

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.237 of 2013

United India Insurance Company Limited, Branch Office Arrah, Bhojpur.
Appeal and Appellant through the Manager & Constituted Attorney, Regional
Office, United India Insurance Company Limited, 3rd Floor, Chanakya
Towers, R'Block, Patna

... .. Appellant/s

Versus

1. Most. Sunaina Devi W/O Lt. Lochan Thakur
2. Dhanji Thakur S/O Lt. Lochan Thakur,
3. Bir Bahadur Thakur S/O Lt. Lochan Thakur,
4. Jagu Thakur S/O Lt. Lochan Thakur,
5. Gayanti Kumari D/O Lt. Lochan Thakur,
6. Puja Kumari D/O Lt. Lochan Thakur,
7. Lagan Kumari D/O Lt. Lochan Thakur, (Res. Nos.2 to 7 is minor sons and Daughters Under The Natural Guardian Mother, Res. No. 1) All the above are Resident Of Village- Jamira, P.S.- Arrah Mofassil, Dist. Bhojpur
8. Janardan Prasad S/O Ganesh Prasad Singh Resident Of Village/ Ps Chandi, P.O.- Narhi, Dist.- Bhojpur, Owner Of Tractor
9. Tun Tun Rai S/O Katu Rai Resident Of Village Jamira, P.S. Arrah Mofassil, Dist. Bhojpur, Driver

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Durgesh Kumar Singh, Adv
For the Respondent Nos.1 to7	:	Mr.Bajarangi Lal, Adv
For the Respondent No.8	:	Mr.Anish Chandra Sinha, Adv
	:	Miss. Sangha Mitra Ghosh, Adv.
	:	Mr. Krishna Murari Rawt, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 11-03-2019

I.A.No. 196 of 2016 is an application under Section 5 of the Limitation Act for condonation of delay in filing of this appeal. Delay is of few days. Hence, the delay is condoned. Accordingly, I.A.No. 196 of 2016 stands disposed of.



2. Heard learned counsel for the parties under Order 41 Rule 11 C.P.C.

3. The United India Insurance Company Ltd. has challenged the award dated 30.11.2012 made in Complaint Case No.26 of 2002 by the Motor Accident Claim Tribunal at Ara allowing compensation of Rs.3,60,000/- alongwith 9% interest from the date of filing of the application in favour of respondent Nos.1 to 7.

4. Deceased Lochan Thakur was husband of claimant No.1. On the date of accident, he was returning to his house. As he reached near the referred bridge, a rash and negligent tractor coming from behind came and touched him which resulted in injury to Shiv Lochan Thakur @ Lochan Thakur. Thereafter, the driver of the vehicle Tuntun Rai started quarrel with the injured and being infuriated, he again started the tractor and crushed the injured within its wheel, as a result whereof, Mr. Thakur died in the hospital. The son of the victim is informant of Ara Mufassil P.S.Case No.101 of 2000 brought on record as Ext.1. Ext.3 is postmortem report of the deceased, Ext.5 is death certificate and Ext.6 is statement of Medical Officer.

5. The learned Tribunal considered that the victim at the time of his death, was aged about 40 years and his monthly



income was Rs.3,000/-. After deducting 1/3rd, the multiplier of 15 was used.

6. The insurer has challenged the award on the ground that it was a case of murder and not a road accident. The wife of the deceased, who is one of the claimants, deposed in the criminal case that the driver of the tractor intentionally crushed her husband to death. Consequently, the criminal court convicted to the driver under Section 302 I.P.C. In the present FIR also, the offence under Section 302 I.P.C. was added during investigation of the case. He further submitted that the same claimant has deposed in the claim case that her husband died due to rash and negligent driving of the driver. In the circumstance, the wife of the deceased is playing both hot and cool which she cannot be permitted to do. Judgment of conviction of the driver under Section 302 I.P.C. was there before the learned Tribunal which the Tribunal failed to appreciate in correct perspective.

7. Section 166 of the Motor Vehicles Act requires that an application for compensation arising out of an accident of the nature specified in sub-section(1) of Section 165 of the Act may be filed before the Tribunal by the referred person and Section 168 says that the Tribunal shall hold an enquiry to decide the claim. The trial of an offender under Section 302 I.P.C. stands on



different footing and enquiry under Section 168 Cr.P.C. stands on different footing. Some exaggeration or it may be said for argument sake that material exaggeration in the statement of the witness cannot be sole determining factor to decide just compensation. The Tribunal has to ascertain only as to whether the death was result of motor vehicle accident or whether it was result of some other act. Once the Tribunal comes to the conclusion that on the basis of material on the record that the death was result of motor accident, the next court has to decide is just and reasonable compensation.

8. Learned counsel for the appellant has placed reliance on the judgment of **Smt Rita Devi & Ors Vs. New India Assurance Co.Ltd. & Anr** reported in **2000 (3) SC 698** for his submission that in a case of murder, compensation cannot be allowed under the provisions of Motor Vehicles Act.

9. Rita Devi case is distinguishable for the reason that the victim of Rita Devi case was a driver of Auto Rikshaw. The passengers boarded on the Auto Rikshaw and one of the passengers on the way decided to commit an act of felony by stealing the Auto Rikshaw and in course of achieving the said object of stealing the Auto Rikshaw, he had to eliminate the driver of the Auto Rikshaw. In the circumstance, the Hon'ble Supreme



Court held that death caused to the driver of Auto Rikshaw was an accidental murder and compensation was made.

10. Learned counsel for the claimants submits that the appellant had not raised this issue that death was murder and not as accident in the written statement filed in the claim case.

11. In this case, the initial accident was also caused by the driver of the tractor when the deceased asked him to drive properly. The driver scuffled and in a rash, he again started driving the tractor and went away crushing the deceased. Therefore, in my view, this is a case of motor vehicle accident and not of murder for the purpose of deciding compensation.

12. Learned counsel for the claimant/respondents asks for enhancement of the compensation on the ground that settled principles of calculation was not followed by the Tribunal. However, learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in **Ranjana Prakash & Ors Vs. Divisional Manager & Anr** decided on 29.07.2011 in **Civil Appeal No.6110 of 2011**, wherein the Hon'ble Supreme Court in para-8 of the judgment considered the provisions of Order 41 Rule 33 C.P.C. and held that the High Court cannot obviously increase the compensation in an appeal by owner/insurer for reduce the



compensation, nor it can reduce the compensation in an appeal by the claimant seeking enhancement of the compensation.

13. In the present case, there is no prayer of the claimants for enhancement of compensation. Hence, there is no question of increase of compensation.

14. In the result, this appeal is dismissed. However, without any cost in the facts and circumstances of this case. The statutory amount be remitted to the learned court below for payment to the claimants.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.03.2019
Transmission Date	NA

