

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.373 of 2021**

- 
1. Ramkhelawan Singh, S/o Late Puran Prasad, resident of Village- Sonbarsha Ghat, P.O. and P.S.-Chautham, District-Khagaria.
  2. Kaili Devi, W/o Ramkhelawan Singh, resident of Village- Sonbarsha Ghat, P.O. and P.S.-Chautham, District-Khagaria.

... .. Appellants

Versus

Sudhir Kumar Chaurasia, S/o Ram Mani Chaurasia, R/o Maheshkhunt  
Pschimi Bari Tola, P.S.- Maheshkhunt (Gogri), District- Khagaria.

... .. Respondent

---

**Appearance :**

For the Appellant/s : Mr. Rajesh Sinha, Advocate  
For the Respondent/s : Mr.

---

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

3      18-01-2023                      Heard learned counsel for the appellants.

2. This appeal arises out of judgment dated 19<sup>th</sup> February, 2021 passed in Claim Case No. 13 of 2014 whereby and whereunder the application preferred by the claimants-appellants under Section 166/140 of the Motor Vehicle Act, 1988 for grant of compensation of Rs.10,00,000/- with interest from the date of filing till actual payment against the opposite party has been dismissed.

3. In the present case, the unmarried son of the claimant no. 1 became victim of a hit and run case on 30.01.2007 at around 08:00 A.M. It is stated that his son Pinku Kumar was going to village Sirjuwa, the sasural of his elder son but on way, he was dashed by an unknown truck on the highway near Sapaha and his son was seriously injured. A case being



Maheshkhunt P.S. Case No. 13 of 2007 was instituted against unknown truck driver for the offences under Sections 279 and 304A of the Indian Penal Code. After investigation of the case, the I.O. submitted a final form dated 28.02.2007 (Exhibit '5') stating that the case under Sections 279 and 304A of the Indian Penal Code is true against unknown truck but there was no clue. After that, a protest petition dated 12.04.2007 was filed in which the opposite party no. 1 of this case and an unknown jeep driver was made party and it was said that the driver of the jeep bearing Registration No. BR-34-3822 had dashed his son due to which his son Pintu Kumar died. On the said protest petition, a complaint case was registered giving rise to Complaint Case No. 521C of 2008 and after examining the witnesses on oath, the learned Magistrate vide order dated 21.09.2013 took cognizance of the offences under Sections 279 and 304A of the Indian Penal Code and issued summons against the accused persons. Thereafter, a claim case was filed by the claimants-appellants before the learned Motor Vehicle Accident Claim Tribunal (hereinafter referred to as the "learned Tribunal") on 20.02.2014.

4. It further appears that on notice, the opposite party no. 1 appeared before the Tribunal, filed his written statement and



contested the claim petition on various grounds.

5. The opposite party no. 1 took a plea that the informant had himself stated that his son had died due to an accident by an unknown truck and he was not aware of the offending truck and his driver, the final form was submitted by the I.O. concerned without any accusation against opposite party no. 1 and his vehicle, the said final form was also accepted by learned C.J.M., Khagaria. It was further submitted that after long lapse of time, the informant filed a protest petition based on false and frivolous grounds by narrating new false story.

6. The learned Tribunal framed as many as six issues as under:-

- “1. Whether the application as framed is maintainable?
2. Have the claimants got valid cause of action for compensation case?
3. Whether the deceased Pinku Kumar died in a motor vehicle Accident due to rash and negligent driving of the driver?
4. Whether the O.P. no. 1 is the owner of the vehicle registration No. BR/34-3822 and whether the deceased Pinku Kumar died by his vehicle?
5. Whether the O.P. No. 1 is liable to pay the compensation as claimed for?
6. To what other relief or reliefs, if any, the claimants are entitled?”

7. In support of their claim, the claimants examined five witnesses namely AW-1 Ramkhelawan Singh (himself claimant), AW-2 Kaili Devi (claimant no. 2 and mother of the



deceased), AW-3 Mantun Singh, AW-4 Anoj Singh and AW-5 Yogesh Kumar Singh. He produced the following documents for consideration:-

“1. Ext. 1 is C.C. of Complaint case No. 521C of 2008.

