

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.443 of 2019

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Shri Ram General Insurance Co. Ltd. Through Manager, E-8, EPIP, RIICO
Industrial Area, Sitapura, Jaipur, (Rajasthan)- 302022.

... .. Appellant/s

Versus

1. Radha Devi W/o Late Premshankar Prasad @ Shankar Modi Resident of Village- Ramankabad, Kharagpur, District- Munger.
2. Sakshi Kumari D/o Late Premshankar Prasad @ Shankar Modi Minor under the guardianship of their Mother, Resident of Village- Ramankabad, Kharagpur, District- Munger.
3. Vishal Kumar S/o Late Premshankar Prasad @ Shankar Modi Minor under the guardianship of their Mother, Resident of Village- Ramankabad, Kharagpur, District- Munger.
4. Harsh Kumar S/o Late Premshankar Prasad @ Shankar Modi Minor under the guardianship of their Mother, Resident of Village- Ramankabad, Kharagpur, District- Munger.
5. Damodar Mandal S/o Yamuna Singh Resident of Village- Khaira, P.O.- Khaira, P.S.- Anchal Haveli, Kharagpur, District- Munger. age Not known.
6. Fantoosh Kumar S/o Damodar Prasad Singh Resident of Village- Khaira, P.O.- Khaira, P.S.- Anchal Haveli, Kharagpur, District- Munger. age Not known.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate.
For the Respondent/s : Mr. Raj Kumar Choudhary, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 06-08-2024

1. Heard learned counsel for the appellant and learned counsel for the claimants/ respondent nos.1 to 4.

2. This appeal has been filed by Shri Ram General Insurance Co. Ltd. (hereinafter referred to as 'Insurance Company') against the judgment/ award dated 08.04.2019 passed by learned Additional District Judge-V-cum MACT,



Munger (hereinafter referred to as 'Learned Tribunal') in Claim Case No.11 of 2017 whereby the learned Tribunal was pleased to direct the appellant/ Insurance Company to pay Rs.11,93,000/- with interest @ 6 % per annum from the date of filing of the claim petition i.e. 02.06.2017 till the date of realization after adjusting Rs.50,000/-, if already paid to the claimants under Section 140 of Motor Vehicle Act. The liberty has been granted to the appellant/ Insurance Company to recover paid compensation amount according to law from the owner of the vehicle on the ground that owner has no valid permit and the owner of the vehicle handed over the vehicle to a driver who had no licence.

3. The facts, in brief, are that an accident took place near Vaura Bridge of Gangta Main Road in the night on 26.03.2017. The Tractor with trailer was coming from Jamui to Ramankabad loaded with Iron rods and plywood boards was turned down due to rash and negligent driving by the driver resulting the death of cleaner Premshankar Modi of the said tractor on the spot. A case under Section 279/304A of Indian Penal Code was lodged vide Lakhimpur Police Station Case No.43 of 2017 dated 27.03.2017, post-mortem of deceased was conducted and after investigation charge sheet has been



submitted against Phantoosh Kumar, driver of the offending tractor.

4. Claimants/respondent nos.1 to 4 are wife and minor daughter and sons of deceased who died in motor accident due to rash and negligent driving of the offending vehicle which was insured with the appellant/ Insurance Company at the time of accident. The claimants have claimed that the deceased was working as cleaner on the offending vehicle and got Rs.9,000/- per month and his wages was Rs.300/- per day from owner of the offending vehicle (respondent no.5/ O.P. No.1).

5. The owner of the offending tractor appeared but did not file his written statement while driver of vehicle did not appeared before the learned Tribunal and declared ex-parte. They did not appear in this appeal also.

6. The Insurance Company appeared and filed written statement and denied the claim of the claimants. However, it was admitted that offending tractor was covered under the valid policy at the material time of accident.

7. The claimants in support of their claim examined three witnesses and also filed documents (Exhibit 1 to 11) including certified copy of FIR, charge sheet, post-mortem



report of deceased, insurance policy of concerned Tractor, driving licence of the involved Tractor etc. However, neither oral nor documentary evidence adduced on behalf of the opposite parties including the appellant/Insurance Company to controvert the claim of claimants.

