

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.571 of 2014

1. Shakuntala Devi Wife of Late Ram Swarath Ram.
2. Abhinav Abhay Son of Late Ram Swarath Ram.
3. Archana Bharti
4. Aradhana Kumar. Both daughters of Late Ram Sawarath Ram. All Resident of Mohalla- Mela Road, Bhavdepur, Shiv Colony, Ward No. 21, Police Station and District – Sitamarhi.

... .. Appellant/s

Versus

1. Pushpa Ranjan Son of Shyamdeo Singh. Resident of Mohalla - Mela Road, Bhavdepur, Police Station and District – Sitamarhi.
2. Major Chandra Bhushan Dwivedi, Branch Manager, The Oriental Insurance Company Ltd. Kargil Chowk, Mohalla - Rajopatti, Police Station and District - Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prasoon Sinha, Advocate
For the Respondent No.2	:	Mr. Sanjay Kumar No.1, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 11-03-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred, under Section 173 of the Motor Vehicles Act, 1988, against the order dated 04.06.2014, passed by the learned District Judge-cum-Motor Vehicles Accident Claims Tribunal, Sitamarhi dismissing Claim Case No.36 of 2014.

3. The appellants are wife and children of *Late Ram Swarath Ram*. They had filed an application for compensation



under Section 166 as well as under Section 140 of the Motor Vehicles Act for interim compensation before the Claim Tribunal.

By the impugned order, the claim petition was dismissed at the preliminary stage, on the ground that the death of *Ram Swarath Ram* was result of murder and not a motor vehicle accidental death. Hence, the claimants were not entitled for compensation. The said order is under challenge in this appeal.

4. For the occurrence of death of *Ram Swarath Ram*, Majorganj Police Station Case No.144 of 2013 was registered under Sections 394, 302 of the Indian Penal Code as well as under Section 27 of the Arms Act, on the statement of *Varun Kumar*.

5. According to F.I.R., the deceased was Manager of the Punjab National Bank. He along with the informant boarded a four wheeler to go to their destinations. On the way, the motor cycle borne criminals intercepted and the pillion rider of the motorcycle resorted indiscriminate firing, which caused injury to the informant as well as to the driver and to the Manager also. During course of treatment, the Bank Manager, namely, *Ram Swarath Ram* died.



6. Learned counsel for the appellants contents that from the material collected during investigation of the case, it revealed that the purpose of murderer was to snatch away the money of the Bank Manager, which was kept in a black bag, which would be evident from the F.I.R. In achieving the desired felony, they fired, causing death of *Ram Swarath Ram*. Since the death was caused during use of motor vehicle hence, the dependents of the deceased are entitled for compensation. Reliance has been placed on the judgment of the Hon'ble Supreme Court in *Smt. Rita Devi & Others Vs. New India Assurance Co. Ltd. & Another*, reported in 2000(3) *Supreme* 698.

7. Learned counsel for the respondent No.2, the Oriental Insurance Company Limited opposed the prayer. However, no other law has been placed for consideration contrary to the judgment in *Rita Devi's case*.

8. In *Rita Devi's case*, the passengers boarded the auto rickshaw on which the deceased was a driver. On the way, one of the passengers intended to loot away the auto rickshaw and to achieve the desired result, he had to eliminate the driver. Hence, he committed the murder of the driver.



9. The Hon'ble Supreme Court considered the provisions of Section 163-A of the Motor Vehicles Act, which creates liability of the insurer to pay in case of death or permanent disablement due to accident arising out of the use of motor vehicle. Sub-section (2) thereof provides that the claimants shall not be required to plead or establish that the death or permanent disablement was due to any wrongful act or neglect or default of the owner of the vehicle concerned or any other person.

The Hon'ble Supreme Court held that the dependents/heirs of the victim would be entitled for compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle without having to prove any wrongful act or neglect or default of anyone.

10. In para 10 of the judgment, the Supreme Court observed as follows:-

“The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if



the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

11. In para 12 and 13 of the judgment, the Hon’ble Supreme Court considered the judgment in the case of *Nisbet Vs. Rayne and Burn*, reported in *1910(1) KB 689*, which was followed by a majority of the House of Lords in the case of *Board of Management of Trim Joint District School Vs. Kelly*, *1914 AC 667* and held in para 14 of the judgment as follows:-

“Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw, then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.”

The Supreme Court further held that the provisions of Workmen Compensation Act and the Motor Vehicles Act are beneficial enactment working in the same field. Hence, interpretation of the word “*death*” in Workmen



Compensation Act would be applicable in the matter of Motor Vehicles Act also.

12. *In Nisbet's case* (supra) it was held as follows:-

“That the murder was an “accident” from the standpoint of the person who suffered from it and that it arose “out of” an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of Challis (supra). In this case of Nisbet, the Court also observed that “it is contended by the employer that this was not an “accident” within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word “accident” negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet.”

In Nisbet's case, the cashier while travelling in a railway to a colliery with a large sum of money for the payment of his employers workmen, was robbed and murdered.

13. In the case before the court below, the murder of the Manager was committed to achieve the goal of robbing him, as he was carrying cash with him and for that reason the F.I.R. was lodged under Sections 394 and 302 of the Indian Penal Code.

14. In view of the settled principles of law above, the impugned order is bad in law. Hence, the same is *set aside* and the matter is remitted back to the court below with a direction to



proceed according to law by treating the application under Section 166 as an application under Section 163A of the Motor Vehicles Act.

15. Accordingly, this appeal stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14.03.2019
Transmission Date	14.03.2019

