

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.769 of 2016

Branch Manager, Oriental Insurance Company Limited, Purab Bazar, Saharsa,
appeal and appellant through the Assistant Manager/ authorized signatory /
Duly constituted Attorney, regional office, Oriental Insurance Company
Limited, Pirmuhani, Patna

... .. Appellant/s

Versus

1. Kalpana Devi, w/o Lt. Balvir Mandal
2. Sonali Kumari, D/o Lt. Balvir Mandal
3. Raushan Kumar, S/o Lt. Balvir Mandal
(Res. Nos.2 & 3 are minor under the guardianship of mother,
Res.1)All the above are resident of village- Tetrahi, P.S. Pipra, Dist.
Supaulclaimants/respondents
4. Lalan Kumar, S/o Ganpati Yadav (Owner) , resident of village –
Gelhia, P.S. Pipra, Dist. Supaul O.P. 2- respondent
5. Arjun Sharma, S/o Lt. Ganesh Sharma, resident of village, Jhitkiyahi,
P.S. Pipra, Dist, Supaul ...O.P. 3 – Respondent
6. Bharti Devi, W/o Lt. Dip Narayan Mandal, resident of village, Tetrahi,
P.S. Pipra, Dist. SupaulOP -4/ respondent

Appearance :

For the Appellant/s : Mr.Durgesh Kumar Singh
For respondent nos.1 to 3 & 6 : Mr. Amrit Abhijat
Mr. S. Kr. Singh, Advocates
For the Respondent nos.4 & 5 : Mr. Naresh Kr. Mehta, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-08-2019

I.A. No.3448 of 2017:

Heard.

This interlocutory application has been filed for
condoning the delay in preferring the present appeal.

For the reasons mentioned in this interlocutory
application, this Court is satisfied that the appellant was
prevented for sufficient reasons from preferring this
miscellaneous appeal within time.



As a result, this interlocutory application is allowed and the delay in filing this miscellaneous appeal is hereby condoned.

M.A. No.769 of 2016:

Heard parties.

This appeal under Section 173 of the M.V. Act, 1988 has been filed by the Oriental Insurance Company Limited for setting aside the judgment dated 26.2.2016 and award dated 9.3.2016 passed by learned Additional District Judge-II-cum-Motor Vehicle Accident Claims Tribunal, Supaul in claim case No.19 /12 by which the claims tribunal has awarded compensation of rupees ten lakhs thirty thousand to the claimants.

Claimants who are widow and children of deceased Balbir Mandal have filed claim case for grant of compensation of rupees eleven lakhs on account of death of husband of claimant no.1 in a motor accident due to rash and negligent driving by the driver of the tractor with trailer bearing registration No. BR 50-8169 and BR 50-8170 which was insured with the Oriental Insurance Company Limited on the date of accident.

Claimants have stated in claim petition that on



24.12.2011 at about 10 a.m. Balbir Mandal was coming from his *sasural* on Hero Honda motorcycle when a tractor bearing registration no. BR – 50-8169 which was being driven in a rash and negligent manner by the driver of said tractor dashed against the motorcycle of Balbir Mandal causing grievous injury to him and he was rushed to hospital where he was declared brought dead.

On basis of fardebyan, FIR was registered giving rise to Trivenganj P.S. Case No.209/2011 under section 279, 337, 304(A) IPC against the unknown driver of offending tractor. After investigation, police submitted charge-sheet against the driver of the offending vehicle. Postmortem of the deceased was conducted in Sadar Hospital, Supaul. In the claim petition, it is stated that deceased was a carpenter having a monthly income of Rs.7,500/- and was aged 30 years.

Written statement was filed on behalf of opposite party no.1/Oriental Insurance Company denying the claim of claimants and have further stated that road permit, driving licence and registration certificate of vehicle were not brought on record by the claimants. Written statement was also filed on behalf of opposite party nos.2 and 3, owners of the offending vehicle in which it has been stated that all the relevant



documents in order to ply the vehicle on road is with the owner and there was no fault on the part of driver of the offending vehicle. The offending vehicle was insured with Oriental Insurance Company Limited on the date of accident.

On the basis of rival pleadings the claims tribunal framed four issues for its determination.

Four witness were examined on behalf of the claimants and documentary evidences were also produced in support of claim case which included Ext.1, FIR., Ext.2, Charge-sheet, Ext. 3, registration book, Ext. 4 MVI report, Ext. 5, postmortem report, Ext. 6, insurance policy and Ext. 7 fitness certificate.

Opposite parties neither produced any oral nor any documentary evidence.

On the basis of documentary evidence as well as oral evidence, the tribunal held that the deceased died due to rash and negligent driving by the driver of the offending tractor as such claimants are entitled for grant of compensation. Claims tribunal has assessed the annual income of deceased to be Rs.90,000/- and has deducted 1/3 towards his personal expenses and assessed loss of dependency to be Rs.60,000/-. Deceased was aged about 30 years as such has applied multiplier of 17



and worked out the compensation amount to be rupees ten lakhs twenty thousand and further granted compensation under conventional heads as Rs.5,000/- for loss of consortium, Rs.5,000/- for funeral expenses and quantified total compensation as rupees ten lakhs thirty thousand for which claimants were found to be entitled with 6% simple interest per annum from the date of filing of claim petition till its realization. Since Rs.50,000/- was already paid as interim compensation, the claims tribunal directed the Insurance Company to pay the remaining compensation amount of rupees 9 lakhs eighty thousand with 6% interest per annum from the date of filing of claim application till its payment.

After hearing the counsel for the parties, this Court does not find any illegality, error or infirmity in the order passed by the claims tribunal requiring any interference by this Court in appeal.

The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company at the time of filing of appeal, be remitted to the claimant no.1 through electronic mode upon furnishing the details in the format to be provided by the Office to the learned counsel for the claimants, who shall fill the format and submit the same in the Office so that amount could be



transferred in the bank account of the claimant no.1 which shall
be adjustable in the compensation amount.

Accordingly, this miscellaneous appeal is disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2019
Transmission Date	NA

