IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.672 of 2014

==

Polo Devi, W/o Matalu Rishi, Permanent Residents of Vill. and P.O.-Diwandih, P.S.-Korha, District -Katihar. Presently residing at Vill.-Vinoba Tola (Jot Govind), P.O. and P.S.-Ismailpur, District -Bhagalpur.

... Claimant ... Appellant/s

Versus

1. The Branch Manager, the New India Assurance Co. Ltd., Near Ghantaghar Chowk, P.O. & P.S. Dist. Bhagalpur
2. The New India Assurance Co. Ltd. 4 Lyons Range, Ist Floor, Kolkata, 700001
3. The New India Assurance Co. Ltd. At. P.O. and P.S.-Faridabad (U.P).
   ……………Opp. 1st parties/ respondents
4. Sahid Khan, Owner S/o Washir Khan, Resident of Village - Dhouj, P.O. and P.S.-Ballabgarh, District-Faridabad. (Hariyana)
   ……...opp. 2nd party/ respondent
5. Sahabuddin (Driver), S/o Rehman, C/o Sahid Khan, S/o Rehman, C/o Shahid Khan, S/o Wasir Khan, Resident of Vill.-Dhouj, P.O. and P.S.-Ballabhgarh, District - Faridabad (Hariyana).

Opp 3rd Party / Respondent/s

==

Appearance :

For the Appellant/s : Ms. Sarita Bajaj
For O.P. nos.1 to 3 : Mr. Mukeshwar Pd. Singh

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 09-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of the appellant against the judgment dated 16.07.2014 and award dated 04.08.2014 passed by the Additional District & Sessions Judge-I-cum- Additional Motor Accident Claims Tribunal, 1st, Naugachia, District, Bhagalpur in claim case No.120/09 by which the learned tribunal has dismissed the claim case of the claimant/appellant.

3. Claimant – appellant is mother of deceased who has filed claim case No.120 of 2009 under Section 166 of the Motor Vehicle Act stating therein that her son Lochan Rishi died in a motor accident on 25.08.2008 due to rash and negligent driving by the driver of Truck No. HR-38N-8343. In her claim petition, she has given her permanent address as resident of village Divandih, P.S. Kodha, District, Katihar and her present address as village, Binoba Tola P.S. & P.O. Ismailpur, District, Bhagalpur. It has been contended on behalf of the claimant that deceased's monthly income was Rs.4,500/- and he was a Raj Mistri and was aged 20 years at the time of death.

4. Accident took place on 25.08.2008 at Pawai Chowk, P.S. Kohra, District Katihar at 2.30 p.m. at N.H. 31. The vehicle was insured by New India Assurance Co. Ltd and the same has been admitted in written statement filed before the Tribunal. F.I.R. was instituted giving rise to Kodha P.S. Case No.203/08 dated 25.08.2008 under Sections 279, 304 A of the IPC. Inquest report was prepared and postmortem report was conducted at Sadar Hospital, Katihar on 26.08.2008. After investigation, police found the case of rash and negligent driving of the offending vehicle to be true and submitted charge-sheet against the driver of offending vehicle.

5. The owner of the vehicle and the driver of the offending vehicle were noticed by the Tribunal but even after valid service of notice, they did not appear and the case proceeded ex parte against them.

6. Written statement was filed on behalf of the New India Assurance Co. Ltd. in which they have denied their liability to pay the compensation to the claimant. It has further been stated in the written statement that Insurance Company has no knowledge about the residential address of the victim and his legal heirs or representatives and claim case is also barred by jurisdiction as claimant is permanent resident of Katihar district and accident also took place in Katihar district. They have denied that victim was earning Rs.4,500/- per month.

7. On the basis of pleadings of the parties, the Tribunal had framed six issues for its determination.

8. The Tribunal in its judgment and award in paragraph no. 6 has held that the Insurance Company has admitted the valid insurance of the offending truck in its rejoinder dated 14.09.11 and also by filing a separate petition on 23.06.11. However, they have stated that since the terms and conditions of the insurance policy has been breached by the owner and driver of the offending vehicle, the Insurance

Company is not liable to indemnify the owner of the offending vehicle from paying the compensation to the claimant.

9. In support of her claim case, five witnesses have been examined by the claimant. Apart from the oral evidence, claimant has also adduced documentary evidence which has been marked as Exhibits. Ext. 1 is the certified copy of the F.I.R. Ext.2 is the photocopy of postmortem report, Ext. 3 is photo copy of insurance policy, Ext. 4 is driving licence, Ext. 5 is MVI report, Ext. 6 is registration certificate of offending vehicle and Ext.7 is permit of the offending vehicle.

