

(2019) 09 PAT CK 0006

In the Patna High Court

Case No : Miscellaneous Appeal No. 137 Of 2009

New India Assurance Co. Ltd

APPELLANT

Vs

Kanchan Bhaga And Ors

RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Indian Penal Code, 1860 — Section 279, 304A, 338

Citation : (2019) 09 PAT CK 0006

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Raj Kumar Singh Vikram, Rajesh Kumar Singh, Anant Kumar Bhashkar, Sanjay Kumar Jha

Final Decision : Disposed Off

Judgement

1. Heard the parties.

2. This miscellaneous appeal has been filed under Section 173 of Motor Vehicle Act on behalf of appellant New India Assurance company Ltd. against the judgment dated 22.09.2008 and Award dated 18.10.2008 passed by 1st Additional District Judge-cum- Motor Accident Claim Tribunal, Saran at Chapra in Claim Case No. 22 of 2002, by which the learned Claims Tribunal has directed the appellant/insurance company to pay a sum of Rs. 3,50,000/- (rupees three lacs fifty thousand) to the claimant with interest @ 6 % per annum from the date of claim case till its realization.

3. Claimant is husband of deceased Parwati Devi who died in a motor accident while travelling on Commander Jeep bearing registration No. BR04A-1926 which collided with another Commander Jeep bearing registration No. BR-06P-150 on 19.09.2001 at about 10:00 P.M. Deceased was travelling on Commander Jeep BR04A-1926 and was seriously injured and taken to hospital where she succumbed to her injuries. F.I.R. was instituted being Dighwara P.S. Case No. 103 of 2001 under Sections 279, 338 and 304-A of the Indian Penal Code against

the drivers of both the vehicles and after investigation police found the case to be true against drivers of the both vehicles and submitted chargesheet against drivers of both the vehicles.

4. Vehicle on which the deceased was travelling was insured with appellant/new India Assurance Company Ltd. who is arrayed as opposite party no.1 in the claim application. The opposite party no.2 is the owner of the offending vehicle.

Opposite party no.3 driver of the offending vehicle and opposite party nos. 4 and 5 are the owner and driver of the 2nd vehicle bearing registration no. BR-06-150 on whom in spite of valid service of notices they did not appear before the claims tribunal and claim case proceeded ex parte against them.

5. Opposite party no.1 appellant/insurance company appeared and filed their written statement and denied the claim of claimants.

6. Claimants examined oral witnesses as well produced documentary evidences which were marked as exhibits by the claims tribunal and on basis of evidences adduced by the parties and materials available on record the tribunal held that deceased died due to rash and negligent driving by the drivers of both vehicles and there was composite negligence on part of both the drivers.

7. Tribunal has further held that deceased was 25 years old at the time of accident and as assessed Rs. 2500/- as her monthly income and Rs. 30,000/- to be her annual income and after deducting 1/3rd towards her personal expenses as assessed Rs. 20,000/- as loss of dependency and applying 17 as multiplier has quantified the amount of compensation as Rs. 3,40,000/- and under conventional heads has granted additional compensation of Rs. 10,000/- for loss of consortium, loss of estate and for funeral expenses and has quantified the total compensation amount to be Rs. 3,50,000/- out of which Rs. 50,000/- has already been paid to the claimant as interim compensation and as such has directed to pay Rs. 3,00,000/- with interest @ 6% per annum from the date of filing of claim case till its realization.

8. Tribunal has further held that it is a case of composite negligence and claimant is entitled to claim the compensation amount from either of the owner/insurer of the vehicle and has directed the appellant/insurance company who is the insurer of Jeep bearing registration No 04A-1926 in which deceased was travelling to pay compensation.

9. This court does not find any error or infirmity in the order passed by the tribunal and as such present appeal is dismissed as liability to pay compensation amount is joint and as well as several. However, since there is specific finding of the tribunal that there was composite negligence on part of drivers of both the vehicles as such the appellant/insurance company is entitled to recover 50% of the compensation amount paid to the claimant from the owner /insurer of the 2nd offending vehicle.

10. The insurance company is directed to pay the balance claim amount with

interest @ 6% from the date of presentation of claim till its realization within 01 (one) month from the receipt/production of a copy of order passed by this court with a right of recovery of 50% of the compensation amount so paid from the owner /insurer of the 2nd offending vehicle.

11. The statutory amount of Rs. 25,000/- deposited by the appellant-insurance company at the time of filing of appeal, a cheque for the same would be prepared in the name of claimant no.1 and be send to the concerned Tribunal for its onward payment to the claimants, which shall be adjusted in the claim amount.

12. The appeal is disposed of.