IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.485 of 2016

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Manoj Kumar Son of Sri Bhaso Singh, Resident of Mohalla- Jai Prakash Nagar, Ward No. , P.S.- Khagaria, District- Khagaria

... ... Appellant/s

Versus

1. Ram Sagar Yadav and Ors. Son of Late Prayag Yadav
2. Smt. Chinta Devi, Wife of Ram Sagar Yadav
3. Most. Bibha Devi, Wife of Late Birju Yadav
4. Saurabh Kumar, Son of Late Birju Yadav, Minor, aged about 13 years
5. Manisha Kumari, Daughter of Late Birju Yadav, Minor, aged about 11 years
6. Puja Kumari, Daughter of Late Birju Yadav, Minor, aged about 9 years
7. Gaurab Kumar, Son of Late Birju Yadav, Minor, aged about 7 years
8. Sharwan Kumar, Son of Late Birju Yadav, Minor, aged about 5 years All the minors are under the guardianship and next friend of their mother Most. Bibha Devi, All are residence of village- Ashok Ghat, P.O.- Dishanpur Ashok, P.S.- Sahebpur Kamal, District- Begusarai
9. The Branch Manager, Bajaj Allianz General Insurance Company Ltd., 6th Fllor, Anand Vihar, West Bori
10. The Branch Manager, Bajaj Allianz General Insurance Company Ltd., Khagaria, P.O.P.S.- Khagaria, Dis

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Amrendra Narayan Rai, Advocate
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 01-12-2022

Heard Mr. Amrendra Narayan Rai, learned counsel for the appellant. None appears on behalf of the respondents.

The present appeal is directed against the order dated 30.3.2016 passed in Motor Vehicle Claim Case No. 27 of 2009 by 4th Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Khagaria by which the claim of the claimants-respondent 1st set (respondent Nos. 1 to 8) was allowed with a direction to the appellant herein to deposit the compensation amount within a period of two months.

2. The Matrix of facts leading to the present case is/are as follows:-

3. On 6.6.2009, Birju Yadav, deceased, was driving the passenger Jeep bearing registration No. BRI-8753 and the said vehicle was moving from Khagaria Railway Station to Begusarai on NH-31. However, near Kallar Tola, a Sumo vehicle bearing registration No. BR-34C-001 which was moving in a very dangerous manner came from opposite side (Begusarai) and dashed against the said Jeep resulting into serious injuries to Birju Yadav and a co-passenger, a lady who succumbed to the injuries on the spot itself. Birju Yadav was taken to the Khagaria Hospital, where he too died. Accordingly, Khagaria Muffasil P.S. Case No. 234 of 2009 was registered amongst other under Section 379 and 304A of the Indian Penal Code against the driver of the Sumo vehicle.

4. The respondent-1st set thereafter preferred claim application on 9.9.2009 for compensation amount of Rs. 3 lakh with interest.

5. The opposite parties, the appellant herein, the

owner of the Sumo vehicle, appeared and submitted amongst other the insurance policy of M/s Bajaj Allianz General Insurance Company Limited, Khagaria stating that the vehicle is insured with the said Insurance Company.

6. 'The Insurance Company' preferred exoneration petition on 8.9.2011 stating that the insurance policy submitted by the opposite party-appellant herein is a fake one and no such policy was ever issued by the Company and as such, they are not liable to pay in the matter.

7. The Motor Vehicle Claim Case No. 27 of 2009 was thereafter taken up by the Motor Vehicle Accident Claim Tribunal, Khagaria, (henceforth for short 'the Tribunal'), the issues were framed and accordingly the learned Tribunal passed the order vide order dated 30.3.2016 and recorded as follows :-

ISSUES

1. Is the claim application as framed is maintainable?

2. Whether the claimants are entitled to get compensation as prayed for and if so to what extent and from whom?

3. To what other relief or reliefs the claimants are entitled?

8. Now it is to be seen whether the claimants have established their case for compensation?

Findings :-

9. In order to establish their case the claimants has examined 3 witnesses in the case namely C.W.1, Ganesh Yadav, C.W.2, Janardan Yadav and C.W.3, Yadav.

Besides oral evidence the claimants have also adduced some documentary evidence in this case, Ext. 1 is formal FIR and fardbeyan of the informant Ext. 2 photocopy of the p.m. report of the deceased Birju Yadav, Ext. 3 Policy paper of the offending certificate of offending vehicle and Ext. 5 is charge-sheet of Muffassil P.S. Case No. 224 of 2009.

10. The O.P.No. 1 and 2 have also adduced oral as well as documentary evidence in this case.

11. As regards oral evidence on behalf of O.P. No. 1, one witness namely Karishma Kumari has been examined who happens to be *working as Legal Executive in Bajaj Allianz General Ins. Co. Ltd. Photocopy of Policy paper bearing No. 0G 09 2116 180300005318 has been produced as documentary evidence which is Ext. A of this case.*

12. O.P. No. 3 has also adduced one witness in this case namely, Ashok Roy.

13. Now I proceed to scan and scrutinize the evidence so far available on the record issuewise and in this connection I first take up Issue No. 2.

