

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.269 of 2012

=====

Pramod Singh, son of late Janik Singh, resident of Village- Chittarkoli, P.S.,
Rajauli, District, Nalanda Appellant/s

Versus

1. Ratan Rikyasan, minor son of Lakhan Rikyasan under guardianship of his mother namely Sunaina Devi
 2. Sunaina Devi, wife of Lakhan Rikyasan, Both resident of village Boddhi Kala, P.S. Rajuli, District, Nalanda.
..Applicants/respondent 1st Set
 3. Khursid Alam, son of Md. Navi Bux, resident of village, Sobur, P.S. Town Dhanbad, District, Dhanbad
 4. The New India Insurance Company Ltd., Naghmatia Road, Gaya, District -(Insurer of the vehicle) Registration Under WB15/309
 5. Md. Asiffuddin, son of Sajouddin, resident of Moh-Sheshpur, Saidpur, P.S. Biharsharief, District, Nalanda
 6. Bali Md. Khan, son of late Khalil Md. Khan, resident of Village- Seikh Sah Lane, Kolkatta
 7. Sheo Narian Gupta, son of Mahadeo Prasad Gupta, resident of village Chitarkali, P.O.+P.S. Rajauli, Dis- Nawada... .. Respondents 2nd Set
- =====

Appearance :

For the Appellant/s : Mr. S. K. Thakur, Advocate
For the Respondent No.4 : Mr. Vikash Chandra Srivastava, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-04-2019

Heard.

This miscellaneous appeal has been filed for setting aside the judgment dated 21.1.2010 and Award dated 17.3.2010 passed in Claim Case No.74/98 / 26/2009 by Motor Vehicle Accident Claim Tribunal, Nawada by which Tribunal has directed appellant to pay 40% of the compensation amount i.e., Rs.67,800/- with interest @ 7% per annum being the owner of offending vehicle.

Claimants are the widow and minor son of deceased Lakhan Rikiasan who on 15.2.1997 was travelling to Kodarma



on Tata Maxi 407 having registration No. UP-50A-0627 which collided with bus No. WB-15-3019 near Rajuli causing death of Lakhan Rikiasan, husband and father of the claimants.

Deceased was 40 years old and his monthly income was Rs.1,500/- and a total compensation of Rs.1,87,000/- was awarded and Shiv Narayan Gupta was original owner of Tata 407 but in order to avoid the liability to pay compensation he sold the vehicle to Pramod Singh (appellant) and registration number of the vehicle was also changed which was confirmed by the police during investigation.

Written statement was filed on behalf of New India Insurance Company and has raised objection that owner of the bus has been wrongly made party in this case. The accident took place due to rash and negligent driving by the driver of Maxi Tata 407 and even assuming that there was contributory negligence by the driver of the bus, only partial compensation is to be paid by the bus owner. The Tribunal framed five issues for determination on the basis of pleading of parties. Four oral witnesses were examined on behalf of claimant and in documentary evidences FIR of Kodamra P.S. Case No. 48/97 under Sections 279, 337, 338, 304 has been marked as Ext. 1 and fardebayan as Ext. 2. The postmortem report of deceased in



which his age has been assessed as 40 years has been marked as Ext. 3. Owner books of both the vehicle have been marked as Exts. 4 and 4/1. Fitness certificate of the bus is marked as Ext. 5 and its insurance policy as Ext.6. Driving licence as Ext.7, Jimmenama as Exts. 8 and 8/1 and inquest report as Ext.9. No evidence was adduced on behalf of opposite parties in the claim case.

On the basis of oral and documentary evidence adduced before the Tribunal, the Tribunal came to the finding that due to rash and negligent driving by drivers of both vehicles, accident took place resulting in death of husband of claimant and, as such, owners of both the vehicles are liable to pay the compensation amount to the claimant. Tribunal has assessed the annual income as Rs.15,000/- notionally and has applied multiplier of 16 and has assessed compensation to be rupees 1 lac 60 thousand and, thereafter, additional compensation has been granted under different heads as Rs.2,000/- for funeral expenses, for loss of estate Rs.25,000/- and loss of consortium Rs.5,000/- and has assessed Rs.1,69,500/- as just compensation to be paid to the claimant. It has further been held that as the offending vehicle bus was insured by the New India Insurance Company who is liable to pay 60% of the amount of



compensation which is Rs.1,01,700/- and remaining 40% compensation amount is to be paid by the owner of Maxi Tata 407, Pramod Singh (appellant) as same was not insured by any of the insurance company.

Present appeal has been filed on behalf of subsequent owner of the Tata Maxi that he has been wrongly saddled with liability to pay 40% of compensation amount as on the date of accident, he was not the owner of the vehicle and he became owner of the vehicle from the date of transfer of ownership of the vehicle which has been recorded in the ownership book on 5.5.1998 and on the date of accident, i.e, 15.2.1997, the registered owner of the offending vehicle was Shiv Narayan Gupta, however, his name has been subsequently deleted from the claim case and name of appellant was inserted in his place although he was not the owner of the offending vehicle Maxi Tata 407 on the date of accident.

From the facts, it is apparent that on the date of accident, the vehicle was registered in the name of Shiv Narayan Gupta which was sold by him to the appellant on a subsequent date as such appellant cannot be fastened with the liability to pay the compensation as on the date of accident he was not the owner of the vehicle and Tribunal has committed an error of



record by directing him to pay the compensation amount to the claimant as such, the judgment and Award passed by the Tribunal is not sustainable either in law or on facts and, accordingly, the same is set aside and the matter is remanded to the claims Tribunal to issue notice to the owner of the offending vehicle who was owner of the offending vehicle on the date of accident and after hearing all the parties, decide the liability of payment of compensation to the claimant in accordance with law within six months from the date of receipt/production of a copy of this order.

In the result, the matter is remanded to the Claims Tribunal for fresh consideration after adding the owner of the offending vehicle whose name was erroneously expunged from the claim petition and to decide the claim case after hearing all the concerned parties.

The miscellaneous appeal stands disposed of.

Let the L.C.R. be immediately returned to the court concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2019
Transmission Date	NA

