

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.391 of 2014

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Ali Akbar Ansari Son of Nabi Rasool Ansari Resident of Village -
Bhagwanpur, P.O.- Bathua Bazar, P.S.- Fulwariya, District – Gopalganj.

... .. Appellant/s

Versus

1. Kishlay Pratap Rai Son of Shri Deep Kumar Rai.
2. Deep Kumar Rai Son of Late Jagdeo Rai,
Both are Resident of Village - Pipra Jado, P.S.- Hathuwa, P.S.- Mirganj,
District – Gopalganj.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Kumar Mishra, Advocate.
For the Respondent/s : Mr. Mohammad Sufyan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 23-07-2024

1. Heard learned counsel for the appellant as well as
the learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 (hereinafter
referred to as “Act of 1988”) on behalf of the appellant against
the judgment and award dated 02.09.2013 and 20.09.2013
respectively passed by the learned 2nd Additional District Judge-
cum-Motor Accident Claim Tribunal, Gopalganj (hereinafter
referred to as “Learned Tribunal”) in Claim Case No.11 of 2007
whereby claim petition of the claimants/respondents has been
allowed and appellant was directed to pay total compensation
amount of Rs.1,32,500/- along with interest of 8% per annum



from the date of order.

3. The brief facts of this case are that claimant no.1 (respondent no.1 herein) was going his home on 09.10.2006 at Pipra Jado from Mirganj and when he reached near Sabeya More, in the meanwhile offending vehicle Bolero Jeep bearing Registration No. BR-28A-3036 driven by its driver rashly and negligently dashed to the claimant no.1 causing grievous injury to him who was treated at Sub-Divisional Hospital, Hathua and from there he was referred and treated at Gorakhpur Orthopedic Hospital. A Complaint Case No.1962 of 2006 dated 12.12.2006 was lodged by the father of claimant no.1 who stated therein that the students including claimant no.1 of Village Upgraded Middle School, Pipra were taken away by the teacher of the School at Mirganj Talkies for seeing the film and when they were returning, a Bolero vehicle bearing Registration No. BR-28A-3036 which was driven by its owner was coming from opposite direction at Bathua Bazar, Mirganj which dashed the children who became seriously injured. Four children brought at Hathua Government Hospital where they were provided first aid. On information on Mobile, claimant no.2 being father of injured-claimant no.1 reached there where vehicle of the owner (appellant) came there and talked about compromise and prohibited to lodge F.I.R. and told that he will give money for



treatment of the children and compensate them monetarily. The complainant further stated that the right leg of his son, Claimant no.1, namely Kishlay Pratap was fractured. On referred, on 12.10.2006 he taken away his son at Gorakhpur Riaz Orthopedic Hospital where operation of leg of his son was done. The vehicle owner denied to make any payment. The Learned Chief Judicial Magistrate sent the said complaint petition to concerned Police Station, where Mirganj Police drew up Mirganj P.S. Case No.11 of 2007 dated 13.01.2007 under Sections 279, 337 & 338 of the Indian Penal Code against Ali Akbar Ansari, the appellant and after completion of investigation, the Police submitted charge sheet on 22.05.2007 under the said sections against the appellant.

4. On notice, the appellant appeared in claim case but not filed any written statement and claim case proceeded ex-parte against the appellant vide order dated 27.05.2009.

5. During the trial, in support of the claim, eight witnesses have been examined. The documents (Exhibit 1 to 8) were proved which includes C.C. of formal F.I.R., injury report, medical certificates, cash memo etc.

6. The learned Tribunal concluded that the offending vehicle bearing Registration No. BR-28A-3036 was driven by its driver, rashly and negligently who dashed the



claimant no.1 resulting his right leg, thigh and femur bone became fractured and became handicapped to the extent of 50% and vide the impugned judgment and award allowed the claim petition of the claimant as stated above.

7. The appellant being not satisfied and aggrieved by the said impugned judgment and award dated 02.09.2013 and 20.09.2013 respectively passed by the learned Tribunal, filed the present appeal.

8. It is submitted on behalf of claimants/ respondents that they have not filed any appeal for enhancement of compensation amount.

9. Learned counsel for the appellant has submitted that the learned Tribunal has failed to appreciate that appellant was not driving the vehicle and the appellant has not been given full opportunity to bring his defence.

