

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.637 of 2014

Pratima Shukla Wife of Late Dinesh Kumar Shukla Resident of 538 K 652,
Triveni Nagar- 3, P.S.- Aliganj, District - Lucknow, Uttar Pradesh

... .. Appellant/s

Versus

1. Jagannath Mishra Son of Ramadhar Mishra Resident of C.T. Road,
Gannipur, P.S.- Kazimohammadpur, District – Muzaffarpur
Respondent / opposite party no.1 / owner of vehicle
2. The Divisional Manager, United India Insurance Company Ltd.,
Muzaffarpur
.... Respondent / opposite party no.2, Insurance Company

... .. Respondent/s

with

Miscellaneous Appeal No. 607 of 2014

The Divisional Manager United India Insurance Company Ltd., Muzaffarpur
through Pranay Kumar Manager cum and duly constituted Attorney United
India Insurance Company Ltd. Regional Office 3rd Floor Chanakya Complex
B.C. Patel Road, P.O. G.P.O. , P.S. Sachiwalaya Patna District Patna (opp.
Party No.2)

... .. Appellant/s

Versus

1. Pratima Shukla Wife of Late Dinesh Kumar Shukla Resident of 538 K 652
Triveni Nagar-3 P.S. Aliganj Lucknow U.P.claimant
2. Jagannath Mishra Son of Sri Ramadhar Mishra C.T. Road Gannipur, P.S.-
Kazimohammadpur, District-Muzaffarpur. (Opp. Party no.1)

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 637 of 2014)

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi

For the Respondent/s : Mr. Ashok Priyadarshi

(In Miscellaneous Appeal No. 607 of 2014)

For the Appellant/s : Mr. Ashok Priyadarshi

For the Respondent/s : Mr. Alok Kumar @ Alok Kr Shahi

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 09-01-2020

M.A. No. 607 of 2014:

Heard parties.

2. This appeal under Section 173 of M.V. Act, 1988



has been filed on behalf of appellant / United India Insurance Company Limited against the judgment dated 7.7.2014 and award dated 14.7.2014 passed by Ad hoc Additional District Judge-I -cum-M.A.C.T., Muzaffarpur in M.V. Claim case no.76 of 2012 by which the tribunal has awarded compensation of Rs.30,42,546/- to the claimant with interest @ 6% per annum from the date of filing of claim case till its payment.

3. Briefly stated the facts of the case is that FIR was instituted by Rakesh Kumar Shukla brother of the deceased Dinesh Kumar Shukla which was registered as Traffic P.S. Case No. 308 of 2008 dated 21.12.2008 against unknown driver of the unknown vehicle. It was alleged in the written complaint that the brother of informant Dinesh Kumar Shukla was administrative officer in United India Insurance Company Regional Office, Patna and on 20.12.2008 at about 5.15 p.m. while he was passing near Hartali More, he was dashed by some unknown vehicle as a result of which, he was injured and was taken to CNS Hospital for treatment and, thereafter, shifted to Tara Nursing Home on 20.12.2008 and was under treatment in said hospital at the time of lodging of FIR on 21.12.2008.

4. During investigation, a letter dated 26.03.2009 written by informant was received by the investigating officer



in which it was stated that the unknown vehicle has been identified which is a motorcycle bearing registration No. BR 06 N 8211. However, the I.O. and the Supervising police officer submitted final report against driver of unknown vehicle and during investigation, it has come that in spite of all efforts made by the police by recording the statement of witnesses who were present near the place of occurrence as well as by deputing the spy, the vehicle could not be identified.

5. After investigation, the police submitted final report against unknown driver under Sections 279 / 337 /338 of IPC in the court of CJM, Patna and found the case to be true but without any clue and submitted final report on 31.10.2009 and investigation was closed and informant was accordingly informed.

6. Protest petition was filed by the informant against the investigation made by the IO in the court of CJM, Patna Sadar, Patna giving rise to complaint case no.1768(C) / 2011 disclosing the name of accused as Pankaj Kumar rider of motorcycle bearing registration No. BR 06 N - 8211 of Muzaffarpur and name of witnesses as Karunesh Ujjawal, Kundan Kumar, Anshu Kumar, Anil Kumar. In his statement recorded on S.A. he stated that he came back Patna from



Lucknow in February, 2009 and inquired from owner of betel shop near place of occurrence who told him that he heard from two persons Karunesh and Kundan that accident was caused by vehicle no. BR 06 N-8211 and thereafter, he informed the IO by a registered letter but no investigation was made by the police on his letter and as such investigation was faulty and he has filed the protest petition making Pankaj Kumar rider of motorcycle as accused.