2. Ext. 2 is C.C. of summoning order dated 21.09.2013 in Complaint Case No. 521C of 2008.

3. Ext. 3 is Information under RTI Act regarding Jeep bearing registration No. BR-34-3822.

4. Ext. 4 is Xerox copy of post-mortem report of the deceased Pinku Kumar.

5. Ext. 5 is C.C. of Chargesheet of Maheshkhunt P.S. Case No. 13 of 2007.”

8. The opposite party no. 1 also informed the learned Tribunal that the order taking cognizance and issuance of summons issued by the learned court below in Complaint Case No. 521C of 2008 has already been quashed by Hon’ble Patna High Court vide order dated 08.01.2019 in Cr. Misc. No. 29415 of 2014.

9. The learned Tribunal has examined the evidences adduced on behalf of the claimants and recorded its finding on the question as to whether the deceased Pinku Kumar died by the vehicle of O.P. No. 1. The relevant part of the consideration given by learned Tribunal are being extracted hereunder from



paragraph '16' of the impugned judgment:-

**“16.** .... Now question is that whether the deceased Pinku Kumar died by his vehicle? Let us look at the evidence in this regard:-

As per the case of Ramkhelawan Singh, his son Pinku Kumar died on 31.01.2007, at around 8.00am when he was going to Sirzua from his village by bicycle, on NH 31 near Sapaha, a commander jeep bearing No. BR-34-3822 dashed him by rashly and negligently driving by its driver. In his cross examination, he has stated that when the incident happened he was not with his son, Mantun Singh, Sanoj Singh and Arun Singh told about the incident and Jeep registration number. As per Fardbayan of the Ramkhelawan Singh, his son was dashed by unknown truck on the highway near Sapaha and his son was seriously injured. He was brought to Maheshkunt Hospital by his own villager namely Arun Sahu who was going from where for marketing purpose and Arun Kumar informed him by telephone, he went to Maheshkhunt from his house and saw that his son was seriously injured, on the advice of the doctor he was brought to Khagaria Hospital for treatment while his son Pinku Kumar died. The unknown truck and the driver could not be traced.

There are two completely different versions of the same incident by Ramkhelawan Singh, the father of the deceased, one is in his fardbayan and other is in his protest/complaint/claim case. As per his fardbayan, Arun who had informed him about this accident and also had sent the injured Pinku Kumar (deceased) to hospital was not brought to the court for testimony. Both witnesses (Matun Singh and Anoj Singh) have stated in their chief that they picked Pinku Kumar up on a thela (trolley) and sent him to Maheshkhut Hospital while Ramkhelawan Singh has stated that he had seen his son in the Maheshkhunt police station and he had brought his son from the police station to the hospital on a thela (trolley). As per Mantun Singh, 10-15 days later the incident, Ramkhelawan came to him to know about the accident then he told him about the incident and the number of offending vehicle. He has also stated



that he has not testified in the past on behalf of the claimant in the criminal case. As per Anoj Kumar, he has no relation with Pinku Kumar, when his father came to the hospital; he came to know the name of the injured. Today Ramkhelawan has brought him for testimony. On saying of Ramkhelawan he is giving testimony. He did not know Ramkhelawan since before. DW-2, Jahuri Yadav alias Ravindra Yadav (witness of Charge sheet-Ext-5) has stated in his examination that on 30.01.2007 at around 10.00 am there was a crowd near Sapaha Dhala where it was found that an unknown truck driver had hit a cyclist. The name of the injured was Pinku Kumar, nobody had seen registration number of the offending truck, he was sent to the hospital by the crowd. The witnesses including claimant Ramkhelawan Singh not reliable on this point, by their testimony it is not established that the vehicle of O.P. was involved in this accident, as well as it is also evident here that the protest petition/Complaint Case No. 521C of 2008 filed against O.P. of the case has been quashed by Hon'ble Patna High Court.

