IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.450 of 2012

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United India Insurance Company Ltd. (Regd. & Head Office, United India House, 24 whites Road, Chennai-600014) Branch Manager, Maldahia Varanasi (U.P.) Local Branch Office, Branch Manager, United India Insurance Co. Ltd G.T. Road, Sasaram, at Sasaram, P.S.-Sasaram, Distt-Rohtas, Sasaram, through Branch Manager , Ramashish Chowk, Hajipur

... O.P. No.1 ... Appellant/s

Versus

1. Sushila Kuer, W/O Late Mokhan Sah @ Late Mukhan Sah
2. Manju Kumari (Minor), D/O Late Mokhan Sah @ Late Mukhan Sah
3. Anju Kumari (Minor),D/O Late Mokhan Sah @Late Mukhan Sah
4. Raju Kumar (Minor), S/O Late Mokhan Sah@Late Mukhan Sah
5. Sanju Kumar(Minor), D/O Late Mokhan Sah @Late Mukhan Sah
6. Rubi Kumari (Minor), D/O Late Mokhan Sah @Late Mukhan Sah
7. Sudhi Kumari (Minor), D/O Late Mokhan Sah @Late Mukhan Sah
8. Chhathu Kumar Gupta (Minor), S/O Late Mokhan Sah @Late Mukhan Sah

Claimants-Respondents

9. Fularjee Devi, W/O Chetan Rai Tiwari, Vill-Kushasha, P.S.-Sahebganj, Distt-Chandauli, U.P.
10. Prasad Ram @ Ram Prasad Ram, S/o Suchit Ram, All 1 to 8 and 10 are R/o Vill-Gorahan, P.S. Bhabhua, Distt.- Kaimur

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ashok Kumar
For the Respondent/s	:	Mr. Ram Chandar Lal

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 16-04-2019

Heard parties.

2. This miscellaneous appeal has been filed by United India Insurance Company against the judgment dated 26.04.2012 and award dated 30.05.2012 passed in Claim Case No.18/36, 2008/2010 by which the Claim Tribunal, Kaimur has directed opposite party no.1/appellant to pay the entire

remaining amount of Rs.1,39,500/- with interest @ 8% per annum from the date of institution of the case, i.e., 14.03.2008 till the date of actual payment with cost of suit to the claimant within two months.

3. Claim case was filed for compensation of rupees four lacs by widow and her minor children on account of death of Mokah Sah @ Mukhan Sah in an accident on 16.02.2001 caused by the tractor having registration No. U.P. 65 J.-3136. At the time of accident, age of the deceased was 30 years and he was carrying the business of repairing of hand pipe and boring machine whose income was Rs.3,000/- per month.

4. Deceased had gone to bring bricks on said tractor from village Dumdum and in course of returning to his village, accident took place in which deceased sustained several ante-mortem injuries and subsequently died. Postmortem of the deceased was conducted and cause of death is attributable to accident. Offending vehicle was insured with United India Insurance Company Ltd. and Fulraji Devi, was the owner of the vehicle and Ram Prasad Ram was driving the vehicle. Deceased was the only bread-earner of the family and the claimants being the widow and children were fully dependent upon deceased.

5. Notices were issued by the Tribunal and opposite

party/appellant, United India Insurance Company Ltd. and opposite party no.3 appeared but did not file any written statement and opposite party no.2 did not appear. In their written statement, the opposite parties have taken a plea that deceased was himself guilty and responsible for accident and the claimants are not liable to pay the compensation.

6. From aforesaid pleadings, Tribunal framed five issues. Tribunal has held that on the basis of oral evidence and documentary evidence adduced on behalf of the claimant before the Tribunal which included certified copy of F.I.R., photocopy of charge-sheet, photocopy of registration book, photocopy of insurance paper, photocopy of postmortem report which has been marked as Ext. and 3 witnesses have been examined on behalf of the claimant and Tribunal has held that the tractor was being driven rashly and negligently by opposite party no.3 who was driver at the relevant time. Tribunal has also held that claimants are widow and minor children of deceased and are entitled for compensation and owner of the tractor is liable to pay the compensation and as the tractor was insured with opposite party no.1, the Insurance Company is liable to indemnify the tractor owner by paying the claimed amount.

7. The Tribunal has also considered the quantum of compensation to be awarded to the claimant and has held that income of the deceased to be Rs.15,000/- per annum on notional basis and on applying multiplier of 18, the compensation been assessed as Rs.2,70,000/- and from which 1/3 deduction, i.e., Rs.90,000/- has been made as personal expenses the deceased would have incurred upon him and found Rs.1,80,000/- as just compensation to be paid to the claimant. Funeral expenses of Rs.2,000/-, lost of estate of Rs.2,500/- and loss of consortium of Rs.5,000/- to be added in the amount of compensation which makes compensation amount as Rs.1,89,500/- including interim compensation of Rs.50,000/- which has already been paid by the Insurance Company.

8. It has been argued argued on behalf of the appellant -Insurance Company that there is specific finding of the Tribunal that driver had no driving licence and vehicle was being driven by an unauthorized person and there was violation of terms and conditions of insurance also and in such a situation, Insurance Company is not liable to indemnify the owner of the vehicle, however, the Tribunal has given liberty that if the vehicle was being driven contrary to the terms and conditions of insurance policy then Insurance Company will have liberty to

realize the compensation amount which has to be paid by the Company to the claimant from the vehicle owner.

9. After hearing the parties and going through the order passed by the Tribunal and considering the material available on record, this Court is not inclined to interfere in the judgment and Award passed by the Claims Tribunal. Accordingly, the miscellaneous appeal is dismissed.

10. However, dismissal of present appeal will not debar the Insurance Company to realize the compensation paid by it from the owner of the vehicle if there is any violation of terms and conditions of insurance policy.

11. Rs.25,000/- which has been deposited by the Insurance Company in the High Court in order to file the present appeal is directed to be paid to the complainant(opposite party no. 1) through the Claim Tribunal drawing a cheque in favour of the claimant(opposite party no. 1).

Let the Lower Court Records be sent to the court below immediately.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2019
Transmission Date	NA