani Kumar
working as A.O. and duly constituted attorney of National Insurance
Company having its Regional Office at 4th Floor, Sone Bhawan, P.S.
Sachivalaya, District- Patna.

... .. Appellant/s

Versus

1. Sabita Devi wife of Late Paintu Yadav.
2. Sanjay Yadav.
3. Manoj Yadav.
4. Phul Kumari.
5. Jeerawati Devi wife of Biranchi Yadav
All resident of Village- Letwa, P.S. Katoria, District- Bhagalpur.
6. Saloni Murmur wife of Nunu Lal Manjhi resident of Village- Medani
Soren, P.s. Goday, District- Giridih at present residing at village- Kaithatkar,
P.S. Katoria, District- Banka.
7. Rajendra Turi son of Lalten Turi, resident of village- Khashbabu Rampur,
P.S. Belhar, District- Banka.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shilendra Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-04-2019

Heard the parties.

2. Aggrieved by the judgment dated 30.03.2010
and award dated 14.05.2010 passed in Motor Accident Claim
Case No. 120 of 1997, by District Judge cum Motor Vehicle
Accident Claim Tribunal, Bhagalpur, the appellant Insurance
Company has filed this Miscellaneous Appeal.

3. Claimant is the widow of deceased Paintu Yadav



and her legal heirs, who had filed the claim petition under Section 166 of the Motor Vehicle Act, 1988 for grant of compensation of Rs. 2,01500/- with interest, pendente lite and future.

4. Nunu Lal Manjhi (opposite party No.1) and Saloni Murmu (opposite party No. 2) were the owners whereas Rajendra Turi (opposite party No. 3) was driver of the vehicle and the vehicle was insured by National Insurance Company Limited, Opposite party No. 4, who is the appellant here.

5. Claimant had filed the claim for compensation that her husband was coming on 03.01.1994 at about 6.30 P.M. when a tractor dashed against him in which he was seriously injured and died while being carried to hospital. The cause of death has been attributed to the accident by said tractor. The tractor was being driven in a rash and negligent manner by the driver and for which Katoria P.S. Case No. 1/97 was instituted under Sections 279 and 304A of I.P.C.

6. The deceased was 30 years old and was a labourer and claim was based upon loss of earning. From the record, it appears that owners (opposite party Nos. 1 and 2) and driver (opposite party No.3) did not appear before the Tribunal in spite of valid service of notices against them and proceeding



was conducted ex-parte against them. The claim was contested by the opposite party Nos. 4 and 5 Insurance Company and in their written statement they have pleaded that deceased died out of his own fault and there was no case of reckless and negligent driving by the driver of the tractor.

7. On the basis of pleadings, the Tribunal had framed six issues for adjudication in this case. In support of her claim case, the claimant had brought F.I.R. (Exhibit-1), Fardbeyan (Exhibit-3), Post-mortem Report (Exhibit-2), copy of Insurance policy (Exhibit-3). Authenticity and genuineness of said documents were not questioned by the Insurance company, Beside the above documentary evidence, the claimant had adduced oral evidences and four witnesses were examined on her behalf. No documentary or oral evidence was adduced on behalf of opposite party No. 5 National Insurance company.

8. On the basis of evidences adduced on behalf of claimant, Tribunal has come to a finding that deceased Paintu Yadav was earning Rs. 50/- per day and has assessed his monthly income as Rs. 1500/-. He was aged 30 years at the time of his death and applying multiplier of 18 for determining the compensation the Tribunal has assessed the compensation of Rs. 2,18,160/-. In addition to said compensation, funeral expenses



of Rs. 2000/-, loss of Consortium of Rs. 5000/- and loss of Estate of Rs. 2,500/-, totaling Rs. 2,27,660/- has been assessed by the Tribunal as just compensation to be granted to the legal heirs of deceased and subtracting Rs. 50,000/- interim compensation granted under Section 140 of the M.V. Act, the total compensation payable is Rs. 1,80,000/-.

9. After going through the order passed by the Tribunal, and considering the materials available on record this Court does not find any illegality or irregularity in the order passed by the Tribunal by which the Insurance Company has been directed to pay compensation to the claimant.

10. However, since the driving licence was never produced before the Tribunal in order to determine whether tractor was being driven by the person holding valid driving licence, as such, liberty is given to the Insurance Company that if there has been any violation of terms and condition of Insurance between the vehicle owner and the Insurance company, the Insurance Company is given liberty to realize the compensation amount paid to the claimant from the owner and driver of the offending vehicle.

11. Miscellaneous Appeal is disposed of with such liberty to the Insurance Company. The amount of Rs. 25000/-



deposited by the Insurance Company for which a cheque drawn in favour of claimant Sabita Devi is directed to be prepared and send to her through the Tribunal, which will be adjusted in the compensation amount to be paid by the Insurance Company and same will be paid within two months from the date of receipt/production of this order before the Tribunal.

12. Let the L.C.R. be returned to the court concerned forthwith.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.05.2019
Transmission Date	N.A.

