(2015) 01 PAT CK 0180

In the Patna High Court

Case No : Miscellaneous Appeal No.81 of 2013

Reliance General Insurance Co. Ltd. APPELLANT

Vs

Soni Devi RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Citation : (2015) 1 BBCJ 333

Hon'ble Judges : Akhilesh Chandra, J.

Bench : Single Bench

Advocate : Mr. Alok Kumar Shahi and Mr. Archana Sinha, Advocates, for the Appellant; Mr. Ambrish Kr. Jha and Mr. Shashi Priya Pathak, Advocates, for the Respondent Nos. 1 to 4; Mr. S. N. Shabbir Alam and Mr. Sanjay Sinha, Advocates, for the Respondent Nos.5 and 6

Final Decision : Disposed Off

Judgement

Akhilesh Chandra, J. (Oral) - Heard the parties.

2. This is an Appeal preferred against award dated 5th October 2012 by the Ad-hoc Additional District Judge/FTC-IV - cum - M.A.C.T., Munger (hereinafter referred to as the "Claim Tribunal") in Claim Case No. 47 of 2010.

3. The relevant fact as emerges from the pleading and evidence available on record is that one Rakesh Mandal @ Rinku while proceeding on a bike bearing no. BR10H 8697 along with his friend Tapan Kumar @ Tipu had a collision with carriage vehicle bearing no. B.R-8G-1130 on 02.02.2010 at Hanuman Mandir, Bariarpur, Munger, owned by respondent no.5, driven by driver respondent no.6, who died at the spot and his companion also suffered some injuries but for the reasons best known he has not been examined.

4. The claim application seeking compensation is preferred by the claimant respondent no.1, Soni Devi (wife of the deceased) parents and minor son of the deceased contested by the owner and insurer of the carriage vehicle. According to owner, no negligence has been shown on his part, who also has valid road

permit etc. Whereas as per the insurer, the owner had no valid permit at the relevant time and it is a case of contributory negligence, so, the liability on the ground of breech of conditions of insurance cannot be fixed upon the insurer. The Claim Tribunal on considering the material accepting monthly income of the deceased Rs.6000/- per month as claimed by the claimants found the claimants entitled for a sum of Rs.8,25,5000/- with an interest at the rate of 9 % per annum and directed to pay such amount in the manner mentioned in the award.

5. The insurer has preferred this Appeal and it is evident from the materials available on record such as evidence of AW-1 Chandan Mandal (in the Examination of Chief) not appearing as an eye witness in spite of stating about the accident but in very cross-examination he became an eye-witness and further asserts that the deceased was driving the bike, consequently, his friend (not produced/examined) was a pillion rider. AW-3, Arun Mandal one of the claimant respondent father of the deceased and informant of police case instituted after accident, when he arrived on telephonic information at the place of occurrence asserts in paragraph 9 that he is not aware about the owner of the bike whereon his son was going on. There is nothing on record to show whether the deceased was competent enough to drive the bike and had valid license. In absence of such documentary evidence disclosing name of owner of the bike besides non-production/examination of undisputed available eye-witness, who is the solitary surviving injured of the alleged accident deprives the claimants at least for 50 % of the compensation, if awarded, and strengthen the submissions made on behalf of the appellant about contradictory negligence and dilution of the liability.

6. Though in the pleading, claimants have come on with the case that deceased had monthly income of Rs.6,000/- through a Digital Studio recently opened but in absence of any paper showing running of such Studio and income etc. besides statement of his widow, one of the claimant in cross-examination, paragraph 8 that her deceased husband had income more than Rs.2,000/- further holds the assertion of monthly income Rs.6,000/- but leads towards consideration of notional monthly income of Rs.3,000/- per month.

7. In view of the decision of the Hon''ble Apex Court in the case of "Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another" reported in "(2009) 6 SCC 121" his annual income is to be assessed as Rs. 36,000/- and the multiplier applicable is 18 bringing the amount to Rs. 6,48,000/-. As per Schedule, 50 % is to be added as future prospect bringing to amount to Rs. 9,72,000/- As per Schedule, ?rd amount is to be deducted as personal and living expenditure, bringing the amount up to Rs.6,48,000/- wherein Rs.25,000/- is to be added as loss of consortium and funeral expenses, bringing the amount to the tune of Rs.6,73,000/- with interest @ 6 % per annum from the date of filing of application till date of actual payment.

8. The appellant is directed to make payment of the aforesaid amount after deducting the amount already paid, if any, within a period of one month from

today. However, as prayed for the appellant is at liberty to initiate proceedings for recovery of the amount from the owner, if at all, after thorough scrutiny convinced to do so on the ground of lack of road permit at the relevant time taking due care of the right of the owner to contest.

9. With the above modification in the award dated 5th October 2012 by the Ad-hoc Additional District Judge/FTC-IV?cum?M.A.C.T., Munger in Claim Case No. 47 of 2010, the Appeal stands disposed of.

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