

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.301 of 2008

National Insurance Company Ltd. through the Administrative Officer,
National Insurance Company Ltd. 4th Floor Sone Bhawan Birchand Patel
Marg, Patna.

... .. Appellant

Versus

1. Nikhat Pravin Wife of late Wahid Ali, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
2. Azam Ali, Son of late Wahid Ali, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
3. Rafat Pravin D/o of late Wahid Ali, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
4. Shaiba Pravin, D/o of late Wahid Ali, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
5. Tauhid Ali, Son of late Wahid Ali, All minor Children of late Wahid Ali under the guardianship of their mother Nikhat Pravin, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
6. Noor Jahan Khatoon, Wife of Md. Aslam Ali and mother of late Wahid Ali, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
7. Md. Aslam Ali, Son of late Jumarati Mian and F/o late Wahid Ali, Resident of Mohalla- Naisarai, P.O. and P.S. Biharisharif, District- Nalanda.
8. Kanhaiya Sah, Son of Jag Narayan Sah, Resident of Village- Bara Ayma, Ward No. 23, P.O. Nimpura, P.S. Kharagpur, District- Midnapur(West Bengal), owner of Truck No. W.B.- 33-6056

... .. Respondents

Appearance :

For the Appellant/s : Mr. Sachchida Nand Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

10 17-01-2023

Heard learned counsel for the appellant.

2. The National Insurance Company is in appeal for setting aside the impugned order dated 20th February, 2008 passed by learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Nalanda, Biharsharif (hereinafter referred to as the “learned Tribunal”) in Claim Case No. 166 of 2006 whereby



and whereunder the learned Tribunal has been pleased to allow a sum of Rs. 3,69,500/- together with interest at the rate of 9% per annum from 28.12.2006 i.e. the date of filing of the claim application till its recovery. The learned Tribunal has held that the opposite parties are jointly and severally liable to pay the compensation and accordingly they have been directed to deposit the amount of compensation within the prescribed period.

3. Let it be recorded that by the order dated 05.04.2010, this Court while calling for the lower court records issued notice to the respondents. Notice was validly served upon all the respondents, however, only respondent nos. 1, 6 and 7 have appeared in this case. As regards respondent no. 8, though attempts were made to serve notice upon him, the speed post notice returned with an endorsement that respondent no. 8 is dead. From the order dated 03.02.2020, it would appear that the learned Advocate for the appellant submitted that there is no necessity now of serving notice on respondent no. 8 or in case of his death to his legal heirs and the matter could be decided even in the absence of any legal heirs of respondent no. 8.

4. In the above circumstances, this appeal has been taken up for consideration.



5. No one appeared on behalf of respondent nos. 1, 6 and 7 on call.

6. Learned counsel for the appellant has raised two-fold submissions. It is submitted that in this case, the learned Tribunal could not appreciate that the driver of the jeep on whom the deceased was travelling was not having a valid licence and secondly that it was a case of contributory negligence resulting in the said accident.

7. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **Bijoy Kumar Dugar versus Bidya Dhar Dutta & Others** reported in **(2006) 3 SCC 242** to submit that in case of contributory negligence, the compensation was required to be reduced by 50%.

8. This Court has carefully perused the impugned judgment and the materials available on the record. To this Court, it appears that the contentions raised on behalf of the appellant cannot succeed. In paragraph '17' of the impugned judgment, the learned Tribunal has recorded the following findings:-

“17. On consideration of above placed evidence and on consideration of documentary evidence adduced on behalf of the claimants I find that after accident Ext. 1 was bought into existence which is F.I.R. of Rahul (Wena) P.S. Case No. 148/05 registered u/s 279, 337, 338 and 304A IPC and on completion of investigation Ext. 2 has been



submitted which is chargesheet no. 76/05 in the above P.S. case and Ext. 3 is attested copy of postmortem report of the deceased Wahid Ali. So, considering the oral and documentary evidence I Find that deceased was travelling by Jeep and when Jeep reached near village Bangoria on N.H. 31 Lodha Khanda one truck no. WB-33-6056 coming from Dhamauli side collided with the Jeep and deceased died in the alleged accident and accordingly, I find and hold that there was certainly negligence on the part of both drivers of the truck and jeep. Though, claimants have tried to show negligence only on the part of the truck driver, but from Ext. 1 on the principle of *res ipsa loquitur* I find that there was negligence on the part of both the drivers of both the vehicles, though, there may be difference of ratio of negligence.”

9. The learned Tribunal held that the deceased Wahid Ali died on 28.07.2005 in the motor vehicle accident arising out of the truck and the jeep, both the owners are liable and there was negligence on the part of both the drivers, though evidence has been adduced on behalf of the claimants that truck dashed the jeep causing the accident.

10. In this case, the learned Tribunal held contributory negligence on the part of the driver of the jeep also but that cannot be said to be a contributory negligence on the part of the deceased. The deceased was a passenger on the jeep. Thus, in the accident which took place because of the negligence on the part of the driver of the jeep as well as truck if the passenger died and the vehicle has been found to be insured by the



appellant Insurance Company, there is no reason as to why the Insurance Company will not pay the claim. The judgment of the Hon'ble Apex Court on which reliance has been placed was rendered in a different facts situation inasmuch as in the said case the Hon'ble Apex Court found that the deceased had not taken due care while driving the car which had met the accident with a bus coming from the opposite side. The said judgment would not apply in the facts situation of the present case.

11. In result, this Court finds no plausible ground to interfere with the impugned order, hence, this appeal fails.

12. This Court finds from the impugned order that it was passed as back as on 20th February, 2008. There is no order of stay of the operation of the impugned order/award by this Court. This Court called upon learned counsel for the appellant to say as to whether the amount under the award has been paid to the claimants or not, learned counsel submits that he has no information in this regard.

13. Under these circumstances, this Court is of the considered opinion that in case the award money has not been paid in terms of the order of the learned Tribunal, the Insurance Company (appellant) would be liable to pay the same with an additional sum of Rs.1 lakh which will be payable as cost for



keeping the claimants engaged in litigation for over a decade after passing of the impugned order/award and on mere pretext of filing of appeal, depriving them from getting the compensation which they were found entitled to in the year 2008. In case, however, the amount has already been paid, the Insurance Company shall not be liable to pay the additional amount of cost.

14. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

lekhi/-

U			
---	--	--	--

