

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.180 of 2018

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The Branch Manager, National Insurance Company Ltd. Company Ltd.
Muzaffarpur through its Chief Regional Manager and the Constituted
Attorney, Regional Officer, National Insurance Company Ltd., 4th Floor,
Sone Bhawan, Birchand Patel Marg, Patna-800001.

... .. Appellant/s

Versus

1. Most. Rekha Devi W/o Late Upendra Kumar Prasad @ Upendra Prasad @ Upendra Prasad.
2. Anmol Prasad S/o Late Sukhdeo Sah.
3. Manisha Kumari Minor D/o Late Upendra Kumar Prasad @ Upendra Prasad 3 to 6 are Minors and represented through their Natural and Legal Guardian/ Mother Most. Rekha devi (Respondent No.1) R/o Village-Pakariya P.S.- Paharpur, District-East Champaran.
4. Rahul Kumar Son of Late Upendra Kumar Prasad @ Upendra Prasad 3 to 6 are Minors and represented through their Natural and Legal Guardian/ Mother Most. Rekha devi (Respondent No.1) R/o Village-Pakariya P.S.- Paharpur, District-East Champaran.
5. Rajan Kumar Son of Late Upendra Kumar Prasad @ Upendra Prasad 3 to 6 are Minors and represented through their Natural and Legal Guardian/ Mother Most. Rekha devi (Respondent No.1) R/o Village-Pakariya P.S.- Paharpur, District-East Champaran.
6. Raushan Kumar Son of Late Upendra Kumar Prasad @ Upendra Prasad 3 to 6 are Minors and represented through their Natural and Legal Guardian/ Mother Most. Rekha devi (Respondent No.1) R/o Village-Pakariya P.S.- Paharpur, District-East Champaran.
7. M/s Saraswati Shishu Mandir Situated at Mohalla- Barwat Sona P.S.- Muffasil Bettiah, District-West Champaran.
8. Amresh Chandra Mishra S/o Late Ishwardhari Mishra R/o Mohalla-Barwat Lachhu P.S.-Muffasil Bettiah, District-West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Raj Kumar Singh Vikram, Adv.
For the Respondent/s	:	Mr. Ajay Kumar Singh, Adv.
	:	Mr. Hariwansh, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of



National Insurance Company against the judgment dated 23.11.2017 and award dated 19.12.2017 passed by Motor Accident Claims Tribunal, East Champaran, Motihari in Claim Case No. 99/2016 by which compensation of Rs. 26,79,545/- with 7% interest per annum has been awarded from date of filing of claim case till its realization.

3. Briefly stated, the facts of the case is that the claim petition was filed by the claimants who are widow and minor sons of deceased Upendra Kumar Prasad stating therein that on 09.07.2016 at about 7.30 AM Upendra Kumar Prasad husband of claimant No. 1 was going to open his shop but in the way a bus bearing registration No. BR-22P-806 dashed against his bike, as a result of which he died on the spot.

4. FIR was instituted bearing Muffasil Bettiah P.S. Case No. 310 of 2016 under Sections 237 and 304A of I.P.C. which was investigated by the police and charge sheet was submitted against the bus driver of the offending vehicle and it was found that due to negligent and rash driving by the driver of the offending bus, the deceased met with an accident and died on the spot.

5. Driver of the offending vehicle Amresh Chandra Mishra has been made opposite party No. 2 in the claim case



and the offending vehicle was owned by M/s Saraswati Shishu Mandir who has been made opposite party No. 1 in the claim petition and the offending vehicle was insured by the National Insurance Company Ltd. which is opposite party No. 3 before the Tribunal.

6. Opposite party Nos. 1,2 and 3 appeared before the tribunal and filed a joint written statement and it was further stated that the offending vehicle was not being driven in negligent and rash manner rather it was the fault of deceased which resulted in a fatal accident as he was talking on mobile while driving motorcycle. It has been further stated in their w.s. that the owner and insurer of motorcycle have not been made party in this case and unless and until the insurer and owner are made party, the case cannot proceed in their absence as such the issues of contributory negligence cannot be decided in their absence. The offending vehicle was plying without permit and registration.

7. On the basis of pleadings of the parties, the tribunal framed six issues for its determination. On behalf of claimants three witnesses were examined and in support of claim case, documentary evidences were produced which has been marked as exhibits by the tribunal. Exhibit 1 is certified copy of FIR,



Exhibit-2 is certified copy of charge sheet, Exhibit-3 photocopy and postmortem report, Exhibit-4 photocopy of Insurance Policy, Exhibit-5 photocopy of driving licence of driver, Exhibit-6 photocopy of permit of bus, Exhibit-7 photocopy of registration certificate of bus and Exhibit-8 pan card of Late Upendra Kumar Pd., Exhibit-9 certificate of registration of VAT, Exhibit-10 photocopy of account, Exhibit-11 photocopy of income tax, Exhibit-11 & 11/2 photocopy of income tax return, Exhibit-12 photocopy of annual return of VAT for the year 2013-14.

8. No oral witnesses has been produced on behalf of opposite parties, however, photocopy of receipt No. 205633 dated 26.07.2016 showing fine of Rs. 11,500/-against the offending vehicle was filed and has been marked as Exhibit-A by the tribunal.

9. On the basis of oral and documentary evidences, the Tribunal has held that due to rash and negligent driving by the driver of offending bus accident took place, as a result of which deceased died on the spot and as such the claimants are entitled for compensation.

10. The offending vehicle was insured with the National Insurance Company, as such the company is liable to indemnify



the owner of the vehicle from payment of compensation.

11. The tribunal on the basis of oral and documentary evidences of income tax and VAT return has assessed the annual income of the deceased as Rs. 2,24,404/- the tribunal has denied any addition in income in the head of future prospect. The age of deceased at the time of death was 37 and number of dependents being five has deducted 1/4th of the income towards his personal expenses and has found the loss of dependency to be Rs. 1,68,303/- and has applied multiplier of 15 which makes the amount of compensation as Rs. 25,24,545/- besides the above amount of compensation the tribunal has awarded additional compensation in the head of funeral expenses Rs. 5000/- loss of consortium 50,000/- loss of estate Rs. 50,000/- and has found Rs. 26,79,545/- as just and proper compensation for which the claimants are entitled and has directed the appellant National Insurance Company to pay the said amount of compensation with an interest of 7% per annum from the date of filing of claim case till its realization. The tribunal has further directed the amount to be kept in fix deposit with regard to the minors.

12. This Court does not find any illegality, irregularity or error in the order passed by the tribunal and amount of



compensation as granted by the claims tribunal to be excessive.

13. The statutory amount of Rs. 25,000/- deposited by the appellant at the time of filing of appeal a cheque for which be prepared in the name of claimant No. 1 and sent to the concerned tribunal for its payment to the claimant No. 1 and remaining compensation amount as directed by tribunal shall be paid by the Insurance Company within three months from the date of receipt/production of a copy of order passed by this Court.

14. This miscellaneous appeal is disposed of.

15. Let LCR be returned to the court concerned forthwith.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.08.2019
Transmission Date	N.A.

