IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.301 of 2015

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The Branch Manager National Insurance Company Ltd. Through Sri Arun Kumar A.O. Cum and Duly constituted Attorney National Insurance Company Ltd. Regional Office 4th Floor, Sone Bhawan, BC Patel Raod, P.O. GPO, P.S. Sachiwalaya Patna District Patna----(Opp. Party No. 2 and 5)

………..... ... Appellant/s

Versus

1. Mosst. Ramrekha Devi and Ors Wife of Late Madan Kumar Jha
2. Meera Kumari daughter of Late Madan Kumar Jha
3. Mausmi Kumari daughter of Late Madan Kumar Jha
4. Anarjeet Kumar son of Late Madan Kumar Jha
5. Nitesh Kumar son of Late Madan Kumar Jha
6. Neeraj Kumar son of Late Madan Kumar Jha all Resident of Village Kolhanta Patori, P.S. Moro District Darbhanga
7. Manoj Kumar Gupta Son of Vishwanath Pd. Gupta Resident of Kalyanpur P.O. Kalyanpur Chowk P.S. Kalyanpur District Samastipur
8. Umesh Mahto Son of Nanu Lal Mahto Resident of Vilage Hasanpur P.S. Kalyanpur District Samastipur
9. Dinesh Sharma son of Ram Pd.Choudhary Resident of Village Kolhanta Patori, P.S. Moro District Darbhanga

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr.Ashok Priyadarshi

For the Respondents : Mr. Baidyanath Thakur, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 09-05-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed on behalf of National Insurance Company Ltd., against the order of rectification dated 30.06.2014 by which judgment dated

15.03.2014 and award dated 05.12.2014 passed by M.V. Claims Tribunal, Darbhanga, in M.V. Claim Case No. 132 of 2009, by which the claims Tribunal has enhanced the compensation amount by reviewing its judgment and order dated 15.03.2014.

3. Claimant-respondent nos. 1 to 6 had filed a claim case under section 166 of the Motor Vehicles Act, 1988, for grant of compensation of Rs. 6,50,000/- on account of death of husband of claimant no. 1/respondent no. 1 Madan Kumar Jha, in an accident. It has been stated in the claim petition that on 28.06.2009, while the husband of claimant no. 1/respondent no. 1 was returning home by driving Jeep bearing registration no. MH-06-1783 when one Truck bearing registration no. BR-06-3769 being driven rashly and negligently by the Driver collided with the Jeep, as a result of which the husband of claimant no. 1/respondent no. 1 died on the spot. The offending vehicle (Truck) was owned by Opposite Party No. 1/ respondent no. 7 and driven by Opposite Party No. 3/respondent no. 8 and insured by National Insurance Company Ltd, appellant herein. The Jeep which was driven by the deceased on the date of accident was owned by Opposite Party No. 1 (2nd Set) and insured by Opposite Party No. 2 (2nd Set) National Insurance Company Ltd., appellant herein.

4. The Jeep which was being driven by the deceased and the same was owned by Dinesh Sharma respondent no. 9, and he stated in his written statement that on the request made by the deceased he gave his Jeep to him for carrying goods from the market to his native village for the purpose of marriage of daughter of the deceased. However, in the way same collided with the offending Truck resulting in his death. The written statement was also filed on behalf of Insurance Company that there was contributory negligence on the part of both the vehicles and the deceased himself contributed to the accident, as such claimant is not entitled for compensation.

5. On the rival pleading of parties, the Tribunal framed six issues for determination and in support of her claim, claimant examined five oral witness and also produced documentary evidence in support of her claim. Exhibit 1 is certified copy of FIR of Bishanpur P.S. Case No. 42 of 2009, Exhibit-2 is certified copy of chargesheet, Exhibit-3 is photocopy of death report, Exhibit-4 is post mortem report of the deceased, Exhibit-5 is the certified copy of charge sheet and Exhibit-6 is the driving license of the deceased.

6. Opposite Parties had not adduced any evidence either oral or documentary to controvert the claim of applicant.

7. On the basis of ocular evidence of eye witnesses and documentary evidence the Tribunal held that due to rash and negligent driving by the Driver of the offending vehicle (Truck), accident took place. The deceased was holding a valid driving license to drive Light Motor Vehicle (LMV) on the date of accident.

8. The Tribunal has assessed the monthly income of deceased as Rs. 4500/- per month and his annual income to be Rs. 54,000/- and since number of dependents were six, 1/5th of his income has been deducted towards his personal expenses and as such has assessed loss of dependency to be Rs. 43,200/- per annum and has applied 17 as multiplier considering the age of deceased as 34 years on the date of accident and has assessed the loss of dependency to the family to be Rs. 7,34,400/- and has further granted additional compensation as Rs. 5000/- towards loss of consortium, Rs. 5000/- towards loss of estate and Rs. 2000/- towards funeral expenses and total compensation for which claimants have been found to be entitled is Rs. 7,46,400/- to be paid by the Insurance Company to the claimants as on the date of accident the offending vehicle (Truck) was insured with the Insurance Company. However, the Tribunal has given liberty to the insurance company that if there was any

violation of terms and conditions of insurance policy, the insurance company can realize the amount from the owner of the offending vehicle(Truck) and since interim maintenance of Rs. 50,000/- was already paid, the remaining amount of compensation of Rs. 6,96,400/- was directed to be paid by the Insurance Company to the claimant and it was directed that since claimant no. 1 is the widow and claimant nos. 2 to 6 are minor daughters, as such Rs. 75,000/- each was directed to be deposited in fixed term deposit in nationalized bank as per choice of claimant no. 1 for the period of five years till the age of attaining majority by order dated 15.03.2014.

9. After passing of the said award a petition was filed on behalf of claimant for correcting the arithmetical calculation in the award dated 15.03.2014, in which it was stated that although judgment and award dated 15.03.2014 has already been passed but while passing the award some guidelines as laid down by the Apex Court was not followed and in view of the judgments as referred has redetermined annual income of deceased as Rs. 54,000/- and without making any deduction on account of personal expenses has assessed the loss of dependency to be Rs. 9,18,000/- and has directed to pay the compensation amount of Rs. 9,30,000/- with interest @ 12 per

cent per annum in place of 8 per cent and allowed the re-determined compensation by order dated 30.06.2014, and enhanced the amount of compensation by amending the order dated 15.03.2014, against which the present miscellaneous appeal has been filed by the Appellant-Insurance Company.

10. After hearing the parties, and going through the materials available on record, this Court finds that subsequent order passed by the Tribunal dated 30.06.2014, in the garb of correcting the arithmetical errors and enhancing them was without jurisdiction and beyond its competence, as such same is not sustainable and accordingly, set aside.

11. Since the earlier order of the Tribunal to keep compensation amount in fixed deposit for five years has already expired, the claim amount of Rs. 6,96,400/- along with interest @ 8 per cent per annum from the date of application till its payment shall be apportioned among the claimants in equal shares within three months from the date of receipt/production of a copy of the order passed by this Court.

12. The statutory amount of Rs. 25,000/- deposited by the appellant at the time of filing of appeal, a cheque for the same would be prepared in the name of respondent no. 1-claimant and be handed over to the learned counsel for the

respondent no. 1 for its onward payment to the claimant.

13. The miscellaneous appeal is allowed to the extent as indicated above.

Let the LCR be returned to the court below forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2019.
Transmission Date	NA