IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.699 of 2014

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1. Amar Shankar, Son of Late Ravi Shankar Pandey
2. Apurwa, Daughter of Late Ravi Shankar Pandey
3. Abhay Shankar Pandey, Son of Late Ravi Shankar Pandey

All resident of Mohalla - Satish Road, Ashok Nagar Pokharia, P.O. and P.S. - Begusarai, Dist. - Begusarai

(Claimants in the suit) ... ... Appellant/s

Versus

1. Shree Kapil Kumar, Son of Late Basudeo Ram, C/o Shri Dilip Kumar Gupta, Resident of Village - Gonama Road, Harnaut P.O. and P.S. - Harnaut, Dist. - Nalanda Owner of the vehicle
2. The Branch Manager, National Insurance Company Limited, Shahadat Market, Kutchery Road, P.O. and P.S. Begusarai, Dist- Begusarai representing the National Insurance Company Ltd.
3. Bhola Singh, Son of Sri Sadhu Singh, Resident of Village - Gadhpar P.S. Bihar Sharif, Dist.- Nalanda driver of the vehicle
4. Mrs. Alpana Kumari Sinha, C/o Mr. Rajesh Kumar Sinha, P-47/2 River View Telco, Jamshedpur.
5. Mrs. Archana Tiwary, C/o Mr. H.K. Tiwary, House of Shiv Shankar Singh, Satish Road, Ashok Nagar, Pokharia P.O. and Dist. - Begusarai

...(Opposite parties in the suit) ... Respondent/s

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with

Miscellaneous Appeal No. 656 of 2013

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The Branch Manager, National Insurance Co. Ltd., Begusarai represented through the Chief Regional Manager and the constituted Attorney Comp, Ltd. 4th Floor, Sone Bhawan, B.C. Patel Marg, P.S. Sachivalaya, Dist- Patna

... ... Appellant/s

Versus

1. Amar Shankar
2. Apurwa
3. Abhay Shankar Pandey

all S/O Late Ravi Shankar Pandey, Resident Of Mohalla Satish Road, Ashok Nagar, Pokharia, P.O. and P.S. and District Begusarai.

Claimants/ respondents 1st Set

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 699 of 2014)
For the Appellant/s : Mr. Vivekanand Vivek, Advocate
For respondent no.2 : Mr. Shailendra Kumar, Advocates
(In Miscellaneous Appeal No. 656 of 2013)
For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent/s : Mr. Vivekanand Vivek, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 02-09-2019

Heard parties.

2. M.A. No.699 of 2014 has been filed on behalf of the claimants-appellants for enhancement of compensation amount awarded by the Motor Accident Claims Tribunal, Begusarai passed in Claim Case No.67 of 2001, whereas M.A. No.656 of 2013 has been filed on behalf of the National Insurance Company Limited against the award granted by the Motor Accident Claims Tribunal, Begusarai passed in Claim Case No.67 of 2001 being excessive and claimants being not dependant upon the deceased, are not entitled for any compensation.

3. Claim application has been filed on behalf of the brother and sister of the deceased Anjali Kumari for grant for compensation. Claimants in their claim application have

stated that their sister Anjali Kumari was travelling from Beugsarai to Ranchi on 25.11.2000 by Ambassador car bearing registration no. BRL- 1626 along with her parents and brother and when the vehicle reached near the Sirotar bridge, truck bearing No. BR-1G-9043 which was being driven in a rash and negligent manner dashed against Ambassador car as a result of which parents, sister and driver of the car died on the spot.

4. On the basis of fardebyan of father (since deceased) of deceased Anjali Kumari, namely, Ravi Shankar Pandey, Harnaut P.S. Case No.192/2000 dated 25.11.2000 was instituted under Sections 279, 337, 338, 304A of Indian Penal Code against the driver of the truck and after completion of investigation, charge-sheet was submitted in the court of CJM, Begusarai. Deceased Anjali Kumari was 25 years old at the time of occurrence and she was graduate and skilled in computer science. The truck was insured by National Insurance Company Limited on the date and time of accident and claimants claimed compensation of Rs.9,82,068/- with interest @ 12% per annum from the date of filing of claim application till its realization.

5. Opposite party no.2, National Insurance Company Limited filed their written statement before the Tribunal stating therein that claimants are brother and sister of deceased and are not dependant upon the deceased as such they are not entitled for any compensation.

