

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.44 of 2015

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The State Of Bihar Through The Collector, Darbhanga

... .. Appellant/s

Versus

1. Sita Devi Widow of- Late Doman Sah.
2. Manoj Kumar, S/o- Late Doman Sah.
3. Sudhir Kumar, S/o- Late Doman Sah.
4. Suman Kumar, S/o- Late Doman Sah. All Resident of Village, P.O. and P.S.- Bahadurpur, District- Darbhanga.
5. Lal Babu Mandal, S/o- Chulhai Mandal. R/o Village and P.S.- Bahadurpur, District- Darbhanga. ... Driver of Truck No. BR-1B-4661-
6. Shatrughna Prasad Deo, S/o- Haribansh Prasad Deo, R/o Village and P.O.- Barhettavia Kalayanpur, District- Samastipur.Owner of the Truck No. BR-1B-4661-

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Saroj Kumar Sharma, AC to AAG 3
For the Respondent/s	:	Mr.Alok Kumar Shahi
For the Claimants	:	Mr. Baidhnath Thakur

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 20-06-2024

I have already heard the learned counsel for the parties.

2. The appellant, State of Bihar, being aggrieved by the judgment and award dated 03.01.2014 and 07.04.2014, passed by the learned Tribunal in M.V. Claim Case No. 77 of 2006, has preferred this appeal.

3. The brief facts of this case is that the house of the deceased, Doman Sah, was situated beside the road. In the night of 13.07.2004, Doman Sah along with his wife and sons,



was gossiping at the door of his house. In the meanwhile, a truck bearing registration no. BR-IB-4661, being driven rashly and negligently by the driver (respondent no.5 herein) came there and dashed Doman Sah. He suffered grievous injuries and died. The claimants (respondent nos. 1 to 4 herein), who are widow and sons of the deceased, Doman Sah, filed M.V. Claim Case No. 77 of 2006 for grant of compensation. The Insurance Company was also impleaded as opposite party in the court below with the driver and the owner of the ill-fated vehicle, but on the plea of the Insurance Company that the truck was not insured, the name of the Insurance Company was struck off from the plaint.

4. The learned court below/Tribunal found that on the date and time of the accident the truck was seized by the Collector, Darbhanga for distribution of flood relief items/materials and since it was under the control of the State, the liability was fixed on the shoulder of the State Government to pay compensation for the death of the deceased, arising out of the accident caused by the ill-fated vehicle.

5. The contention of the learned counsel for the State (appellant) is that, though the vehicle was taken by the State Government for distribution of flood relief materials/items,



but the driver, without giving information to the authorities, had taken the truck from the possession of the State Government and it is the reason that the State Government is not liable to pay the compensation.

6. Five witnesses have been examined on behalf of the claimants to prove their case, out of which A.W.1 is Rajendra Mahto, A.W.2 is Mahesh Sahni, A.W.3 is Prem Kumar Choudhary, A.W.4 is Raj Kumar Mahto and A.W.5 is Most. Sita Devi, the widow of the deceased. The claimants have also produced documentary evidence to prove their case. Ext.1 is the certified copy of the FIR of Bahadurpur P.S.Case No. 132 of 2004, which was lodged on the basis of the written report of Sudhir Kumar Sah, the son of the deceased. It has been mentioned in the FIR that in the night of 12.07.2004, his father Doman Sah (deceased) and the family members were gossiping in front of the road. Meanwhile, a truck bearing registration no. BR-IB-4661 coming towards Laheriasarai direction being driven rashly and negligently, dashed the informant's father, who succumbed to his injuries. Ext.2 is the death certificate of the deceased. Ext. 3 is the post mortem report, which shows that the deceased died due to shock and hemorrhage caused in a road traffic accident. The applicants' witnesses in their statements



deposed that at the time of accident, the vehicle was being driven rashly and negligently. During the course of trial, the owner of the truck (respondent no.6 herein) appeared and filed his written statement. He has mentioned therein that as per letter no.773 dated 03.12.2005 and letter no.530 dated 07.12.2004, issued by the District Nazarat, the truck was seized by the Administration of Darbhanga for the flood relief work. He has also mentioned that the vehicle was not running since January, 2003, because it was not insured. As per the State, the vehicle was in running condition and it was hired for flood relief work after making advance and the driver while going to Bazar Samiti went away with the truck. As per the averment of the State, the vehicle was sent to Bazar Samiti for distribution of flood relief materials, but the relief articles/materials were not available in Bazar Samiti, as such, the driver was directed to go back to the District Nazarat, but he did not deposit the vehicle in the Nazarat and fled away with the vehicle.

