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**(2012) 02 PAT CK 0031**  
**In the Patna High Court**  
**Case No : M.A. No. 201 of 2004**

Nanhi Begam and Others

APPELLANT

Vs

Dhrub Narain and Others

RESPONDENT

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**Date of Decision :** 16-02-2012

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2013) 1 ACC 219 : (2013) ACJ 632 : (2012) 2 TAC 715

**Hon'ble Judges :** Shailesh Kumar Sinha, J

**Bench :** Single Bench

**Advocate :** Vivekanant Vivek, for the Appellant; Ram Chandra Lal Das, Shri Ashok Kumar, Shri Dr. Amrendra Kumar -1, Shri Lal Bahadur Pandey and Shri Ajay Kumar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shailesh Kumar Sinha, J.—This appeal is directed against the order dated 28th February, 2004 in Claim Case No. 54 of 1998 passed by the First Additional District Judge-cum-Motor Vehicles Accident Claim Tribunal, Bhagalpur (hereinafter referred to as the Tribunal). The appellants claim for compensation filed u/s 166 of the Motor Vehicles Act for the death of the husband of the appellant No. 1 and father of the appellant Nos. 2 to 4 the minor children of the deceased, was rejected. The short relevant facts for disposal of the appeal are that the deceased was a driver of the truck bearing Registration No. BR 10A-8550 died on account of hitting by another truck bearing Registration No. BR 1-D-1561 on 26th August, 1997 at Khiddi Chowk within Halsi Police Station, District- Lakhisarai. As per the claimant's case the driver of the offending truck on account of certain altercation with the deceased driver who was bolting back panel of the truck unloading the goods, the driver of the offending truck sat down on his own truck and coming from the opposite direction in a rash and negligent driving hit the deceased who was standing near his truck and on account of such injury he died on the spot. The first information report was

lodged vide Ext.-1. Post mortem on the dead body was performed by the Doctor at Sadar Hospital, Munger vide Ext.-3. The aforesaid claim case thereafter was filed against the owner, driver of the offending truck as also the respondent-Insurance Company. The said claim was mainly contested by the Insurance Company with whom the offending truck was insured. The Tribunal upon considering the fardbeyan of the first information report vide Ext.-1 concluded that the death was caused by the driver of the offending vehicle by way of murder. In other words, the deceased did not die an accidental death. Accordingly, the claim application was dismissed with liberty to the Insurance Company to recover the amount of interim compensation paid to the claimants from the owner of the vehicle. The claimants on being aggrieved filed the present appeal. Mr. Vivekanand Vivek, learned Counsel appearing for the appellants submits that the Tribunal dismissed the claim purely on considering the fardbeyan of the first information report vide Ext.-1 and held that the deceased died on account of murder committed by the driver of the offending vehicle without appreciating the fardbeyan and other evidence on record in its correct perspective. It was further submitted that the case of the claimants was supported clearly and correctly by the claimants' witness No. 4 an eye witness namely, Sukhdeo Choudhary who categorically stated in his evidence that the crux of the accident was the rash and negligent driving by the driver of the offending vehicle and in course of which the deceased got hit causing his death. Learned Counsel submits that the Tribunal committed serious error of law and fact by relying upon the alleged uttering of the driver of the offending vehicle narrated in the F.I.R. that he would kill the deceased and not considering the evidence of the claimants' witness No. 4, an eye-witness, whose evidence was not at all considered by the Tribunal. As regards the monthly income and age of the deceased, claimants' have adduced the evidence that the deceased was earning a monthly wage of Rs. 3000/- being the driver of truck and he was aged about 36 years. Learned Counsel submits that if the death is caused by the vehicle which is insured and even if a person is killed as alleged in the F.I.R., the same would be covered under the Motor Vehicles Act and in this connection he relies upon a decision in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, . Accordingly, it is submitted that the Tribunal ought to have allowed the claim. No one appears on behalf of the respondent Nos. 1 and 2. However, Mr. Ram Chandra Lal Das, learned Counsel appears on behalf of the respondent No. 3 and submits that the very foundation of the claim that the deceased died on account of the accident is not established. As a matter of fact, the deceased was murdered by hitting him by truck as narrated in F.I.R. and in that circumstance the provisions of the Motor Vehicles Act are not attracted. As such, it was pure and simple case of murder by the driver of the offending vehicle and not as an accidental death. Accordingly, it is submitted that the claim was rightly rejected by the Tribunal. Learned Counsel relied on the decision in the case of Smt. Shushila Mishra & Ors. v. Oriental Insurance Co. Ltd. & Anr., reported in AIR 2011 Chhattis. 177 (D.B.), for the proposition that the case of murder would not be covered under -the Act. Mr. Das submits that with

respect to income and age no documents were produced. He further submits that since the case was held to be not maintainable, as such, at best it could be remanded back for considering the question of compensation.

2. Upon considering the rival submissions of the parties, it would appear that the main controversy between the parties is as to what is the cause of death. The fact of death caused by the offending vehicle is not in dispute. On conjoint reading of the evidence adduced on behalf of the appellants vide Fardbeyan of FIR (Ext.-1) and the evidence of the claimants' witness No. 4 namely, Sukhdeo Choudhary makes it clear that the death has been caused by hitting of the deceased by the offending truck insured with the Respondent-Insurance Company. The only difference is that the Tribunal took into consideration the informant's statement in the F.I.R. that the driver of the offending vehicle was shouting that he would kill the deceased, and thereafter, he sat on his truck and driving the vehicle in rash and negligently hit the deceased. The claimants' witness No. 4, Sukhdeo Choudhary has clarified by deposing that after some altercation the driver of the offending vehicle driven the vehicle rashly and negligently hitting the deceased causing his death. On appreciating of evidence, it would appear that there is no much difference in the manner of accident. Merely by shouting by the driver of the offending vehicle that he would kill will not make the death of the deceased as murder. Therefore, this Court finds that it was a case of accidental death caused by the offending vehicle insured with the respondent-Insurance Company, and as such, the Insurance Company is liable to pay the compensation. Now as regards the quantum of compensation, the evidence on record is that the deceased was earning a monthly wage of Rs. 3000/- being a driver and he was aged about 36 years and died leaving behind the widow and three minor children as on the date of occurrence. The submission of Mr. Das that the matter was not contested on the point of income and age of the deceased has been taken note only to be rejected for the reason that the Insurance Company had the opportunity to object such evidence of the claimants' witness in which the widow has stated and other witness that the deceased was earning a sum of Rs. 3000 as monthly wage/salary being a driver and his age was 36 years and this witness was open to be cross-examined, however she was not examined, and as such, the evidence of this witness remained on the record. As regards the quantum of compensation, the amount as claimed by the claimants in their claim application i.e. Claim Case No. 54 of 1998 is accordingly allowed with interest at the rate of 6% per annum from the date of filing of the claim application till the payment. Such payment be made within a period of four months from today. The appeal accordingly stands allowed as indicated above. No costs.