6. In support of their claim case, claimants have examined two witnesses who have supported the claim case of claimants. Witness no.1 and witness no.2 are claimants. Claimants have also filed documentary evidence in support of their claim case which have been marked as exhibits by the Tribunal. Ext. 1 is the certified copy of F.I.R. Ext. 2 is the certified copy of charge-sheet. Ext.3 is certified copy of tax token. Ext.4 is certified copy of fitness of vehicle. Ext. 5 is certified copy of registration of vehicle. Ext. 6 is the insurance policy. Ext.7 is the certified copy of driving licence. Ext. 8 is certified copy of order dated 6.7.11 in claim case no.71/01 arising out of same accident which was filed by the claimants of deceased driver. Ext.9 is the certified copy of award in claim case no.71/01. Ext. 10 is the award of Lok Adalat. Ext.11 is registration certificate of truck. Ext.12 is the postmortem report of Anjali Kumari. Ext. 13 is photocopy of enrollment paper.

Ext.14 is photocopy of programming certificate. Ext.15 is photocopy of mark-sheet of deceased Anjali Kumari of B.A. Part – III.

7. No evidence either oral or documentary has been adduced on behalf of the opposite parties.

8. The Claim Tribunal has held that Insurance Company has accepted the factum of accident and their liability to pay the compensation after compromising the case in Claim Case No.71/01 filed by the dependants of driver as such, the factum of accident and the offending truck being driven in a rash and negligent manner and offending truck being insured by the opposite parties – appellants, is admitted by the Insurance Company.

9. Claimants have already received the compensation amount from the Insurance Company on account of death of their parents in said accident and have filed a separate case for grant of compensation on account of death of their sister.

10. It has been argued on behalf of appellant-Insurance company that although there is no evidence on record that deceased was working or employed having monthly salary, yet the Tribunal has assessed her income as

Rs.7,000/- per month and her annual income to be Rs.84,000/- without any basis. The Tribunal has deducted 1/3rd towards her personal expenses, whereas it should be 50% as she was unmarried. Deceased was 25 years old and Tribunal has applied 17 as appropriate multiplier and after granting compensation under conventional heads of Rs.25,000/- has found Rs.9,82,068/- as just and proper compensation for which the claimants were found entitled and has granted 6% interest per annum from the date of registration of claim case till its realization.

11. It has been further argued that Anjali Kumari was unmarried and was a non-earning member in the family, as such Claimants cannot be her dependants and there cannot be any compensation granted for loss of dependency. Claimants are not class one heir of deceased Anjali Kumari being brother and sister. Since deceased was unmarried, mother was only class one heir and dependant of deceased Anjali Kumari, who was entitled for compensation. However, she also died in the accident and as such there are no class-I surviving heir of deceased.

12. Claimants have already received compensation for loss of dependency in a separate claim case filed against

death of their father/mother in the same accident to whom Claimants were dependants, however, Claimants cannot claim dependants of deceased sister as such their cannot be any loss of dependency. Moreover deceased Anjali Kumari was not a earning member in the family.

13. After hearing learned counsel for the appellant-Insurance Company and learned counsel for the Claimant, this Court finds that judgment and award passed by the Claims Tribunal is not sustainable, although Claimants being legal representatives of deceased the claim case was maintainable on their behalf, however, their extent of entitlement for grant of compensation was to be decided by the Claims Tribunal. As the Claimants are not dependant on the deceased as such they cannot be granted any compensation for loss of dependency particularly in a case when the deceased was a non earning member of the family and Claimants have already received compensation for loss of dependency in a different Claim Case arising out of death of their father/mother in the same accident. However, Claimants represent the estate of deceased which devolved upon them on death of their sister Anjali Kumari by way of survivorship, as such they are entitled for compensation of Rs. 15,000/- for loss of estate.

Claimants are also entitled for grant of Rs. 50,000/- under Section 140 of M.V. Act on no fault liability, as such same is a statutory liability and forms part of estate of deceased for which Claimants are entitled. The Claimants are also entitled for grant of Rs. 15,000/- as funeral expenses and Rs. 40,000/- for loss of love and affection.

14. Monetary dependency is not the only factor on which compensation to legal representatives are to be assessed. Deceased sister of Claimant was living with Claimants and must be providing assistance, care, help and support to the family by her service to which the Claimants became deprived on account of her sudden demise in the motor accident for which they are entitled for compensation which is assessed as Rs. 1 Lacs for loss of non-monetary/non-pecuniary dependency.

15. The Award passed by the Claims Tribunal is modified to the extent that they are entitled for compensation of Rs. 2,20,000/- to be paid by the Insurance Company. Since, Rs. 50,000/- has already been paid as interim compensation, insurance company is directed to pay the sum of Rs. 1,70,000/- to the claimants, with interest @ 6 per cent per annum from the date of application till its realization

within 30 days from the date of receipt/production of a copy of the order passed by this Court.

16. 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 claimants, which shall be adjusted in the compensation amount.

Both the miscellaneous appeals are disposed of.

Let the L.C.R. be returned forthwith to the concerned Claims Tribunal.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	30.07.2019
Uploading Date	03.09.2019
Transmission Date	NA