

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.131 of 2012

1. BRANCH MANAGER NATIONAL INSURANCE COMPANY
Represented Through Sri Anjani Kumar, Working As A.O. And Duly
Certified Attorney Of National Insurance Co. Ltd., Having Its Regional
Office at 4th Floor, Sone Bhawan, P.S- Sachivalya, District- Patna.
2. Divisional Manager, National Insurance Co. Ltd., Sumrit Mandal Complex,
Central Jail Road, Bhagalpur Represented Through Sri Anjani Kumar,
Working As A.O. And Duly Certified Attorney Of National Insurance Co.
Ltd., Having Its Regional Office At 4th Floor, Sone Bhawan, P.S-
Sachivalya, District- Patna.

... .. Appellant/s

Versus

1. ANITA DEVI W/O Late Arun Kr. Singh Resident Of Village- Sanhouli, P.S-
Chitra Gupta Nagar, District- Khagaria At Present Residing At Village-
Bhawanipur, P.S- Bihpur, Distt- Bhagalpur.
2. Ravi Kumar Singh S/O Late Arun Kr. Singh Resident Of Village- Sanhouli,
P.S- Chitra Gupta Nagar, District- Khagaria At Present Residing At Village-
Bhawanipur, P.S- Bihpur, Distt- Bhagalpur.
3. Rimi Kumari D/O Late Arun Kr. Singh Resident Of Village- Sanhouli, P.S-
Chitra Gupta Nagar, District- Khagaria At Present Residing At Village-
Bhawanipur, P.S- Bihpur, Distt- Bhagalpur.
4. Shalu Kumari D/O Arun Kr Singh Resident Of Village- Sanhouli, P.S- Chitra
Gupta Nagar, District- Khagaria At Present Residing At Village-
Bhawanipur, P.S- Bihpur, Distt- Bhagalpur.
5. Shanni Kumar Singh S/O Late Arun Kr. Singh Resident Of Village-
Sanhouli, P.S- Chitra Gupta Nagar, District- Khagaria At Present Residing
At Village- Bhawanipur, P.S- Bihpur, Distt- Bhagalpur.



6. Sahujha Devi W/O Late Jawahar Pd. Singh Resident Of Village- Sanhouli,
P.S- Chitra Gupta Nagar, District- Khagaria At Present Residing At Village-
Bhawanipur, P.S- Bihpur, Distt- Bhagalpur.
7. Amit Kumar S/O Sri Ramanand Kumar Resident Of Village- Dumaria
Bujurg, P.S- Parbatta, Distt- Khagaria

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shailendra Kumar, Adv

For the Respondent/s : Mr. Vivekanand Vivek, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-07-2019

I.A. No. 3688 of 2014

Heard learned counsel for the parties.

This interlocutory application has been filed for
condoning the delay of about two months in preferring this
appeal.

For the reasons mentioned in the interlocutory
application, the prayer made therein is allowed, and the delay in
filing this appeal is hereby condoned.

The interlocutory application stands disposed of.

M.A. No. 131 of 2012

Being aggrieved and dissatisfied with the judgment
dated 17.09.2011 and award dated 19.10.2011 passed by Motor



Accident Claims Tribunal, Naugachia in Claim Case No. 138 of 2006, the National Insurance Company Ltd., has filed this miscellaneous appeal.

2. Briefly stated, the facts of the case is that husband of claimant no. 1 Arun Kumar died in a motor accident on 24.06.2006 by a Jeep bearing registration no. JH-04A-2606 while he was returning from Singeshwar Asthan to his village Sanhouli after attending marriage ceremony and as soon the Jeep reached Dumri Pool towards Sonbarsa Ghat, the vehicle turned turtle and fell in a ditch, resulting in the death of Arun Kumar-husband of the claimant no. 1.

3. Accident took place due to rash and negligent driving by the driver of the Jeep for which a criminal case was instituted under Sections 279, 337, 338 and 304 of IPC against the driver.

4. After investigation the police found case to be true and submitted chargesheet against the driver.

5. The deceased was 49 years old and according to claimant his earning was Rs. 72,000/- (Rs. 6000X12) per annum and claimant were fully dependent upon his income and as such they are entitled for compensation under the under the Motor Vehicle Act and compensation of Rs. 6,33,500/- with interest @



12 per cent per annum has been claimed by the claimants.

6. Claimant No. 1 is the widow of the deceased, claimant no. 2 to 5 are the sons and daughters and claimant no. 6 is the mother of the deceased. Notices were issued to the opposite parties who are owner and driver, however, even after valid service of notice owner and driver have not contested the claim case of claimant before the Tribunal.

7. The claim case was contested by the appellant insurance company. The appellant insurance company filed their written statement and stated that driver of the offending vehicle was not holding valid driving licence and as such the owner has committed breach of terms of insurance policy and insurance company is not liable to indemnify the owner of the offending vehicle. The vehicle in question was plying without any valid route, permit and without any fitness certificate and the owner of the vehicle has violated the Rules of Motor Vehicle Act and as such the Insurance Company cannot be held liable for payment of any compensation to the claimants.

8. On the pleading of the parties, the Tribunal has framed six issues for its determination.

9. Four witnesses have been examined on behalf of claimants, who have supported the case of claimants and



documentary evidence have also been adduced. Exhibit-1 is the certificate showing income of the deceased, Exhibit-2 is the certified copy of FIR bearing Choutham P.S. Case No. 118 of 2006, Exhibit-3 is the photocopy of Insurance policy, Exhibit-4 is post mortem report and Exhibit-5 is heirship certificate.

10. No evidence has been adduced on behalf of opposite parties either oral or documentary.

11. After hearing the parties and perusing the evidence on record, the Tribunal came to finding that due to rash and negligent driving of Jeep, accident took place on account of which husband of claimant no. 1 received grievous injury and died during the course of treatment and the vehicle was insured with the insurance company, as such the claimants are entitled for compensation. Appellant-Insurance Company has failed to establish that Driver had not valid and effective driving licence and vehicle was plying without any permit.

12. The Tribunal has assessed the monthly income of of the deceased as Rs. 6000/-per month and has found annual income to be Rs. 72,000/- and the age of the deceased is 49 years and has applied the multiplier as 13 and 1/3 has been deducted towards personal expenses and has come to the conclusion that claimants are entitled for compensation of Rs.



6,24,000/- and in addition to said amount Rs. 2000 has been granted for funeral expenses, Rs. 5000/- for loss of consortium and Rs 2500/- loss of estate, and quantified the claim amount as Rs.6,33,500/-and has ordered for deducting Rs. 50,000/- of interim compensation already taken by the claimants, with interest @ 6 per cent per annum from the date of filing of the claim case.

13. After hearing the parties and considering the evidence on record, the court had assessed the amount of compensation on the basis of judgment rendered in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.** since reported in (2009) 6 SCC 121 and **National Insurance Company Limited vs. Pranay Sethi and Ors.** since reported in (2017) 16 SCC 680.

14. This Court does not find any error, irregularity or illegality in the order passed by the Motor Accident Claims Tribunal, and as such the present miscellaneous appeal is disposed of.

15. The statutory amount of Rs. 25,000/- deposited by the appellant at the time of filing of appeal, a cheque for the same would be prepared in the name of claimant no. 1 and be sent to the concerned Claims Tribunal and paid to the claimant



no. 1, which is adjustable against the compensation amount.

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

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2019
Transmission Date	NA