8. After hearing the parties and after gone through the material on record, vide the impugned judgment dated 08.04.2019, the learned Tribunal hold that claimants are entitled to get compensation under various heads, which is stated herein-
below:-

1.	Monthly income of the deceased.	Rs.7,200/-
2.	Deduction towards personal and living expenses.	Rs.1,800/-
3.	Increase in income through future prospects.	Rs.1,800/-
4.	Net monthly income after deduction towards personal & living expenses and increase through future prospects Rs. (7200-1800+1800)	Rs.7,200/-
5.	Multiplier of 13 taken into deciding age group of the deceased aged about 46 years i.e. (7200x12x13)	Rs.11,23,000/-
6.	(a) Loss of Estate (b) Funeral Expenses (c) Loss of Consortium	Rs.15,000/- Rs.15,000/- Rs.40,000/-
7.	Total compensation amount	Rs.11,93,000/-

9. Learned counsel for the appellant/ Insurance Company has submitted that the learned Tribunal failed to consider that the deceased was not a cleaner, as the tractor has sitting capacity of one person only, he was a gratuitous



passenger, the liability cannot be imposed on the Insurance Company. It is further submitted that the tractor was insured only for agriculture purposes and it was being used for commercial purpose as Iron rods were loaded on tractor trailer. Learned counsel has further submitted that the minimum wages as effective from 01.10.2016 vide Notification dated 30.09.2016 by Government of Bihar for unskilled labour was Rs.209/- per day with revised variable Dearness Allowance (VDA), but the learned Tribunal wrongly considered income of deceased as Rs.240/- per day. He further submits that the deceased was not a permanent employee of the owner, hence the future prospects of 25% is not correct.

10. Learned counsel for the appellant in support of his contentions that when deceased was traveling in a tractor trailer as a gratuitous passenger, the liability cannot be imposed on the Insurance Company and relied upon the judgments of this Court; (i) Judgment dated 16.10.2015 (**The United India Insurance Company Ltd. vs. Biltan Sao @ Bilran Prasad & Ors.** in M.A. No.453 of 2012), (ii) Judgment dated 13.07.2017 (**M/s United India Insurance Company Limited vs. Most. Mangli Devi & Ors.** in M.A. No.419 of 2013) and (iii) the Judgment dated 13.04.2017 (**The Branch Manager, The New**



India Assurance Company Ltd. vs. Neelam Devi & Ors. in M.A. No.473 of 2015).

11. On the other hand, learned counsel appearing for the claimants has submitted that claimants have proved their case by examining witnesses as well as the documentary evidence got exhibited on their behalf in support of their claim. Learned counsel has submitted that deceased was the cleaner of the tractor who was not a gratuitous passenger and there is no evidence in this case that deceased was a gratuitous passenger. He has referred a judgment dated 06.02.2023 of Hon'ble Gauhati High Court in MAC Appeal No.84 of 2013 wherein in paragraph no.8 it has been observed as under:-

"8. The Motor Vehicle Act, 1988 does not define the expression 'gratuitous passenger' in a goods vehicle in a public place. But gratuitous passenger would mean one who has taken lift".

12. Learned counsel for claimants has further submitted that the learned Tribunal has rightly awarded the compensation which requires no interference by this Court. He has contended that future prospects @ 25 % of the monthly income of the deceased has been rightly added in view of the decision of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors.** reported in



(2017) 16 SCC 680.

13. Learned counsel for the claimants has further submitted that the judgment relied upon by the learned counsel for the Insurance Company would not be applicable in the present case as those judgments deal with different facts and situations.

14. Having heard learned counsel for the parties and considering the submissions made and the materials on record, it appears that there is no dispute as to the occurrence. The only question that remains to be decided whether the appellant is liable to pay the compensation and the quantum of compensation awarded with respect to monthly income of deceased and future prospects as raised on behalf of appellant.

15. The learned Tribunal considering that claimants have not produced any document regarding the income of the deceased who was working as cleaner of the offending vehicle assessed that the deceased was earning Rs.7,200/- per month at the time of death considering the minimum wages of unskilled labour at the relevant time which is appropriate. In this regard, no evidence to the contrary was led by the appellant before the Tribunal. It is well settled that assessment of compensation cannot be done with mathematical precision. The Motor Vehicle Act, 1988 provides for assessment of just and fair compensation.



In view of the facts and circumstances, this Court is not inclined to interfere in the assessed income of the deceased at this stage.

16. The learned Tribunal in view of paragraph no.59.4 of the judgment in the case of Pranay Sethi (*Supra*) rightly added 25 % of the monthly income of deceased as future prospects in view of the fact that the deceased was engaged as cleaner and was above the age of 40 years.

