

---

**(2007) 03 PAT CK 0079**  
**In the Patna High Court**

Branch Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Khushboo and Others

RESPONDENT

---

**Date of Decision :** 14-03-2007

**Acts Referred:**

**Citation :** (2007) 03 PAT CK 0079

**Final Decision :** Dismissed

---

### **Judgement**

Syed Mohd. Mahfooz Alam, J.—This miscellaneous appeal has been preferred against the judgment/award dated 1.3.2000, passed by Mr. Baikunth Nath Shahi, Third Additional District and Sessions Judge-cum-Motor Accidents Claims Tribunal, Begusarai in Claim Case No. 53 of 1994 whereby he has been pleased to grant the compensation to the tune of Rs. 4,00,000 to the claimants with interest at the rate of 12 per cent per annum from the date of application and directed the appellant to indemnify the entire compensation amount.

2. Being aggrieved by the said judgment and award the appellant National Insurance Co. Ltd. has preferred this appeal.

3. From the perusal of the lower court records it appears that the claim case was filed for grant of compensation on account of death of one Manoj Kumar Rai caused in a motor vehicle accident which occurred on 2.6.1994 at about 2.30 in the night at NH 28 near village Bagraha. It is said that the deceased was travelling in the truck bearing registration No. BRQ 9717 along with the dead body but due to rash and negligent driving of the driver of the truck the said truck dashed against a standing truck and due to the said dashing Manoj Kumar Rai sustained injury and died. It further transpires from the record that in support of their case the claimants adduced oral as well as documentary evidence and after perusing the said oral and documentary evidence the learned Tribunal awarded compensation.

4. Learned advocate for the insurance company assailed the judgment of the Tribunal firstly, on the ground that deceased was a gratuitous passenger

travelling in goods carrying vehicle and, as such, the insurance company is not liable to pay compensation. Secondly, on the ground that the accident had occurred due to head-on collision between two vehicles, as such, it was a case of contributory negligence but as the owner and insurer of another vehicle bearing registration No. BEQ 8814 were not impleaded as party in the claim application as such, the claim application suffers from the defect of non-joinder of necessary parties. His third contention was that learned Tribunal has wrongly awarded additional compensation to the tune of Rs. 73,000 for loss of consortium which is not permissible under law.

Point No. 1:

5. It has been argued by the learned advocate for the appellant that truck is a goods carrying vehicle in which passengers are not allowed to travel and since the deceased was travelling in the ill-fated truck as a gratuitous passenger, the insurance company is not liable to pay compensation even after 1994 amendment in the Motor Vehicles Act. In support of his argument, learned advocate for the appellant placed reliance upon the decisions in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, and *Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others*,

No doubt, a truck is a goods carrying vehicle in which passengers are not allowed to travel and any person travelling on such vehicle is not covered for compensation if any accident takes place but in the peculiar situation in which the deceased was travelling on the said truck which met with the accident it cannot be said that the deceased was a gratuitous passenger. Admittedly, the truck in question was carrying the dead body and the deceased was accompanying with the dead body. As per the definition of "goods" as defined u/s 2 (13) of the Motor Vehicles Act, 1988, "goods" includes livestock and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle. Since the definition of "goods" includes anything except "living persons", I am of the view that the dead body comes under the definition of "goods" and since the deceased was accompanying the dead body at the time of accident, so, it cannot be said that the deceased was simply a gratuitous passenger rather the circumstances establishes that at the relevant time the deceased was accompanying the dead body either as owner of the goods (dead body) or as authorised agent of owner of the goods (dead body) and, therefore, for his death the insurance company is liable to pay compensation if the vehicle is insured.

Point No. 2:

6. It has been argued by the learned advocate for the appellant that the owner as well as the insurer of truck bearing registration No. BEQ 8814 were necessary parties in this case as it was a case of head-on collision between the two trucks

but as the claimants have not impleaded them as party in the claim case, as such, the claim application suffers from the defect of nonjoinder of necessary parties. In this regard, I have to say that as per the evidence available on record the death of deceased was not the result of head-on collision between the two trucks, rather, it was the result of rash and negligent driving of the driver of truck No. BRQ 9717 alone which dashed against the standing truck bearing registration No. BEQ 8814 and there is no other reliable evidence on record to controvert the above evidence, so, I am unable to accept this argument of learned Counsel for the appellant that the accident was the result of head-on collision between the two trucks and, therefore, I hold that the owner and insurer of the other truck were also necessary party in the claim case. Thus, I hold that the claim application does not suffer from any defect due to non-joinder of necessary parties.

Point No. 3:

7. Lastly, it was argued on behalf of the appellant that the Tribunal has wrongly awarded Rs. 73,000 as additional compensation towards loss of consortium which is not permissible under law. On this point, I fully agree with the submission of learned advocate for the appellant that the courts are not allowed to be guided by the sentiments, rather, the courts are bound to act within the purview of law. As per the Second Schedule appended under the Motor Vehicles Act, 1988, the courts can award Rs. 5,000 only towards loss of consortium and any amount exceeding from the said amount fixed under the Schedule is not permissible under the law to be awarded. I am further of the view that if the compensation is assessed on the basis of guidelines provided under the Second Schedule then it is not permissible to grant additional compensation to the claimants exceeding Rs. 5,000 towards loss of consortium. I am, therefore, of the view that the Tribunal has committed illegality by allowing additional compensation of Rs. 73,000 to the claimants towards loss of consortium and, as such, this amount should be deducted from the total compensation fixed by the Tribunal which was fixed Rs. 4,00,000.

8. From perusal of para 10 of the judgment of the court below, it appears that the Tribunal has calculated total compensation at Rs. 3,27,000 and on scrutiny the amount so calculated by the Tribunal appears to be correct, as such, I hold that the Tribunal has rightly assessed the total compensation payable to the claimants at Rs. 3,27,000. Accordingly, the said finding of learned Tribunal is upheld and it is held that the claimants are entitled to get compensation at Rs. 3,27,000 for the death of Manoj Kumar Rai.

9. It has further been argued by the learned advocate for the appellant that the Tribunal has awarded interest at the rate of 12 per cent per annum but as per the recent judgments the award of 12 per cent interest per annum is excessive and so, it should be reduced. There appears much weight in the argument of learned advocate of the appellant in view of the recent judgments of the Apex Court and in view of the fact that in recent time the banks have considerably

reduced the rate of interest on all kinds of deposits. In such view of the matter, I am of the opinion that the award of 9 per cent per annum will be the just and proper award of interest in this claim case. Accordingly, the 12 per cent interest per annum, as awarded by the Tribunal, is also reduced to 9 per cent interest per annum and it is held that claimants will be entitled to receive compensation at Rs. 3,27,000 with interest at the rate of 9 per cent per annum from the date of filing of application till realisation of the amount which will be payable by the appellant insurance company as admittedly offending vehicle was insured under the appellant insurance company at the time of accident.

10. In the result, I do not find any merit in this appeal and, as such, the same is hereby dismissed with the above modification. The appellant insurance company is directed to pay the entire amount within a period of three months from today after deducting the amount already paid to the claimants.