

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.294 of 2016

Mansoor Alam, son of Noor Mohammad, Resident of Hajipur, P.s.-Katihar Sahayak, District-Katihar.

... .. Appellant/s

Versus

1. Gopal Kumar Sarawagi, son of Bhanmal Sarawagi resident of Salmari, P.O.-salmari, P.S.-Azam Nagar, District-Katihar.
2. Sayeeda Praveen, wife of Zabir Khan, Resident of Gali No.3 Islamganj, Ludhiana, Punjab-141003.
3. Md. Ehtesham Khan (Driver) son of Mumtaz Khan, resident of Kelonuna, P.S.-Guruwa, District-Gaya D/L No.364/07-08, Gaya.
4. United India Insurance Company, Alam Market, Girl's School Road, P.O. and P.s. and District-Katihar.
5. The New India Assurance Company G.T. Road, Nillerganj, Ludhiana.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ajit Kumar Singh, Advocate
For the Respondent No.4	:	Mr. Mr. Ashok Priyadarshi, Advocate
For the Respondent No.5	:	Mr. Vikash Chandra Srivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date: 07-12-2022

Heard Mr. Ajit Kumar Singh, learned counsel for the appellant and Mr. Ashok Priyadarshi for respondent no.4 and Mr. Vikash Chandra Srivastava for respondent no.5.

2. The present appeal is directed against the order dated 21.09.2015 and the Award dated 23.01.2016 passed by the learned Additional District Judge, IV, Katihar cum Motor Vehicle Accident Claim Tribunal, Katihar (*henceforth for short* 'the Tribunal') in M.V. Claim Case No.60 of 2010 by which a compensation amount of Rs.2,77,000/- with an interest of 7% per annum was directed to be paid from the date of filing of the claim petition within a period of two months.



3. The matrix of facts giving rise to the present appeal is/are as follows:

4. As per the case, the claimant, driver of the truck bearing registration no. BEK-5533 belonging to Gopal Kumar Sarawagi met with an accident on 06.02.2009 when a truck from the opposite direction bearing registration no. PB 10CA/1178 collided with it.

5. This resulted into injuries to the claimant-driver of BEK-5533 and he remained under treatment for a long time in the Advance Bone Centre clinic of Dr. Anil Kumar Dwivedi.

6. After recovering, the claim petition was filed.

7. The contesting respondents appeared and opposed the claim stating therein that there was negligence on the part of the claimant also which resulted into the said collision and further ground was that the police found both the drivers of the vehicle to be offender/driving in negligent manner and have accordingly made both of them liable which has also found mentioned in the Motor Vehicle Inspector Report dated 10-02-2009 and 08-02-2009 (marked as Ext.X/12).

8. Having gone through the rival contentions the learned Tribunal framed issues and accordingly taking into account that the police made the claimant also responsible for the act of rash and negligent driving, it finally held that it is a case of contributory negligence on the part of the claimant himself and as such he is liable to be compensated only to the tune of 50%.



9. Accordingly, following the recent judgment of the Apex Court in the case of **National Insurance Co. Ltd vs Pranay Sethi** reported in **(2017) 16 SCC 1050**, the learned Tribunal calculated the amount to be Rs.2,77,000/- with 7% interest from the date of filing of the claim petition within a period of two months.

10. Aggrieved, the present appeal has been filed.

11. Mr. Ajit Kumar Singh, learned counsel for the appellant submits that 'the Tribunal' erroneously held the appellant to be part of the said accident and accordingly provided contributory compensation and as of 50%. He submits that the considering the fact that the permanent disablement that the application-claimant- appellant suffered he should have been compensated 100%.

12. Mr. Ashok Priyadarshi, learned counsel for the respondents on the other hand submits that the fact that the police held the appellant herein also responsible for the said accident and submitted charge sheet which remained uncontested, 'the learned Tribunal' was perfectly justified in holding him to be part of contributory negligence and accordingly following the **National Insurance Co. Ltd vs Pranay Sethi** (supra), he has been suitably compensated and appeal as such is fit to be dismissed.

13. There seems to be weight in the submission put forward by Mr. Ashok Priyadarshi. The police investigated the matter and submitted charge sheet against both the drivers holding them responsible for the accident and the appellant having accepted the said



report of the police, ‘the learned Tribunal’ did not erred in passing the order dated 23.01.2016 after holding him responsible for the negligence and accordingly compensated him with 50% of the amount.

14. In the aforesaid circumstance, this Court does not find any error in the order dated 23.01.2016 passed by the learned learned Additional District Judge, IV, Katihar cum Motor Vehicle Accident Claim Tribunal, Katihar.

15. The M.A. No.294 of 2016 fails and accordingly dismissed.

(Rajiv Roy, J)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2022
Transmission Date	NA