7. On the basis of protest petition and examination of complainant on S.A. and statement of inquiry witnesses Kundan Kumar, Karunesh Ujjawal and Anil Kumar, the court of Judicial Magistrate, 1st Class, Patna took cognizance of the offence under Sections 279, 337, 338 IPC against the accused Pankaj Kumar and issued summons to him for his appearance.

8. Thereafter, an application under Section 166 of the M.V. Act, 1988 was filed on behalf of claimant /respondent / Pratima Shukla before the Motor Vehicle Accident Claims Tribunal, Muzaffarpur, claiming compensation of Rs. 73,00,000/- on account of death of her husband - Dinesh Kumar Shukla who was injured in said motorcycle accident on 20.12.2008 and died on 05.02.2009.

9. In the claim case, the owner of the motorcycle



Jagarnath Mishra was made opposite party no.1 whereas appellant / Insurance Company was made opposite party no.2. Alleged rider of the vehicle Pankaj Kumar was not made party in the claim proceeding.

10. It is further stated in the claim petition that deceased Dinesh Kumar Shukla was 43 years of age at the time of death and his income was Rs. 60,000/-per month, who died leaving behind widow and two minor daughters.

11. Written statement was filed before the Tribunal by the appellant-United India Insurance company Ltd., in which it was stated that alleged vehicle bearing registration No. BR 06N 8211 was insured with opposite party no. 2 / United India Insurance company Ltd. They have admitted that the said vehicle was insured for the period from 17.03.2008 to 16.03.2009. It is further submitted that it was for the claimant to establish her case on the basis of oral and documentary evidence to be adduced before the Tribunal to establish that the deceased died due to accident from said vehicle on account of negligent and reckless act by the rider of the offending vehicle. It is further stated that claimant has to establish that the said vehicle(motorcycle) was being ridden by the person having a valid and effective driving licence on the date and time of



accident. The claim is barred on the ground of territorial jurisdiction.

12. Opposite party no.1 the owner of the vehicle also filed the written statement denying his liability and stated that claims tribunal had no territorial jurisdiction to entertain claim application. It was further stated that Pankaj Kumar son of Chandreshwar Ojha who is his relative took his motorcycle on 20.12.2008 and returned it on 21.12.2008 and Pankaj Kumar had valid and effective driving licence on the date of accident and his motorcycle was insured with United India Insurance Company Ltd. on the date of accident and liability to pay the compensation is with United India Insurance Company Ltd., Muzaffarpur.

13. A prayer was made before the Tribunal to pay interim compensation to the claimant under Section 140 of the M.V. Act on the basis of no fault liability and said prayer was considered by the Tribunal and allowed by its order dated 23.05.2013 and interim compensation was paid by the insurance company.

14. On the basis of pleading of the parties, Tribunal framed 9 issues for its determination and decided all the issues in favour of claimant and directed Insurance Company to pay



compensation of Rs.30,42,546/- to the claimant with interest @ 6% per annum from date of filing of claim case till its realization.

15. The claims tribunal has relied upon the deposition of AW 5 Saket Kumar and AW 6 Prashant Kumar who claimed themselves to be eye witnesses of the accident caused by motorcycle bearing registration No. BR 06 -N -8211 and allowed the claim of claimant and directed appellant/ insurance company to pay the compensation amount and aggrieved by said award, the appellant / insurance company has filed this appeal. The two issues which are relevant for consideration in this appeal are as follows:-

(I) Issue no. 3 Whether the accident in question took place by vehicle bearing registration No. BR 06N 8211 on 20.12.2008 near Hartali More, Patna, in which deceased died and

(ii) issue no. 5 whether accident took place within the jurisdiction of this Court?

16. Witness no. 1 Anil Kumar, has been examined on behalf of claimants who stated in his examination-in-chief that the incident is of 20.12.2008 in the evening and he has a betel shop near the place of accident where Karunesh and



Kundan Kumar came and informed that one person has met an accident and is seriously injured. After some days, informant Rakesh Shukla came to his betel shop to inquire about said accident and after two days, he introduced Karunesh Ujjwal and Kundan Kumar to him. Both said that accident was caused by rash and negligent driving by the rider of motorcycle no. BR 06 N-8211 and Rakesh Kumar Shukla informed about death of his brother Dinesh Kr. Shukla in said accident.

17. In his cross-examination, he has stated that he is not an eye witness of the accident and he was informed about the said incident by those two persons who had come to his betel shop.

18. Witness No. 2 is the claimant Pratima Shukla who supported her claim case and stated about the incident of 20.12.2008 in which her husband died.

19. In her cross examination, she has admitted that she is not an eye witness of the occurrence.

20. Witness No. 3 Rakesh Kumar shukla brother of the deceased has been examined on behalf of claimant who has stated about the accident. In his examination in chief he has stated that at the time of accident he was in Lucknow where he was informed about the accident and thereafter he came to CNS



Hospital, Patna, and shifted his brother for better treatment to Tara Nursing Home, Patna and when he inquired he could know about the offending vehicle from Karunesh Ujjwal and Kundan Kumar.

