IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.53 of 2016

Reliance General Insurance Co. Ltd. through Its Manager, 19, Reliance Centre, Walchand Hirachand Marg, Ballard Estate, Mumbai.

... ... Appellant/s…….Opposite Party No. 3

Versus

1. Kabita Devi and Ors W/o Late Ganga Paswan
2. Kiran Kumari D/o Late Ganga Paswan, aged about 13 years
3. Anshu Kumar S/o Late Ganga Paswan, aged about 12 years
4. Rohit Kumar S/o Late Ganga Paswan, aged about 11 years
5. Soni Kumari D/o Late Ganga Paswan, aged about 9 years
6. Kishan Kumar S/o Late Ganga Paswan, aged about 7 years
7. Shani Kumar S/o Late Ganga Paswan, aged about 6 years, Respondent No. 2 to 7 are minor children of Late Ganga Pa All resident of Village- Pandaul, P.O.- Pandaul, P.S.- Pandaul, District- Madhubani.
   …………..Respondent No. 1 to 7/Claimants No. 1 to 1
8. Anil Kumar Singh S/o Ram Kalebar Singh Resident of Village- Baruari, P.s.- Baruari, District- Muzaffarpur.
   …………..Respondent No. 8/Owner Opposite Party No. 1
9. Ram Lohit Thakur, S/o Late Ram Nandan Thakur, Resident of Village- Kalana, P.O. and P.S.- Pandaul, District- Madhubani.
   …………..Respondent No. 9/Driver Opposite Party No. 2

... ... Respondent/s

Appearance :

For the Appellant/s : Mr.Alok Kumar @ Alok Kr Shahi, Adv

For the Respondent/s : Mrs. Rekha Prasad, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 26-06-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed for setting aside the order dated 01.12.2014 and award dated 16.07.2015 passed by Additional District Judge-I-cum-Motor Vehicle Accident Claims Tribunal, Darbhanga, in Claim Case NO. 47 of

2010, by which the Tribunal has allowed the claim application and directed appellant to pay a sum of Rs. 9,94,000/- to the claimants as compensation.

3. Briefly stated the facts of the case is that claimants who are widow and minor children filed a claim petition claiming Rs. 4,10,000/- as compensation on account of death of husband of claimant no. 1 Ganga Paswan, in motor accident caused by Bus bearing registration no. JH-12B-2267 which belonged to opposite party no. 1 Anil Kumar Singh, and driven by opposite party no. 2 Ram Lohit Thakur and insured by opposite party no. 3 Reliance General Insurance Company (Appellant).

4. Ganga Paswan died in a motor accident on 15.10.2009 at 3:15 pm by offending Bus which was being driven rashly and negligently by its driver and dashed from behind against deceased who was walking on the road flank. On notice opposite party no. 1 owner of the offending vehicle and opposite pary no. 3 appeared before the Tribunal and filed their written statement. In his written statement opposite party no. 1 stated that he is owner of the offending vehicle and he filed tax token, fitness certificate and insurance policy which was valid on the date of accident. opposite party no. 2 Ram Lohit Thakur

was driving the offending vehicle who had valid driving licence and accident did not take place due to rash and negligent driving of the Bus rather deceased was negligent which was the cause of fatal accident.

5. Opposite party no. 3 Insurance company in their written statement denied that deceased was killed by rash and negligent driving by the offending Bus and same was goods carrying vehicle as such Insurance Company is not liable to pay compensation. The driver had no valid and effective driving licence to drive the vehicle.

6. On the basis of the pleadings of the parties, the Tribunal framed five issues. Three witnesses were examined on behalf of claimant, who are AW-1 Binod Mahto, AW-2 Kavita Devi and AW-3 Jitendra Mahto and have also adduced documentary evidence which have been marked as Exhibit-1 Certified copy of Pandaul P.S Case No. 151 of 2009, Exhibit-2 certified copy of chargesheet, Exhibit-3 certified copy of post mortem report, Exhibit-4 copy of vehicle registration certificate, Exhibit-5 certificate of fitness, Exhibit-7 copy of insurance policy, Exhibit-8 road permit, Exhibit-9 driving licence, Exhibit-10 family membership certificate, Exhibit-11 residential certificate.

7. Opposite parties have neither adduced any evidence either oral or documentary or cross-examined the claimants witnesses.

8. On the basis of ocular evidence as well as documentary evidence including the chargesheet submitted by the police against the driver of the offending vehicle under Section 279, 304A of IPC, the Tribunal has held that deceased died in an accident caused by negligent and rash driving by the Driver of the offending vehicle-Bus, as such claimants are entitled for compensation.

9. The Tribunal has held that the offending vehicle-Bus of which rightful owner is opposite party no. 1 and same was insured by opposite party no. 3 and policy of insurance was valid on the date of accident and the driver was having a valid driving licence and there was valid road permit and fitness certificate on the date of accident, as such insurance company is liable to pay the compensation and indemnify the owner.

10. The Tribunal has found the age of deceased to be 35 years on the date of death of and his earning from his stationery shop has been assessed to be Rs. 5000/- per month . The Tribunal has deduced 1/5th towards personal expenses of deceased as number of dependants were eight and assessed

annual loss of dependency to be Rs. 48,000/- and has applied multiplier of 16 and has found total loss of dependency to be Rs. 7,68,000/- and thereafter under conventional heads has granted compensation of Rs. 10,000/- towards funeral expenses and Rs. 10,000/- for loss of consortium and thereafter has added 30 per cent towards future prospect and has assessed Rs. 10,44,000/- to be just, proper and fair compensation for which claimants are entitled with interest @ 6 per cent per annum. The claimants have already received interim compensation of Rs. 50,000/-, as such directed for payment of compensation of Rs. 9,94,000/- with 6 per cent interest per annum from the date of filing of the application till its payment.

11. The counsel for the appellant has argued that Tribunal has assessed the monthly income as Rs. 5000/- per month without any documentary evidence and 30 per cent has been granted towards future prospect which should be 25 per cent. The deceased was a self employed person and was running his stationery shop as such the assessment of the Tribunal that he was earning Rs. 5000/- per month is realistic and proper and finding of the Tribunal cannot be faulted on this account. Deceased was self employed and was aged 35 years and claimants were entitled for 40 per cent future prospect, however,

Tribunal has granted future prospect as 30 per cent. The claimants were further entitled for a compensation of Rs. 70,000/- under conventional head, however, only Rs. 20,000/- has been granted to the claimants under conventional heads.

12. The miscellaneous appeal filed by Reliance General Insurance Company is dismissed with further direction to pay a sum of Rs. 1 Lac apart from the compensation amount already granted by the Tribunal within three months from the date of receipt/production of a copy of the order passed by this Court.

13. The statutory amount of Rs. 25,000/- deposited by the appellant, a cheque for which be prepared in the name of claimant and sent to the concerned Tribunal for its payment to the claimant, which shall be adjusted in the compensation amount to be paid to the claimant.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2019.
Transmission Date	NA