IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.297 of 2014

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The New India Assurance Company Ltd. Through Branch Manager, The New India Assurance Company Limited, Branch Darbhanga, At. Katahalwari, Post & District- Darbhanga, Bihar, Appeal and and Appellant through the Manager and Authorized Signatory, Regional Office, The New India Assurance Company Limited, 6th Floor, BSFC Building, Frazer Raod, Patna

... ... Appellant/s

Versus

1. Amiri Khatoon, W/o Md. Zahid Resident of Village Mishrauli, P.O. Kansi Simri, District Darbhanga.
2. Sri Ganesh Sah, S/o Sri Rajendra Sah, Resident of Village /Post Paigampur, P.S. Singhwara, District Darbhanga (owner).
3. Sri Shatrudhan Thakur, S/o Lt. Sonu Thakur, Resident of Village /P.O. Rampur, P.S. Singhwara, District Darbhanga (Driver).

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Durgesh Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
Date : 06-05-2019

Aggrieved by judgment dated 21.02.2014 and Award dated 16.04.2014 passed by District Judge-cum-Motor Vehicle Accident Claim Tribunal, Darbhanga, in Claim Case no. 78 of 2011 granting compensation amount of Rs. 3,65,000/- (Rupees three lacs sixty five thousand) only. The insurance company has filed this appeal against said judgment and Award.

Briefly stated the facts of the case is that on 10.04.2011 at about 8:00 A.M. the deceased Md. Shamsher Khan, son of the claimant was coming to his house after attending the coaching center when the offending vehicle dashed against him in which he sustained grievous injury and died on the spot. The F.I.R. was lodged under Sections 279 and 304(A) of the Indian Penal Code against the driver of the vehicle, who is opposite party no.2 and after investigation police submitted chargesheet against him for rash and negligent driving resulting into death of deceased who was 10 years old at the time of his accidental death.

Opposite party no.2 had valid driving licence and the vehicle owner was opposite party no.1. The offending vehicle was insured with the opposite party no.3 the New India Assurance Company Ltd. and the claimant parents of deceased made claim for payment of compensation amount Rs. 6 lacs (Rupees six lacs).

The opposite party no.3 is New India Assurance Company Ltd. (appellant) appeared before the Tribunal and filed their written statement. It was stated in their written statement that deceased died due to his own fault and there was no fault by the driver of offending vehicle and same was being driven in the normal manner, as such, claimants are not entitled for any compensation.

Opposite party nos.1 and 2 who are the owner and driver of the offending vehicle also appeared and filed their written statement and produced the policy of insurance contending that vehicle was insured with opposite party no.3 New India Assurance Company Ltd. at the time of accident and the driver had a valid driving licence.

In support of Claim Case altogether 3 witnesses including claimant and 2 eye-witness of occurrence were examined who have supported the Claim of claimants and apart of oral evidences, documentary evidences have also been adduced before the Tribunal which were marked as Exhibits and same are certified copy of F.I.R. (Ext-1), certified copy of charge sheet (Ext-2), certified copy of post mortem report (Ext-3), copy of Driving Licence (Ext-4), copy of death certificate (Ext-5), copy of family member certificate (Ext-6) and registration certificate of the offending vehicle (Ext-7) and the insurance policy of the offending vehicle (Ext-8).

No witnesses were examined on behalf of opposite party nor any documentary evidence were produced by them before the Tribunal.

The appellant New India Assurance Company Ltd. is aggrieved by the quantum of compensation granted by the Tribunal and assailed the same on various grounds however in the light of judgment in the case of ***Reshma Kumari Vs. Madan Mohan*** reported in ***2013 Vol .9 SCC page 65,*** this court finds that the claimants are entitled for compensation of the amount as granted by the Tribunal and not inclined to interfere with the quantum of compensation amount granted by the Tribunal.

Accordingly, this Miscellaneous Appeal is dismissed.

The insurance company is directed to pay the amount of compensation with interest @ 6% from the date of filing of the claim application till realisation within two months from the date of receipt/production of order passed by this Court.

The statutory amount deposited by the New India Assurance Company at the time of filing of Appeal for which a cheque of Rs. 25,000/- (Rupees twenty five thousand) is directed to be prepared in the name of respondent no.1 and sent to the Tribunal for its payment to the claimant which shall be subject to adjustment in compensation amount.

Let the Lower Court Record be returned to the concerned Tribunal forthwith.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2019
Transmission Date	NA