

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.474 of 2015

1. Puja Devi W/o Late Banti Kumar
2. Lakshmi Kumari, D/o Late Banti Kumar
3. Bina Devi @ Reena Devi, W/o Sukhdeo Yadav
4. Sukhdeo Yadav, S/o Late Nanhk Yadav All residents of Mohalla- Maranpur, P.O.- Gaya, P.S.- Civil Lines, District- Gaya. (Appellant No.-2 is minor daughter of appellant No.1 living under her natural and Legal Guardianship).

... .. Appellant/s

Versus

1. The Oriental Insurance Company Ltd. through its Divisional Manager, 2nd Floor, R.J. Palace, Rai Kashi Nath More, Gandhi Maidan, P.O. Gaya, P.S. Civil Lines, District- Gaya (Bihar) (Insurer of truck bearing Registration No. BR2H/3489).
2. Rajesh Kumar Singh, S/o Sri Dhanesh Singh, resident of Village- Fatehpur (Palakiya), P.O.- Sherghati, P.S.- Sherghati, District- Gaya, Bihar, Owner of truck bearing registration no. BR02H/3489.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ravindra Kumar Sinha, Adv.
For the Respondent No.1	:	Mr. Bimlesh Kumar Jha, Adv.
For the Respondent No. 2	:	Mr. Abhay Kumar Thakur, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 14-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed against the judgment and order dated 01.09.2015 passed by learned VIth Additional District Judge-Cum-Motor Accident Claims Tribunal, Gaya in Motor Accident Claim Case No. 21/2014/102/2014 by which the learned Claims Tribunal has dismissed the claim case of appellants.

3. Claimants are widow, minor children and parents



of deceased Banti Kumar aged about 21 years who is claimed to have been died in a motor accident on 22.08.2013 at about 7:00 PM when one Truck bearing registration No. BR-2H/3489 dashed against the tempo in which the deceased was travelling with other passengers.

4. Notices were issued to owner/driver and the Insurance Company. The Insurance Company appeared and filed their written statement and have denied the claim of claimants.

5. On the basis of pleadings of the parties, the Tribunal framed six issues for its determination. In support of their claim case witnesses were examined on behalf of claimants and claimant No. 1 in her examination-in-chief-cum-Affidavit has stated that deceased Banti Kumar was her husband and he died in a motor accident. She has further stated that one truck dashed against tempo in which her husband was travelling, as a result he was seriously injured and died during treatment at Patna. He was a Raj Mistri having a monthly income of Rs. 7000/- to 8000/-. In her cross-examination she has stated that on a tempo in which her husband was travelling, seven more passengers were travelling and due to negligence of truck driver, the accident took place. Second witness examined



on behalf of claimants is the father of deceased who has also supported the claim case and has stated that his son died during treatment at Patna, however, both have stated that Nagendra Kumar @ Sahab whose name appears in the FIR died in Magadh Medical College, Gaya.

6. FIR was also instituted by brother-in-law of Nagendra Kumar @ Sahab in which it was stated that his brother in law Nagendra Kumar @ Sahab alongwith 4-5 passengers were going on tempo and he was following them when at 7:00 PM the offending truck dashed against the tempo, as a result of which persons travelling in the tempo were injured and with the help of locals they were taken to Primary Health Centre, Manpur where the doctor declared his brother-in-law dead and rest of the injured persons were shifted to Magadh Medical College Hospital, Gaya for better treatment. Exhibit-2 is the charge sheet submitted by the police after investigation against the driver of the offending vehicle. Exhibit-3 is death certificate issued by Bihar Hospital and Research Centre, Patna with respect to death of husband of claimant No. 1 in which cause of death has been attributed to acute respiration.

7. On the basis of oral and documentary evidence adduced before the tribunal, the tribunal has dismissed the case



of the claimant as there was no sufficient evidence to establish and corroborate that deceased received any injury in motor accident and was travelling on said tempo and was dashed by the offending truck and died on account of said accident and rejected the claim case filed by the claimant, even cause of death is not attributable to any accidental injury.

8. After going through the materials available on record as well as documentary and oral evidences adduced before the Tribunal, this Court does not find any error or illegality in the order passed by the Tribunal. As such, miscellaneous appeal is dismissed.

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

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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