IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.515 of 2017

National Insurance Company Biharsharif District Nalanda through Sri Rajesh Ranjan cum and duly Constituted Attorney National Insurance Company Ltd., Regional Office 4th Floor Sone Bhawan B.C. Patel Road P.O. G.P.O., P.S. Sachiwalaya Patna, District- Patna.

... ... Appellant/s

Versus

1. M/s Om Construction Prop. Smt. Sujata Roy owner of Truck No. BR 13/9905 at Pathra English P.O. Orhanpur P.S. Mufassil Nawada District- Nawada.
2. Manorma Devi Wife of Late Pawan Kumar Residents of Village Porajeet P.O.Sirnama P.S. Wena, District Nalanda.

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ashok Priyadarshi, Adv
For the Respondent/s	:	Mr. Rabi Bhushan Prasad No.1, Adv.
	:	Mr. Vijay Prakash Bhargawa, Adv
	:	Miss Binita Singh, Adv.
	:	Mr. Umesh Pd., Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 31-07-2019

Heard the parties.

2. This appeal has been filed under Section 173 of M.V. Act by appellant National Insurance Company Ltd. for setting aside the judgment dated 29.09.2016 and Award dated 18.03.2017 passed by District Judge, Nalanda at Biharsharif-cum-Motor Accident Claims Tribunal in Claim Case No. 70 of

2012 by which the claims tribunal has awarded Rs. 6,90,000/- compensation amount with interest @ 7% per annum from the date of filing of claim application till payment.

3. Claimant Manorama Devi, mother of deceased has filed claim application for grant of compensation of Rs. 6 lacs on account of death of Pravin Kumar in a motor accident on 24.06.2012 while he was travelling on a motorcycle, a Truck bearing registration No. BR13-9904 which was being driven in a rash and negligent manner dashed against the motorcycle, as a result of which Pravin Kumar died.

4. FIR was registered being Nursarai P.S. Case No. 156/2012 under Section 279, 304A, 427 of IPC against the driver of the offending vehicle and after investigation, police found the allegation of rash and negligent driving by the accused driver of the offending vehicle to be true and submitted charge sheet against him.

5. Opposite party No. 1 is the owner of offending vehicle whereas opposite party No. 2 is the National Insurance Company and both appeared before the tribunal and submitted their written statement. Opposite party No. 1 in his written statement has stated that the driver was not driving the truck in a rash and negligent manner and accident took place due to fault

of the deceased.

6. The offending vehicle was insured by opposite party No. 2 National Insurance Company and the driver was holding a valid and effective driving licence on the date of accident. Opposite party No. 2 in their written statement have stated that three vehicles were involved in the accident including the Tata Safari vehicle but the owner, driver and Insurance Company of said vehicle has not been impleaded as opposite party and as per charge sheet the accident took place on account of negligence of both drivers of truck as well as Tata Sarari. There was contributory negligence on the part of deceased also. The driver was not holding a valid and effective driving licence at the time of accident.

7. On the basis of pleading of parties, tribunal framed five issues for its determination.

8. Three witness have been examined on behalf of claimant in which P.W. 1 is Manorama Devi (claimant), P.W. 2 is Surendra Kumar (informant) and P.W. 3 is Pankaj Kumar. Five documentary evidences has also been produced on behalf of claimants which have been marked as Exhibits by the Tribunal. Exhibit-1 is the salary certificate of deceased, Exhibit-2 is certified copy of FIR, Exhibit-3 is certified copy of

charge sheet, Exhibit-4 is certified copy of postmortem report, Exhibit-5 is photocopy of driving licence.

9. No witness has been examined on behalf of opposite party No. 1 (owner of the vehicle), however, one witness Shashi Ranjan Kumar Verma has been examined on behalf of opposite party No. 2 (Insurance Company). Four documents have been produced on behalf of opposite party No. 1 which has been marked as Exhibits by the tribunal. Exhibit-A is certified copy of driving licence, Exhibit -B is certified copy of Insurance Policy, Exhibit-C is certified copy of road permit and Exhibit-D is certified copy of fitness certificate. Two documents have been exhibited by opposite party No. 2 which has been marked as Exhibit-E (original certificate of D.T.O.), Exhibit-F (original investigation report regarding driving licence).

10. The tribunal has held that deceased died due to rash and negligent driving by the drivers of the Truck and Tata Safari, as such, claimant is entitled to claim compensation with either or both, as both are jointly as well as severally liable for compensation and has further held that there was no contributory negligence on the part of the deceased.

11. The Tribunal has found age of deceased to be 18 years and his monthly income to be Rs. 5000/- and annual

income to be Rs. 60,000/-. The Tribunal has deducted 50 per cent from the annual income as he was unmarried and has assessed loss of dependency to be Rs. 30,000/- but has not granted any addition in income towards future prospect and has applied 18 as a multiplier and assessed Rs. 5,40,000/- to be compensation amount, thereafter has granted compensation under the conventional heads as Rs. 1, 00,000/- for loss of love and affection, Rs. 25,000/- towards loss of estate and Rs. 25,000/- for funeral expenses and has quantified total compensation amount to be Rs. 6,90,000/- as just and proper compensation with interest @ 7 per cent per annum from the date of filing of claim petition till its realization.

12. The Award has been challenged by the Insurance company that grant of Rs. 1,50,000/- under conventional head is excessive as in case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors since reported in (2017) 16 SCC 680,*** a fixed amount of Rs. 70,000/- is to be granted under conventional heads. However, if the compensation is assessed and calculated on the basis of Pranay Sethi case then claimants are also entitled for 40 per cent towards future prospect and monthly income of deceased will become Rs. 7,000/- and annual Rs. 84,000/- and on deduction of 50 per cent towards personal and living

expenses, loss of dependency will be Rs. 42,000/- and since deceased was 18 years old multiplier will be 18 and compensation amount will become Rs. 7,56,000/- and on adding Rs. 70,000/- under conventional head, the entitlement of claimants for grant of compensation will become Rs. 8,26,000/-. However, the Tribunal has awarded Rs. 6,90,000/- as a compensation amount. As claimants have not challenged the quantum of compensation as such no order of enhancement of compensation amount can be passed on appeal preferred by the appellant-Insurance Company. The Award has also been challenged on the ground that Driver of the offending vehicle was not having a valid and effective driving licence. However, it is well settled proposition of law that Insurance Company is liable to pay the compensation amount where violations of terms and conditions of Insurance Policy is not fundamental in nature.

13. The statutory amount of Rs. 25,000/- deposited by the appellant at the time of filing of appeal, a cheque for the same shall be prepared in the name of claimant-respondent no. 2 and sent to the concerned Tribunal for its payment to the claimant-respondent no. 2, which shall be adjustable in the compensation amount.

There is no merit in this miscellaneous appeal and same is, accordingly, dismissed.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.09.2019
Transmission Date	N.A.