IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.534 of 2014

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1. United India Insurance Co. Ltd. through Divisional Manager, D.O.-2, Ahmadabad
2. United India Insurance Co. Ltd. through Divisional Manager, Dr. R.P. Road, Bhagalpur, District, Bhagalpur
   Both appearing through the Manager and Constituted Attorney of United India Insurance Company Limited, Regional Office, Hotel Chanakya Complex, R-Block, Patna.

The Insurer of Vehicle -opposite party nos.3 & 4 ... ... Appellant/s

Versus

1. Deji Devi, W/o Late Umesh Kumar Singh
2. Vikash Kumar (Minor), S/o Late Umesh Kumar Singh
3. Komal Kumari (Minor) D/o Late Umesh Kumar Singh,
   Both the minors represented through their mother as the natural guardian & next friend. All resident of Village Basgadhrha, P.S. Korha, District Katihar, Presently residing at Jawahar Talkies Road, Nathnagar, P.S. Nathnagar, District Bhagalpur.
   ……………...Claimants – Respondent 1st Set
4. Aarti Roadys Pvt. Ltd., Paresh Nagar Society, Gujarawadi, wadi, Baroda, Gujrat Owner of GJ 6 VV 7496 through its proprietor.
   ……………..Opposite party no.1- Respondent 2nd Set
5. Shobha Nath Yadav, S/o Sukhram Yadav Resident of Village Nanaipur, P.O. Uraiya, District Pratapgarh, Uttar Pradesh

Opposite Party no.2- ... ... Respondent 3rd Set

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Appearance :

For the Appellant/s	:	Mr. Harendra Kumar
For the cross Objector-	:	Mrs. Pallavi Pandey
		Mr. Madan Mohan, Advocates

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 19-06-2019

Heard parties.

2. Aggrieved by the judgment dated 20.3.2014 and Award dated 30.4.2014, the appellant-United India Insurance Company Limited has preferred this miscellaneous appeal whereas claimant – respondents have filed cross objection for

enhancement of compensation amount.

3. Briefly stated the facts of the case is that the claimants are widow and minor daughter of deceased Umesh Kumar Singh who while riding on a motorcycle met with an accident by a truck No.GJ-7496 which was being driven in a rash and negligent manner by the driver of the offending vehicle and died on the spot.

4. An F.I.R. was instituted giving rise to Kodha P.S. Case No.76/11 dated 5.5.2010 under Sections 279, 337, 338 and 304 A of the Indian Penal Code and after investigation, police found the case to be true against driver and submitted Charge-sheet No.91/2010 in the trial court against the truck driver, Sohba Nath Yadav.

5. Claimant, Deji Devi is widow and claimant nos.2 and 3 are minor son and daughter of the deceased Umesh Kumar Singh. Notices were issued to opposite party nos.1 and 2 who are the driver and owner of the offending vehicle but in spite of the valid service of notice, they did not appear and contested the case before the Tribunal and same was decided *ex parte* against them, however, opposite party nos.3 and 4, Oriental Insurance Company appeared and contested the matter.

6. On the pleading of the parties, the Tribunal

framed five issues. Claimants in support of her claim case produced oral as well as documentary evidences. Claimant, Deji Devi has been examined as Witness No.1, whereas, Mithilesh Kumar Singh, Tulsi Paswan and Ashok Kumar Singh have been examined on behalf of the claimant as witness nos.2, 3 and 4 and apart from the oral evidence, documentary evidences have also been adduced on behalf of the claimant. Ext. 1 is the salary slip of the deceased. Ext. 2 is F.I.R. of Kodha P.S. Case No.76/2010. Ext. 3 is the charge-sheet No.-91/2010 filed in Kodha P.S. Case No.76/2010. Ext. 4 is the postmortem report of deceased Umesh Kumar Singh. Ext. 5 is the insurance policy of the offending truck and Ext. 6 is the succession certificate of the deceased.

7. It has been argued on behalf of appellant – Insurance Company that deceased was also responsible for said accident as he was riding a motorcycle on which two more persons were sitting as a result of which, accident took place and there being contributory negligence on part of deceased, the Tribunal committed error by granting 100% compensation to the claimants.

8. The Insurance Company has to prove and establish if there was any contributory negligence on part of

deceased and same requires to be pleaded and proved by leading evidences. In present case, police has found driver of the offending vehicle to be rash and negligent and nothing has been alleged against the deceased for being responsible for accident in any manner. The Insurance Company is also required to establish that triple loading had resulted in accident and in absence of which, contributory negligence cannot be attributed to the deceased.

9. On the basis of admitted facts that income of the deceased was Rs.6,000/- per month and his age was 32 years at the time of death and he died leaving behind three dependants , this Court re-assess the quantum of compensation which is just and fair and for which claimants are entitled.

(i) Annual Income	**=**	**Rs. 72,000/-**
(ii)Future prospect 40%	**=**	**Rs. 28,800/-**
(iii) Total Income	**=**	**Rs. 1,00,800/-**
(iv)Personal Expenses (1/3rd)	**=**	**Rs. 33,600/-**
(v) Loss of dependency	**=**	**67,200/-**
(vi) Multiplier (67,200x16)	**=**	**16**
(vii) compensation	**=**	**Rs. 10,75,200/-**
(viii)Funeral Expenses	**=**	**Rs. 15,000/-**
(ix) Loss of estate	**=**	**Rs.15,000/-**
(x) Loss of Consortium	**=**	**Rs.40,000/-**

(xi) Total compensation = Rs.11,45,200/-

(xii) Interim compensation granted = Rs.50,000/-

(xiii) Net balance compensation = Rs.10,95,200/-

10. The insurance company is directed to pay the compensation amount of Rs.10,95,200/- to the claimants with 6% interest per annum from the date of filing of claim application till its payment.

11. The statutory amount of Rs.25,000/- which was deposited by the appellant - Insurance Company for which a cheque be prepared in the name of claimant no.1 and send to the concerned Claims Tribunal for its payment to the claimant and which shall be adjusted in the compensation amount.

12. Miscellaneous appeal is disposed of.

13. Let the L.C.R. be returned forthwith to the court concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2019
Transmission Date	NA