7. Four witnesses O.P.W. 1 to O.P.W.5 have been examined on behalf of the State. Though they have stated the similar things during their depositions, but the statements of these witnesses were not supported by any document, due to which they were disbelieved by the learned Tribunal.



8. It is an admitted fact that the vehicle in question was under custody of the State Government. On the ill-fated day, the vehicle was deputed by the State Government for distribution of flood relief items. Despite the fact that vehicle is not insured, the State Government deployed it and used the same for distribution of the relief items. It is the case of the owner, that the vehicle was not insured and it was the reason that the owner refrained from deploying the vehicle on the road. The State before seizing the vehicle and deploying it for distribution of flood relief, did not bother to check the insurance policy of the vehicle. The un-insured vehicle, at the time of accident, was in possession of the State Government. As such, in my view, the State Government is liable to make the compensation.

9. The learned counsel for the appellant further submitted that the quantum of compensation is exorbitant as no evidence in respect of income of the deceased has been adduced in evidence by the claimants.

10. In their depositions, the claimants' witnesses have deposed that the deceased was running a betel and tea stall and he was earning Rs. 200-250 per day.

11. The learned court below on the basis of



structured formula settled in the case of **Sarla Verma**, reported in **2009 (6) Scale-129**, calculated the quantum of compensation, fixing the income of the deceased as Rs. 4000/- per month and considering the number of dependents being four, 1/3rd of his income was deducted towards his personal expenses. Moreover, considering the age of the deceased, the multiplier of 15, as per the ratio laid down in the case of **Sarla Verma** (supra, was applied and quantum of compensation was fixed as Rs.5,02,000/-(rupees five lacs two thousand). In my view, the learned Tribunal has rightly calculated the quantum of compensation on the basis of structured formula fixed in the case of **Sarla Verma** (supra).

12. The learned counsel for the respondents (claimants) submitted that if the vehicle is requisitioned by the State Government and during the relevant period, if an accident takes place, the liability to pay the compensation goes to the shoulder of the State Government. In support of his submission, the learned counsel relied upon a decision of Hon'ble the Supreme Court, reported in the case of *National Insurance Co.Ltd. Vs. Deepa Devi and others (2008 1 SCC 414)*. In that case, the Hon'ble Supreme Court held that when a vehicle is requisitioned by the State Government, the owner of the vehicle



has no other alternative, but to hand over his vehicle to the State. Therefore, the State shall be liable to pay the amount of compensation to the claimants. The learned counsel for the claimants also submitted that the appellant/State of Bihar also challenged the order of ad-interim compensation awarded to the claimants under Section 140 of the Motor Vehicles Act before this Court, but the appeal of the State (M.A.No. 387 of 2008) was dismissed and this Court has already held the responsibility of the State to pay the compensation.

13. The involvement of the vehicle in accident causing the death of the deceased is an admitted fact. It is also an admitted fact that the ill-fated vehicle, at the time of accident, was under the seizure of the State for distribution of flood relief materials. At the time of the accident, the ill-fated vehicle was under the control of the State Government and during that course, the accident took place. As per the decision of Hon'ble the Supreme Court, in the case of *National Insurance Co.Ltd. Vs. Deepa Devi and others* (supra), the liability goes to the shoulder of the State to pay compensation. As such, in my view, the appellant, State of Bihar, is liable to pay compensation.

14. As the learned court below/Tribunal fixed the compensation on the basis of structured formula in the case of



Sarla Verma (supra), I do not see any reason to interfere with the quantum of compensation.

15. On the above-mentioned observations, this appeal is dismissed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
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