21. In his cross examination, he stated that he got the information of accident on phone in Lucknow and thereafter he came to Patna and lodged the FIR in the hospital on 21.12.2008 against unknown.

22. Witness No. 4 is Saket Kumar who in his examination in chief has supported the claim case as stated in claim application and in his cross-examination he has stated that he is eye witness of the occurrence and he saw the accident from the distance of 15 to 60 metre. Prashant (AW 6) was along with him and tried to catch the culprits. On a query made by the court, he stated that deceased was a pedestrian when he met with the accident as a result of which he suffered head injury.

23. Prashant Kumar is witness no. 5 on behalf of claimant who has supported the case of claimant as disclosed in claim petition.

24. In his cross examination he has stated that he is eye witness of the occurrence. He has seen the occurrence from the distance of 2 to 3 laggi. Motorcyclist fled away after hitting



the deceased. People assembled there tried to catch the culprits but he fled away. The deceased was walking on the left side of the street when he was dashed by the motorcycle.

25. Witness no. 6 Ranjeet Kumar Mishra is a formal witness who has proved the death certificate of deceased.

26. Manohar Kumar Trivedi has been examined as witness no.1 of the insurance company who in his examination-in-chief has stated that he was appointed as investigator by the United India Insurance Company Ltd. He has proved salary certificate of the deceased issued from his office. He has also stated that the rider of the motorcycle had valid and effective driving licence on the date of accident.

27. Prakash Kr Mandal is the Manger of the insurance company who has been examined as witness no. 2 on behalf of Insurance Company who has proved the salary certificate and income of the deceased.

28. After hearing the counsel for the parties and perusing the materials available on record, it is apparent that the husband of claimant met an accident on 20.12.2008 at about 5:15 p.m. and, thereafter, he was rushed to the hospital and informant who is brother of deceased was informed on telephone while he was in Lucknow and he came to Patna on



21.12.2008 and, thereafter, lodged the FIR upon which, Traffic P.S. Case No. 308 of 2008 was instituted in Patna and after investigation, the vehicle which caused the accident could not be identified by the police although every effort was made to identify said vehicle for which statement of persons who were present near the place of occurrence were recorded and even spy was deputed by the police yet the vehicle could not be identified and police submitted the final report as case to be true but without any clue. The finding of the police cannot be ignored by the claims tribunal with respect to the offending vehicle which remained unidentified.

29. Informant who lives in Lucknow stated that he came to Patna in February, 2009 and, thereafter, from Karunesh Ujjawal and Kundan Kumar, he came to know that the vehicle was BR 06 N 8211 which caused the accident but strangely both of them have not been examined as witnesses on behalf of claimant. Two witnesses who claimed to be eye witnesses namely, Saket Kumar and Prashant Kumar for the first time before the tribunal have deposed and their statement was neither recorded by the police or before the court which took cognizance on protest petition filed by informant/complainant as such their evidence is not trustworthy and cannot be relied upon



and is fit to be discarded. The other witnesses are admittedly not the eye witnesses.

30. On the basis of oral evidence, it is not established that the accident was caused by motorcycle no. BR 06 N 8211 particularly in the background that even after much effort, police could not identify the offending vehicle and informant claims to have identified the offending vehicle on the basis of information given by two persons namely Karunesh Ujjawal and Kundan Kumar whom he met in February, 2009 and even none of them have been examined as witness on behalf of claimant.

31. The deceased was administrative officer posted in Patna and claimant and her family resided at Patna, the accident took place in Patna, case was registered at Patna and protest petition was filed before CJM, Patna, deceased was admitted in hospital at Patna and he died during treatment in hospital at Patna. The claimant has given her address of Lucknow, as such, on the date of filing of the claim application, she could not be ordinary resident of Muzaffarpur and as such court (tribunal) at Muzaffarpur had no territorial jurisdiction to entertain the claim application.

32. Whole claim case appears to be collusive claim



case and evidences were created to suit the interest of claimant and opposite party -Insurance Company also did not seriously contested the claim case before the tribunal as the deceased was officer in the opposite party no.2/Insurance Company.

33. For the reasons as stated above, the judgment and award of the claims tribunal is not sustainable either in law or on fact and is accordingly set aside and claim case is dismissed. However, the interim compensation already granted to claimant shall not be recovered.

34. The miscellaneous appeal No. 607 of 2014 filed on behalf of appellant / United India Insurance Company is allowed.

35. Miscellaneous appeal No.637 of 2014 filed on behalf of claimant for enhancement of compensation amount is dismissed.

36. Both Miscellaneous appeals are disposed of.

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

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.01.2020
Transmission Date	NA

