

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.22 of 2016

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1. Kalhi Devi, W/o Late Baijanath Rai
 2. Chandraket Rai, S/o Late Baijnath Rai.
 3. Dinesh Rai, S/o late Baijnath Rai.
 4. Jitendra Kumar, S/o Late Baijnath Rai
 5. Varun Kumar, S/o Late Baijnath Rai.

All are resident of village- Chausia, P.S. Sonepur, District- Saran. At present C/o Shiv Ganga Press Gudari Bazar, Hajipur, District- Vaishali.

... ... Appellant/s

Versus

1. Nandkishore Singh, S/o Late Satyanarayan Singh, resident of village – Maunaphatak, Chapra, District- Saran (owner of Bus No. BR-04-D-4561)
2. Ramji Rai, S/o Ramlal Rai, resident of village- Lauakal, P.S. Baniyapur, District- Saran (driver of Bus No. BR-04-D-4561)
3. Reliance General Insurance Company Ltd., through Manager (Legal)
(A) The Manager (Legal)
8th Floor, Himalya House, 38 B, J.L. Nehru Road, Kolkata-71
(B) Branch Manager, Reliance General Insurance Company Ltd.
301-302, Kaushalya Apartment, Bandar Bagicha Near Dakbunglow Chowk, Patna.

... ... Respondent/s

with

Miscellaneous Appeal No. 308 of 2016

Reliance General Insurance Co. Ltd. through its Branch Manager, 301-302, 3rd Floor, Kaushalya Estate, Bandar Bagicha, Dak Bunglow Road, Chouraha, P.S.- Kotwali, District- patna

... ... Appellant/s

Versus

1. Kalhi Devi, W/o Late Baijanath Rai
2. Chandraket Rai, S/o Late Baijnath Rai.
3. Dinesh Rai, S/o late Baijnath Rai.
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5. Varun Kumar, S/o Late Baijnath Rai.

All are resident of village- Chausia, P.S. Sonepur, District- Saran. At present C/o Shiv Ganga Press Gudari Bazar, Hajipur, District- Vaishali.

... ... Respondent/s



Appearance :

(In Miscellaneous Appeal No. 22 of 2016)

For the Appellant/s : Mr. Mukesh Prasad Singh, Adv.

For the Respondent/s : Mr. Alok Kumar @ Alok Kr Shahi, Adv.

(In Miscellaneous Appeal No. 308 of 2016)

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Adv.

For the Respondent/s : Mr. Mukesh Prasad Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 03-07-2019

Heard both the parties.

2. Miscellaneous Appeal No. 22 of 2016 has been filed on behalf of claimant/appellant for enhancement of compensation amount whereas Miscellaneous Appeal No. 308 of 2016 has been filed on behalf of Insurance Company for setting aside the judgment dated 26.06.2015 and Award dated 10.07.2015 passed by 6th Additional District Judge-cum-Motor Accident Claims Tribunal, Vaishali at Hajipur in Claim Case No. 22 of 2010.

3. Claimants are the widow and her four sons who have filed the claim petition on account of death of husband of claimant No.1 on 19.10.2009 while he was sitting on motorcycle, a bus bearing registration no. BR-04D-4561 collided with the said motorcycle due to rash and negligent driving by the driver of the bus as a result of which the husband of claimant no.1 Baijnath Rai was seriously injured.



He was carried to the hospital where he was declared by doctors as brought dead.

4. The accident was reported to the police upon which Sonapur P.S. Case No. 268 of 2009 was instituted under Sections 279, 337, 338 and 304(A) of the Indian Penal Code against the driver of the offending bus. After investigation police submitted chargesheet against the driver.

5. It has been further stated that the deceased was an employee of Bihar State Electricity Board having income of Rs. 23,026/- per month and was aged about 55 years on the date of his accidental death. Notices were issued to the driver and owner of the offending vehicle but in spite of service of notice they did not appear and the case was decided ex parte against them.

6. Opposite party no.3, the Insurance Company appeared and filed their written statement and have denied the claim of the claimant. It has been admitted by them that on the date of accident the offending bus was insured with the Insurance Company. They have further stated in their written statement that it appears that driver was not having a valid driving license as such the company is not liable to indemnify the owner of the vehicle as there was violation of terms and



conditions of insurance policy. They have further contended that there was contributory negligence on behalf of deceased also as three persons were sitting on the motorcycle which met the accident being in violation of Motor Vehicle Rules.

7. On the basis of pleading of the parties, claims tribunal framed five issues for its determination. In support of her claim case claimant examined six witnesses and apart from oral evidence, documentary evidence were also produced. Exhibit-1 is photocopy of certificate of deceased Baijnath Rai, Exhibit- 2 is FIR of Sonapur P.S. Case No. 268 of 2009, Exhibit-3 is Charge sheet submitted in Sonpur P.S. Case No. 268 of 2009, Exhibit- 4 is Postmortem report of deceased Baijnath Rai.

8. Opposite party has neither examined any oral evidence nor produced any documentary evidence. However, investigation report of the investigator Prabin Kumar has been produced and marked as Exhibit-A on behalf of opposite party.

9. On the basis of evidences and materials placed before the tribunal, the tribunal has held that deceased died due to negligent and rash driving by the driver of the offending bus. The tribunal on the basis of pay slip has



assessed that the monthly income of deceased was Rs. 23,026/- and his age was 55 years and has assessed the income of deceased as Rs. 20,315/- and added 15% as future prospects since his age was between 50-60 years and applying multiplier of 11 has found his total income as Rs. 30,83,817/- and thereafter 1/3rd has been deducted for his personal expenses and has assessed loss of dependency to be Rs. 19,55,878/- and thereafter has deducted 10% on account of contributory negligence and has found Rs. 17,60,291/- as just compensation amount to be granted to the claimants.

10. Aggrieved by the quantum of the compensation the claimants have preferred this appeal and after hearing the parties, this court re-assessed the quantum of compensation. In the income of the deceased allowances has to be added as income. 15% is to be added as future prospects and 11 will be appropriate multiplier. The number of dependents are four, as such 1/4th has to be deducted for personal and living expenses of deceased. The plea of contributory negligence was neither pleaded nor any evidences was led by the opposite party/insurance company before the tribunal, as such, no deduction can be made under such head. Only because three persons were riding on motorcycle will not infer any



contributory negligence unless and until it is established that same contributed to the accident. Apart from this claimant is also entitled for a sum of Rs, 70,000/- in the head of loss of consortium, loss of estate and funeral expenses.

11. This Court re-assesses the amount of compensation for which petitioner is entitled.

Annual Income(Rs. 23026X12)	= 2,76,312/-
Future Prospect(15%)	= Rs. 41,446/-
Total Income	= Rs. 3,177,58/-
Personal Expenses (1/4th)	= Rs. 2,38,318/-
Multiplier (11)	= Rs. 26,21,498/-
Conventional heads	= Rs. 70,000/-
Total compensation	= Rs. 26,91,498/-

12. From the perusal of record, it appears that the claimants have already been granted Rs. 50,000/- as interim compensation. Hence, the total compensation amount to be paid will be Rs. 26,41,498/- along with interest as allowed by the Tribunal from the date of application till its payment, after making deduction of the income tax as applicable on the relevant date.

13. These miscellaneous appeal are allowed to the extent as indicated above.



14. Let the statutory amount deposited in M.A. No. 308 of 2016 be sent to the concerned Tribunal for its payment to the claimant and same shall be adjusted in the total award amount.

15. Let LCR be returned to the court concerned forthwith.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.08.2019
Transmission Date	N.A.