10. It is further submitted that during the course of trial, the Doctor has not been examined to prove the disability certificate of injured claimant.

11. It is also stated that out of 8 witnesses, CW-1, CW-2 and CW-7 (injured) were eye-witnesses of the occurrence but during trial, CW-1 and CW-2 (teachers of the school) have not stated that the vehicle in question was driven by the appellant and, as such, only on the basis of deposition of sole



witness CW-7, the learned Tribunal has awarded compensation against the appellant. Learned counsel further submitted that learned Tribunal failed to appreciate that the case has been filed after lapse of four months which is afterthought only with a purpose to extort money from the appellant.

12. On the other hand learned counsel for the respondents has submitted that the learned Tribunal has passed the impugned order and award after due consideration of the material on record and the appellant appeared in the case but failed to file his written statement and was proceeded ex-parte and it cannot be said that opportunity had not been given to the appellant to defend his case. Learned counsel for respondents has supported the impugned order and award and prayed to dismiss this appeal having no merit.

13. Having heard the learned counsel for the parties, considering the submissions made and on perusal of record it appears that CW-1 and CW-2 who were teachers of the concerned school and eye-witnesses of the occurrence, in their evidence stated that appellant was driving the offending Bolero vehicle rashly and negligently causing the incident on 09.10.2006 and supported the facts stated in claim petition. CW-7, the claimant no.1 who was injured in the incident, also fully supported the claim petition. CW-3, CW-4, CW-5 & CW-8, are



formal witnesses who proved the relevant documents (Exhibit 1 to 8). CW-6, the father of claimant no.1 also supported the claim petition. There is no dispute as to occurrence and liability of appellant in view of the fact that the Police after investigation, filed charge sheet against the appellant under Section 279, 337 & 338 of the Indian Penal Code.

14. The disablement certificate of claimant no.1/ respondent no.1 issued by Medical Board of PHC, Hathua is a public document. The injured claimant has given details about the occurrence, nature of injury and treatment and there is no evidence of rebuttal or denial by the appellant.

15. The law is now well settled that the proceeding in a claim petition for compensation before the Tribunal is neither suit nor an adversial *lis* and claimant is not required to prove his case as required in the criminal trial.

16. The Hon'ble Supreme Court in case of ***United India Insurance Company Ltd. Vs. Shila Datta & Ors. (2011) 10 SCC 509*** held that a claim petition for compensation in regard to motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accident Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversial *lis* in the traditional sense. The learned Tribunal is required to follow such summary procedure



as it thinks fit. It may choose one or more persons possessing special knowledge of and matter of inquiry, to assist it in holding the inquiry (vide Section 169 of the Act).

17. In the case of ***Kusum Lata & Ors. Vs. Satbir & Ors. (2011) 3 SCC 646***, the Hon'ble Supreme Court observed that it is well known that in case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

18. The Hon'ble Supreme Court in ***Sunita & Ors. Vs. Rajasthan State Board Transport Corporation & Ors. (2020) 13 SCC 486*** observed as under:-

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

19. The Hon'ble Supreme Court in the case of ***Rajwati @ Rajjo & Ors. Vs. United India Insurance Company***



Ltd. & Ors. in Civil Appeal No. 8179 of 2022 [(2022) SCC

OnLine SC 1699] decided on 09.12.2022 observed as follows:-

“It is well settled that Motor Vehicle Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunals role would be to award just and fair compensation. As held by this Court in Sunita (supra) and Kusum Lata (supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, “the standard of proof to be borne in mind must be preponderance of probability and not the strict standard of proof beyond all doubts which is followed in a criminal cases.”

20. The Tribunal after considering all materials on record awarded compensation, which requires no interference in the appeal filed by the appellant.

21. In the facts and circumstances of the case, the compensation awarded by the Tribunal cannot be said to be excessive. This appeal has no merit. In the result, this Misc. Appeal is **dismissed**.

22. There shall be no order as to costs.

23. Pending applications, if any, stand disposed of. The stay of further proceeding of Execution Case No.1 of 2013 is vacated.

24. Let the LCR be returned back to the learned Tribunal.



25. Let the statutory amount deposited on behalf of the appellant, if any, be remitted to the learned 2nd Additional District Judge-cum-Motor Accident Claim Tribunal, Gopalganj for its disbursement in accordance with law.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	04.07.2024
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