10. The Tribunal has held that the offending vehicle was insured with the New India Assurance Co. Ltd. on the date of accident. No contrary evidence has been led to this effect by the Insurance Company and there are sufficient evidence to establish that offending vehicle was insured with the Insurance Company. The Tribunal has further held that no evidence has been adduced on behalf of the Insurance Company for violation of any terms and conditions of policy of the insurance. However, a report dated 17.04.2012 has been brought on record by insurance company which denies the issuance of driving licence to the driver of the offending vehicle. The Tribunal has further held that photocopy of the registration

certificate and permit of the offending vehicle has been placed on record which has been marked as Exts. 6 and 7.

11. The Tribunal has further held that on the basis of F.I.R. and charge-sheet it is established that driver of the offending vehicle was driving the vehicle in a rash and negligent manner which resulted in the accident causing death of the son of the claimant and has held that son of the claimant died in a motor accident caused by rash and negligent driving by the driver of the offending vehicle, as such, owner and driver of the offending vehicle are liable to pay compensation but since it is a admitted fact that vehicle was insured by the Insurance Company, Insurance Company is liable to pay the compensation to the claimant.

12. Claims Tribunal has further held that no case of contributory negligence has been set up by the opposite parties. However, the Tribunal has further recorded that as per F.I.R. and postmortem report, death was of Sochan Kumar, S/o Matalu Rishi but in claim application name of deceased is Lochan Kumar, S/o Matalu Rishi. It has been further held that case record shows that the claimant had sought amendment in the claim petition to add alias name of the deceased as Lochan Kumar supported by affidavit of Matlu Rishi and certificate

granted by Mukhiya and Circle Officer, Katihar. The certificate of Circle Officer shows that Lochan Kumar died but does not indicate any alias name of the deceased Lochan Kumar as Sochan Kumar as mentioned in F.I.R. and in postmortem report. Father's name of Lochan Kumar and Sochan Kumar is same and it is not disputed, as such, merely mentioning name of Lochan Kumar as Sochan Kumar in F.I.R. and postmortem report will not disentitle the claimant from getting compensation. Father's name is same as such there cannot be any dispute of identity. No other claimant has come forward to claim compensation.

13. The Tribunal has further held that the claimant has stated that the deceased Lochan Kumar was earning Rs.4,500/- per month as Raj Mistri, however, there is inconsistent evidence on the income of the deceased, as some witnesses have stated that income was Rs.90,000/- per annum, whereas others have stated that he used to earn Rs.175/- per day. There is no documentary evidence of income of deceased, as such, notional income as Rs.36,000/- per annum is assessed.

14. Claimant has given her permanent address as Katihar and at present she is residing in Bhagalpur to earn her livelihood. There is no reason to disbelieve it. Claim case was

maintainable at either place. There is no bar that claim case cannot be filed where claimant is residing at the time of filing of claim case. If claims tribunal was of the opinion that it had no territorial jurisdiction over the matter, it ought to have returned the plaint to be presented before the Tribunal having territorial jurisdiction at the initial stage itself. Even the issue of territorial jurisdiction has to be decided at the initial stage of proceeding and no such plea can be taken at the final stage of proceeding.

15. The claimant in her claim petition has stated that deceased was a Raj Mistry, a semiskilled labourer and his monthly income was Rs.4,500/- per month. This court also assess the monthly income of deceased as Rs.4,500/- per month which is reasonable and realistic as he was a semiskilled labourer.

16. Accordingly, on the basis of evidence on record the compensation for which claimant is entitled is assessed by this Court.

(I) Annual Income	= Rs.54,000/-
(ii) 40 % future prospect	= Rs. 21,600/-
(iii) Total Income	= Rs.75,600/-
(iv) Deduction (50%)	=Rs.37,800/-
(v) Loss of dependency	= Rs.37,800/-

(vi) Multiplier = 18

(vii) Compensation Amount = Rs.6,80,400/-

(viii)Loss of Estate = Rs. 15,000/-

(ix)Funeral Expenses = Rs. 15,000/-

(x)Loss of parental consortium = Rs.40,000/-

Total compensation = Rs.7,50,400/-

17. The claimant is entitled for compensation of Rs.7,50,400/- (seven lacs fifty thousand four hundred) and award is modified to said extent.

18. The insurance company is directed to pay the amount of compensation of Rs.7,50,400/- (seven lacs fifty thousand four hundred) with interest @ 6% per annum from the date of application till its payment within two months from the date of receipt/production of copy of order passed by this Court.

19. Miscellaneous appeal is allowed.

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

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.10.2019
Transmission Date	NA