17. With respect to liability of Insurance company for the gratuitous passenger, this Court in the case of M/s United India Insurance Company Vs. Magli Devi & ors (*Supra*) and the Branch Manager, The New India Assurance Company Ltd. (*Supra*) relying upon the earlier Judgment of this Court in the case of The United India Insurance Company Ltd. Vs. Biltan Sao @ Biltan Prasad & Ors (*Supra*) held therein that as the deceased was traveling in a Tractor trailer as a gratuitous passenger, the liability cannot be imposed on Insurance Company. In United India Insurance Company Ltd. vs. Biltan Sao @ Biltan Prasad (*Supra*) it was observed that the tractor was insured for agricultural purpose and the victim was coming on trailer with brick for construction of his building and thus the tractor was used for commercial purpose and for that no extra premium was paid to the Insurance Company, result is that the deceased was a gratuitous passenger inasmuch as the tractor owner by engaging



the tractor in non-agricultural purpose itself violate the terms of the insurance policy and the Insurance Company will not be liable to indemnify the insurer.

18. The learned Tribunal held that the vehicle in question i.e. tractor bearing Registration No. BR-10 GA-05355 was validly insured with the appellant at the time of accident. The Insurance Company in paragraph no.4 of its written statement admitted that at the material point of time, the tractor bearing Registration No. BR-10 GA-05355 was under the valid and effective policy of insurance issued by the appellant/ Insurance Company vide policy No.10003/31/17/673946 effective from 21.03.2017 to 20.03.2018. The copy of certificate of Insurance (Exhibit 8) is on record. It is also observed that there is no evidence on behalf of Insurance Company to show that there was any violation of the Rules or terms of policy by respondent no.5 or 6. Mere perusal of Exhibit 8 (certificate-cum-policy schedule) of tractor (noted therein as motor commercial vehicle) which was issued by the appellant contains premium for third party liability which (includes Basic TP cover, PA for owner, driver and paid cleaner) apart from own damage cover for the offending Tractor (BR-10 GA-05355).

19. The Copy of Insurance policy (Exhibit 8) on the record of the Tribunal clearly indicate that Insurance company



has collected the amount of the premium of Rs.100/- towards personal accident of owner-cum-driver and also collected Rs.50/- as premium towards legal liability of the paid cleaner. The documentary evidence is not controverted by the Insurance Company. The pleadings and proof in motor accident claims petition should be considered liberally particularly when the documentary evidence produced on the record, was not challenged by the Insurance Company and exhibited by the Tribunal. The Insurance Company cannot run away from its liability to pay compensation to the claimants.

20. When the owner of a vehicle pay additional premium and same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Motor Vehicle Act, 1988. Section 147 of the Act clearly prescribes for statutory liability to cover risk of paid driver and cleaner under the insurance policy, which is a matter of contract. On payment of such additional premium by the owner, the liability of the owner shifts upon the insurance company. Thus, the risk of paid driver and cleaner would be covered under the insurance policy. Only when the additional premium is not paid, liability would be as per the Employee Compensation Act, 1923.

21. In my view, by accepting additional premium, the Insurance company indemnifies the owner for paid driver



and/or cleaner and risk of driver/cleaner is covered under it.

22. The appellant has not raised any plea/objection before the learned Tribunal that the tractor was insured only for agriculture purpose or that the deceased was a gratuitous passenger in the written statement and the said plea has been raised in this appeal having no merit and is against the record of this case. Even otherwise, the judgment of this Court referred by the learned counsel for the appellant where the deceased was traveling as a gratuitous passenger are not applicable in this case. The cleaner employed by the owner of vehicle cannot be termed as gratuitous passenger in the fact and circumstances of the case.

23. For the aforesaid reasons, I find that the appeal is devoid of merit and liable to be dismissed. Accordingly, this appeal stands **dismissed**. The Judgment and award dated 08.04.2019 passed by Learned Tribunal in Claim Case No.11 of 2017 stands confirmed.

24. The appellant/ Insurance company is directed to deposit the awarded amount with accrued interest as per the award of learned Tribunal in this case after making deduction of any amount paid in this case to claimants by the appellant/Insurance Company before the concerned Tribunal within eight weeks from today and the learned Tribunal is directed to pay the said amount to the claimants after following



due procedure.

25. Statutory deposit, if any, made by the appellant/Insurance company shall be transmitted to the concerned Tribunal.

26. Let the LCR be returned to the concerned Tribunal, forthwith.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	04/07/2024
Uploading Date	06/08/2024
Transmission Date	NA

