

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.349 of 2011

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THE NATIONAL INSURANCE COMPANY

... .. Appellant/s

Versus

BIRENDRA PASWAN and ORS

... .. Respondent/s

with

Miscellaneous Appeal No. 1052 of 2016

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1. Birendra Paswan and Anr son of Ram Balak Paswan
2. Kanti Devi W/o Birendra Paswan Both resident of Village- Kauabar, P.S.- Dobhi, District- Gaya.

... .. Appellant/s

Versus

1. The National Insurance Co. Ltd. and Anr
2. Mr. Shamshul Hoda son of Kalimuddin resident of Jharkhand Ground Pansalwa Chatra, P.S. Chatra Dist- Chatra.

... .. Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 349 of 2011)

For the Appellant/s : Mr.Shailendra Kumar

For the Respondent/s : Mr.

(In Miscellaneous Appeal No. 1052 of 2016)

For the Appellant/s : Mr.Mukesh Prasad Singh

For the Respondent/s : Mr.Shailendra Kumar

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

14 13-10-2023

Re.: Miscellaneous Appeal No. 349 of 2011

This Miscellaneous Appeal has been filed against the judgment and Award dated 19.01.2011, passed in MAC Case No. 74 of 2010/110 of 2007 whereby the claim of the claimant-respondent has been allowed and further the Insurance Company is directed to pay the entire amount of compensation



along with the interest at the rate of 9% per annum. It is further alleged that the Insurance Company is at liberty to realize the entire compensation amount alongwith the interest already paid to the claimant from the owner of the offending Truck bearing JH02E-6608 through the process of law.

2. Learned counsel for the appellant submits that the Insurance Company has no liability to pay the compensation amount, however the learned Tribunal has held that the driver of the offending Truck has no valid and effective driving license at the time of accident.

3. Learned counsel for the appellant relied upon a decision of Hon'ble Andhra Pradesh High Court reported in **2011 A.C.R. 39 (A.P.)** wherein the Hon'ble High Court has held that the appellant-Insurance Company has been excluded from payment of the Award amount in view of the finding that the driver of the offending vehicle had no valid and effective driving license. It is submitted that in the case of ***National Insurance Company Ltd. Vs. Swaran Singh and others*** reported in **(2004) 3 SCC 297**, the Hon'ble Supreme Court has decided the right of recovery from the owner of the vehicle and in the light of the aforesaid decision, learned Tribunal has already given the liberty to the Insurance Company to realize



the Award amount from the owner of the offending Truck after the payment of the said Award amount to the claimant.

4. Considering the aforesaid facts and circumstances of the case and in view of the decisions of the Hon'ble Supreme Court, the appeal is dismissed.

5. The Insurance Company is at liberty to realize the entire compensation amount along with the interest from the owner of the said offending Truck after payment of the Award amount with interest to the claimant.

6. Accordingly, this Miscellaneous Appeal is dismissed.

7. Office is directed to return the statutory amount to the appellant-Insurance Company.

Re.: Miscellaneous Appeal No. 1052 of 2016

8. This Miscellaneous Appeal No. 1052 of 2016 has been filed against the judgment and order dated 29.07.2015 and Award dated 11.08.2015 for enhancement of compensation amount passed by the learned Additional District Judge-VI-cum- Motor Vehicle Accident Tribunal, Gaya in MAC Case No. 74 of 2010/110 of 2007, the Tribunal has awarded a sum of Rs. 2,29,500/- along with interest at the rate of 9 per cent per annum. The claimant/appellant has already received



Rs. 50,000/- as interim compensation amount under Section 140 of Motor Vehicle Act and after deducting from total compensation amount, the amount comes to Rs. 1,79,500/- is required to be paid.

9. The opposite party no. 1/respondent no. 3 has liberty to realize the entire compensation amount along with interest paid to the applicant from opposite party no. 2, owner of the said offending truck bearing Registration No. JH02E6608 through the process of law.

10. The case of the claimant/appellant, in short, is that the deceased, namely, Laxman Kumar was minor aged about 10 years at the time of accident and he was single son of the applicant. The deceased was a student. Learned counsel for the appellant submits that learned court below has wrongly assessed the annual income of the deceased as Rs. 15,000/- which is in the teeth of the Hon'ble Supreme Court in case of ***Krishna Gopal and Anr. Vs. Lala and others*** reported in ***(2014) 1 SCC 244***. Learned counsel for the appellant submits the Tribunal failed to award any amount of future prospect and filial consortium, filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to death of a child causes great shock and



agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. This aspect has been considered in the Case of ***Magma General Insurance Company Limited Vs. Nanu Ram*** reported in ***(2018) 18 SCC 130***. The Motor Vehicle Act, 1988, is a beneficial legislation which has been framed with the object of providing relief to the victims or their families in case of genuine claim. In case where a parent has lost their minor children or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the heads of filial consortium. The amount to be awarded for loss of consortium will be as per the amount fixed in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. So far multiplier is concerned in the present case, the deceased was 10 years old at the time of accident. In case of ***Meena Devi Vs. Nanu Chand Mahto***, the Hon'ble Supreme Court had relied on the judgment of ***Krishna Gopal and another Vs. Lal and others*** reported in ***(2014) 1 SCC 244*** wherein paragraph 39 reads as follows:-

“In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs. 30,000 and further taking the young age of the parents, namely,



the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in Sarla Verma v. DTC, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000/- and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerela SRTC v. Susamma Thomas, which is referred to in Lata Wadhwa Case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs 50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.”

11. As per the decision of the Hon'ble Supreme Court, the notional income is assessed at Rs. 30,000/- and the multiplier of 15 can be applied to the multiplicand thus, Rs. 30,000/- X 15 = Rs. 4,50,000/- and Rs. 50,000/- under conventional head towards love and affection, funeral expenses. The said amount would be just and reasonable compensation to be awarded in favour of the appellants. The amount of Rs. 5,00,000/- with interest at the rate of 9 per cent should be paid to the appellant from the date of filing of the application till the



date of payment.

12. The amount of compensation as awarded by the learned Tribunal is enhanced from Rs. 2,29,000/- to Rs. 5,00,000/-. The total amount of compensation would be Rs. 5,00,000/-. The enhanced amount shall bear interest at the rate of 9 per cent from the date of filing of the claim petition till realization. The due amount is to be paid by respondent no. 1 within a period of three months.

13. The Insurance Company will be at liberty to recover the awarded amount from the owner of the offending vehicle after the payment of awarded money to the claimants.

14. Accordingly, Miscellaneous Appeal No. 1052 of 2016 appeal is allowed.

(Khatim Reza, J)

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