Issue No. II:

14. As per claim petition, it appears that the claimants have sought compensation from O.P. No. 1 and 2 which are Bajaj Allianz General Ins. Co. Ltd. As per claimant the offending vehicle No. BR 34C-0001 was insured with the said company at the relevant date of accident whereas the O.P. No. 1 and 2 have pleaded in their exoneration petition that the said policy paper which is Ext. 3 of this case is fake and fabricated and manipulated to obtain compensation from the *said company. Even O.P. No. 3 who is owner of the offending vehicle has pleaded in his W.S. that his said offending vehicle was insured with the said O.P.*

15. Now coming to the evidence it appears that the claimant who has been examined as witness No. 1 has not stated in his evidence that the offending vehicle was insured with the O.P. No. 1 and 2. Even owner of the offending vehicle has not taken pains to examine himself as a witness in this case nor he has produced original policy paper in this case to authenticate the contention that his offending vehicle was insured with O.P. No. 1 and 2 on the relevant date of accident. Had it been so he would have filed to buttress his stand that his vehicle was insured with O.P. No. 1 and 2. So adverse inference is drawn against him when it was not filed by him. Moreover, adverting to the evidence of Karishma Kumari who has been examined on behalf of O.P. N0o. 1 and 2, it appears that the policy paper submitted by the claimant is fake and forged documents and so, she *has categorically stated that the Insurance Company is not liable to pay compensation to the claimant for the alleged death of claimant's son arising out of the said accident.*

In view of the above oral evidence of the parties it becomes highly pertinent to go through the Ext. 3 vis-a-vis the Ext. A of this case. On the perusal of both the Exts. It appears that both the policy hear the No. OG 09 2416 1903 00003338. But Ext. 1 appears to have been issued on 23.11.08 for the vehicle No. Br-17-1533 in the name of owner Binay Singh, R/O Vill. Pratappur, Tola, Patna G.P.O. Patna which is Tata Truck. But here the Ext. 1 shows that it stands in the name of O.P. No. 3 and that too for his vehicle Sumo bearing registration No. BR-34C-0001. In this way, I find that the policy paper filed by the claimant in respect of the offending vehicle does not match with the Ext. A filed by the O.P. No. 1 and 2. Moreover, accident took place on 6.6.2009 whereas Ext. 1 was issued on 15.6.2009 which is after the occurrence having taken place. So, in view of the *above facts there is difference in respect of the policy paper Ext. 1 submitted by the claimant vis-a-vis Ext. A of this case. So, on the facts available on the record; as well as documentary evidence adduced by the parties I find that the policy paper of the offending vehicle upon which the claimants as well as O.P. No. 3 have put claim for compensation from O.P. No. 1 and 2 appears to be far from truth and so the policy paper appears to be take and fabricated and hence the O.P. No. 1 and 2 are not under any contractual liability to pay compensation to the claimants. For the reasons stated above the O.P. No. 1 and 2 are exonerated from the liabilities of paying compensation to the claimants.*

Moreover, the case of the claimant as made out in his claim petition that the deceased Birju died on 6.6.2009 in a road accident when his jeep bearing registration No. BR-01-8753 was dashed against the offending vehicle bearing registration No. BR-34C-0001 belonging to the O.P. No. 3. In course of accident the deceased

Birju got serious injury besides other passengers travelling in the said jeep and in course of treatment Birju died at Khagaria Hospital and p.m. report, it appears that the deceased Birju appears to have died in a road accident. On perusal of Ext. 5 which is charge-sheet, it appears that the I.O. has also found the case true that the offending vehicle was of guilty and responsible for the death of Birju in the said accident and so he has submitted charge-sheet against the offending vehicle BR-34C-0001 belonging to the O.P. No. 3.

16. Coming to the evidence of C.W. 1 and it appears that they were travelling in the said Jeep which was being driven by the deceased Birju at the time of relevant accident. They have also stated in their evidence that the offending vehicle dashed against the said Jeep while driven rashly and negligently leading to the death of Birju Yadav. However, after going through the evidence of Ashok Roy who has been examined on behalf of O.P. No. 3 it appears that he has stated in categorical terms that the offended vehicle was *itself responsible for the said accident as it was being driven rashly by the deceased at the relevant time of accident and the offending vehicle is not at all reparable for the said accident. After going through the entire evidence so far available on record as adduced by the parties, I find that Ext. 1 and 5 which are fardbeyan as well as charge-sheet of Mufassil P.S. Case No. 234 of 2009 has been fully supported the evidence of C.W. 1 and 2 and therefore, I am of the considered opinion that the deceased Birju Yadav died in it road accident on 6.6.2009 when his offending vehicle was dashed against the vehicle No. BR-34C-0001 and on perusal of the R.C. book which is Ext. 4 of this case, it appears that the offending vehicle belongs to O.P. No. 3 and so the O.P. No. 3 is under liability to pay compensation to the claimants for the death of his son, Birju Yadav who met with an accident on 6.6.2009 at the relevant time in as much his said vehicle was not insured with any Insurance Company at the relevant time as held earlier herein. So, there issues decided in favour of* claimants and against O.P. No. 3 only.

