

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.814 of 2013

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The Branch Manager, New India Assurance Company Ltd., Madhuri Market,
Main Road, Motihari, Near Badi Maszid, P.S. Town, Dist- East Champaran,
Motihari, Represented through The Chief Regional Manager New India
Assurance Comp. Ltd., 6th Floor, BSFC Building, Frazer Road, Patna-1.

... .. Appellant/s

Versus

1. Most. Kanti Devi Wife Of Late Aklu Sah Resident Of Vill./Mohalla -
Sainagar, P.S. - Muffasil Motihari, Dist. East Champaran At Motihari.
2. Gita Kumari Minor Daughter Of Late Aklu Sah Represented Through His
Legal And Natural Guardian Mother Most. Kant Resident Of Vill./Mohalla -
Sainagar, P.S. - Muffasil Motihari, Dist. East Champaran At Motihari.
3. Pinki Kumari Minor Daughter Of Late Aklu Sah Represented Through His
Legal And Natural Guardian Mother Most. Kant Resident Of Vill./Mohalla -
Sainagar, P.S. - Muffasil Motihari, Dist. East Champaran At Motihari
4. Vinay Kumar Singh Son Of Chandrika Singh Resident Of Village -
Rampurwa Mirzapur, P.S. - Mehsi, Dist. - East Champaran At
Motihari(Owner of the vehicle).
5. Jitendra Sahni Son Of Baidya Nath Sahni Resident Of Village - Bela Dekoha
Watganj P.S. - Pipra Kothi, Dist. - East Champaran At Motihari (Driver of
Vehicle).

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed by the
appellant New India Assurance Company Ltd. for setting aside
the judgment dated 30.08.2013 and Award dated 20.09.2013
passed by IIIrd Additional District Judge Cum Motor Vehicle
Accident Claims Tribunal, East Champaran, Motihari, in Claim
Case No. 108/2012 by which the learned Tribunal has granted



compensation of Rs. 6 lacs (rupees six lacs only) with 9% interest to the claimants from the date of presentation of claim petition till its realization.

3. Briefly stated, the facts of the case as disclosed in claim petition is that on 12.04.2007 at about 6:00 PM the husband of claimant No. 1 Akalu Sah @ Bharat Sah was travelling on a Jeep bearing registration No. BR-05P-0612 with his cousin brother-in-law Munilal Sah and they were going to Banarchhula Chowk, when at 7.15 PM the driver of the Jeep while driving the Jeep in a rash and negligent manner dashed against one standing tractor, as a result of which Akalu Sah sustained grievous injury and he was carried to Sadar Hospital, Motihari, however, he succumbed to his injuries in course of treatment.

4. FIR was lodged giving rise to Pipra P.S. Case No. 51 of 2007 instituted under Sections 279, 337, 304A of I.P.C. against the driver of the offending vehicle. After investigation police found the case to be true of negligent and rash driving by the driver of offending vehicle and submitted charge sheet against the driver of said vehicle.

5. Claimants are widow and children of deceased and filed the claim case before the Tribunal for compensation of Rs.



6 lacs.

6. Notices were issued to opposite parties. Opposite party No. 1 is the driver whereas opposite party No. 3 is the owner of vehicle. However, in spite of valid service of notice they did not appear and case proceeded ex parte against them. Opposite party No. 2 is the Insurer of offending vehicle and it appeared and filed written statement inter alia alleging that claimants are not entitled for any compensation. The claim is barred by limitation. It was further submitted that deceased was himself guilty of the accident and it is a case of contributory negligence.

7. On the basis of pleadings of the parties the learned tribunal framed four issues for determination and adjudication. Claimants have examined four witnesses who have supported the claim case of claimants. Hira Lal Sah A.W.-1, Kanti Devi is A.W. 2 as well as Claimant No.1, Muni Devi A.W. 3 and Jaggu Sah A.W. 4 besides oral evidences documentary evidences has also been produced on behalf of claimants which has been marked as Exhibits by the Tribunal. Certified copy of FIR is Exhibit- 1, Certified copy of charge sheet is Exhibit-2, Insurance Policy of the offending vehicle is Exhibit-3, postmortem report is Exhibit-4, photocopy of Motor Vehicle Inspector Report is



Exhibit-5, photocopy of registration certificate is Exhibit-6, photocopy of temporary permit is Exhibit-7, photocopy of fitness certificate is Exhibit-8, Tax token is Exhibit-9, driving licence is Exhibit-10. However, no witnesses have been examined on behalf of opposite party, however they have filed a report that temporary permit of said Jeep is not issued by said office which has been marked as Exhibit-A . Investigation report has been marked as Exhibit-B.

8. On the basis of oral as well as documentary evidence tribunal has held that the driver of the Jeep was driving the vehicle in a rash and negligent manner and in spite of several objections raised by the passengers he continued to drive the Jeep in rash and negligence manner which resulted in the accident causing death of husband of claimant No. 1. The age of deceased was 45 years. His monthly income was Rs. 6000/- and he was a semi-skilled labourer working as Mason and the tribunal has assessed income of deceased to be Rs. 5000/- per month. The tribunal has further held that the offending Jeep was insured with appellant Insurance Company on the date of accident and related documents i.e. driving licence, fitness certificate, registration certificate, tax token were in order, however, opposite party No. 2 has alleged that the temporary



permit of the said vehicle which has been enclosed with the claim petition is forged. However, there is no objection with respect to authenticity of remaining documents of the vehicle.

10. The tribunal has assessed the annual income of deceased to be 60,000/- and has deducted 1/3rd on his personal expenses and has assessed loss of dependency to be Rs. 40,000/- and as the age of deceased was 45 years at the time of his death tribunal has applied 15 as a multiplier and has quantified the amount of compensation as Rs. 6 lacs of which Rs. 50,000/- has already been paid as an interim compensation and has directed Rs. 5,50,000/- to be paid as compensation to the claimants/respondents besides the said amount of compensation the tribunal has also directed to pay additional compensation under the Conventional head, Rs. 2,000/- as funeral expenses. Rs. 5,000/- as loss of consortium and Rs. 2,500/- as loss of estate. Claimants are entitled for total compensation amount of Rs. 5,59,500/- with 9% interest per annum to be paid by the Insurance Company to the claimant.

9. This Court does not find any merit in the appeal of Insurance Company, and is accordingly dismissed, however, since the vehicle was plying without any valid permit as a passenger vehicle which is a fundamental breach of the policy



of Insurance as such the Insurance Company is granted liberty to realize the amount after paying the compensation amount to the claimant from the owner of the vehicle.

10. Statutory amount of Rs. 25,000/- which has been deposited at the time of filing of appeal, a cheque of which be prepared in the name of claimant No. 1 and sent to the concerned tribunal for its onward payment to the claimant No. 1 which shall be adjustable with the final compensation amount to be paid within two months from the date of receipt/production of copy of order passed by this Court.

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

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.08.2019
Transmission Date	N.A.