From the foregoing discussion of both oral and documentary evidence, it is apparent that the deceased Pinku Kumar has not died due to rash and negligent driving of driver of Commander Jeep BR/34-3822. So, Issue no. 4 is decided against the claimants.”

**10.** In view of the findings recorded above, the learned Tribunal has dismissed the complaint petition.

**11.** Mr. Rajesh Sinha, learned counsel for the claimants-appellants has assailed the impugned judgment stating that it was a hit and run case in which it was not possible to find out a witness immediately after the accident. It is his submission that AW-3 Mantun Singh is a resident of another village who disclosed the registration number of the jeep which had



allegedly dashed the son of the claimants. He, however, disclosed it after about 15 days of the alleged occurrence.

12. Similarly, AW-4 had also disclosed this fact to the claimant no. 1 after a few days of the incident. It is his submission that there was no reason for the learned Tribunal to disbelieve these two witnesses particularly when the owner of the vehicle did not examine the driver.

13. He has relied upon the judgment of this Court in the case of **The Oriental Insurance Company Limited and Another Vs. Most. Rajabala Devi and Others** reported in **2007 (4) PLJR 686** to submit that without there being any finding that AW-3 and AW-4 were either related to the claimants or were inimical against the owner, their evidence could not have been thrown out. Learned counsel, therefore, submits that impugned judgment is bad in law and is liable to be set aside.

14. Having heard learned counsel for the appellants and on perusal of the records/impugned judgment, this Court finds that in this case, the accident took place on 30.01.2007. In connection with the said accident, one FIR was lodged and the same was investigated by police. According to the FIR, the victim was dashed by an unknown truck driver. AW-3 and AW-4 who did not present themselves in course of investigation but



later on they supported the case of the claimants before the Tribunal stating that they had seen the accident in which a boy was coming from bicycle and a commander jeep dashed him from backside and fled away, they came to know about the name of the victim.

**15.** It is the statement of AW-3 that Ramkhelawan Singh, the father of the deceased came to his village 'Sirjuwa' after a few days of the incident to know about the incident where he met him and told him about the incident and the number of the offending vehicle. Earlier, this Court has noticed that the alleged occurrence took place near 'Sapaha' when his son was going to village 'Sirjuwa' the sasural of his elder son. Both AW-3 and AW-4 are from village 'Sirjuwa'.

**16.** So far as AW-4 is concerned, he has also stated that he disclosed this fact as to accident and the name of the offending vehicle to Ramkhelawan Singh, the father of the deceased when he came to his village Sirjuwa after a few days of the incident.

**17.** This Court finds that both the witnesses have claimed that they had seen the accident and later they came to know about the name of the deceased also but they did not on their own inform the father of the deceased about their knowledge of the offending vehicle. The father of the deceased is said to have visited the village of these witnesses few days after the accident.



During this period, the investigation of the case was still going on, these two witnesses say that they disclosed about the incident and the number of the offending vehicle to the father of the deceased but there is no explanation as to why they did not present themselves before the investigating agency/I.O. of the police case and disclose these facts. The protest-cum-complaint petition was filed much after filing of the police final report and it is only after the learned court below took cognizance and issued summons in the complaint case, the present complaint was filed. The prosecution of the opposite party/owner in the said complaint case has already been quashed by this Court in Cr. Misc. No. 29451 of 2014.

**18.** In the given kind of materials placed before the learned Tribunal, the learned Tribunal has rightly appreciated the evidences on the record and having noticed that the evidences were not showing that the deceased Pinku Kumar had died due to rash and negligent driving of the driver of the commander jeep, dismissed the complaint petition.

**19.** In the case cited before this Court, the facts were quite different and distinct. In the said case, only after a notice published by the mother of the victim, the information could be gathered about the accident and the learned Tribunal believed the quality of the evidence in favour of the claimants.



20. This Court, therefore, finds no error in the  
impugned judgment so as to warrant any interference.

21. This appeal, therefore, fails.

**(Rajeev Ranjan Prasad, J)**

lekhi/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|