Issue No. I:

17. From the claim petition, it also appears that the claimants are parents, wife and five minor children of the deceased. They appears for the legal heirs as well as legal representative of the deceased, Birju Yadav as this fact has not been controverted by the O.P. enclosure of Trial. So, all the claimants being the legal representative as well as legal heirs appears to be entitled to get compensation amount from O.P. No. 3. Under such circumstances, the claim petition as framed is maintainable. Hence, issue No. 1 had decided the favour of claimant.

Issue No. III

18. Now the question remains as to what will be the quantum of compensation to be awarded to the claimants in respect of death of his son in a road accident. As per claim petition as well as from the evidence of C. W. 3, it appears that the deceased Birju Yadav aged about 39 years was class one driver of the offended

vehicle earning three thousand rupees per month and on his income parents and wife as well as five children of the deceased were dependent and after his death the members of the whole family have been driven on the verge of starvation. The O.P. No. 3 has not controverted the income of the deceased nor put forward any proof with respect to the income in the contrary. So, it is in the interest of justice in the income of the deceased would be taken rupees three thousand per month. From the claim petition it appears that the deceased died leaving behind his mother, wife and five children which are dependents on the income of the deceased. So, 1/4th deduction is permissible.

*19. Now the annual loss of the dependency of the family would e 36,000/-1/4-27,000/-. The age of the deceased at the time of accident appears to be 26 years as per Ext 3 of this case. So, the multiplier would be 17 under the facts and circumstances. Now, the total income of the family would be Rs. 27,000/- * 17*4,59,000/-. On this amount the claimant is entitled to pet rupees* *five thousand as loss of consortium. Rs. 2000/- as funeral expenses and also Rs. 25,000/- in the form of loss of estate. So the compensation amount now comes to be Rs. 4,68, 500/-. However, on the perusal of the evidence of C.W. 3 who is father of the deceased, it appears that he has state in his evidence at para-7 that the deceased was not holding valid license at the time of accident nor he has aily road permit. Tax token for plying the said Jeep on road. It also appears from his evidence at para-10 that the said Jeep which was being driven by the deceased, Birju Yadav at the time of accident was old one and purchased by the deceased himself. But his name was not entered in R.C. book in the M.V.I. Office. In this way, I find that the deceased Birju was driving the said vehicle without any valid license and also not with any road permit and also not running the said vehicle under any insurance policy. So, the deceased himself has contributed to some extent to the alleged accident which claim anted his life. So, in this view of the matter the amount of compensation* *would be deducted by so due to contributory negligence by the deceased himself leading to the accident. In this was the total compensation amount after deducting 50% would be Rs. 2,34,250/- which appears pat and reasonable under the facts and circumstances of the case. The claimant is also entitled to get interest on the said amount from the date of settlement of issue i.e. 24.7.2013. Hence, this issue is decided in favour of claimant. Hence, it is hereby.*

ORDERED

That the claim be and the same is allowed with contest. The O.P. No. 3 is directed to deposit 70% of the amount in the name of wife and children of the deceased and so in the name of mother of the deceased through cheque or Bank Draft. The wife of the deceased is further directed to deposit 50% of the 70% of the total compensation amount in the name of minor children under fixed deposit scheme in any bank or Post Office under the guardianship of her which would be payable after the attainment of majority *of the last minor children. The O.P. No. 3 is directed to deposit the compensation amount in the manner its indicated above within two months from the date of passing of this judgment filing which the claimants are entitled to take recourse of law to realize the same.*

8. Heard learned counsel for the appellant.

9. Admittedly, the accident of the Jeep happened with the Sumo vehicle bearing registration No. BR-34C-0001 and the appellant being owner cannot exonerate himself from the contributory negligence from the said accident.

10. The learned Tribunal took note of the fact that the deceased who allegedly own the Jeep did not have proper documents and accordingly the claim was cut to half which was totally justified.

11. Further, the appellant tried to hoodwink 'the learned Tribunal' by submitting a policy of ‘the Insurance Company’ which was disowned by the said Company stating it to be a fake one. Thus, it cannot be said that the appellant had gone to ‘the Tribunal’ with clean hands.

12. Considering the aforesaid facts and circumstances, this Court does not find any error in the order

dated 30.3.2016 passed by the learned Tribunal in Motor Vehicle Claim Case No. 27 of 2009.

13. The M.A. No. 485 of 2016 thus fails and is accordingly dismissed.

14. The appellant is directed to pay the compensation amount as directed by 'the learned Tribunal' within a period of three months, if already not paid.

I.A. No. 02 of 2019.

The aforesaid Interlocutory Application was filed for staying the proceeding of Execution Case No. 01 of 2016.

In view of the fact that M.A. No. 485 of 2016 already stands dismissed, the I.A. No. 02 of 2019 has become infructuous and is accordingly dismissed.

(Rajiv Roy, J)

Ravi/Ajay-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05/12/2022
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