

(2018) 05 PAT CK 0022

In the Patna High Court

Case No : Miscellaneous Appeal No.970 of 2011

THE BRANCH MANAGER NATIONAL IN

APPELLANT

Vs

KAMLA DEVI & ORS

RESPONDENT

Date of Decision : 09-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 05 PAT CK 0022

Hon'ble Judges : PRAKASH CHANDRA JAISWAL

Bench : Single Bench

Advocate : Raj Kumar Singh Vikram, Ratnakar Ambastha

Final Decision : Disposed of

Judgement

1. Heard learned counsel for the appellant and learned counsel for the respondent-claimant on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 5.02.2011 and award dated 13.05.2011 passed by learned Adhoc

Additional District & Sessions Judge-IV-cum-Motor Vehicle Accident Claim Tribunal, Lakhisarai in Claim Case no. 45 of 2006 whereby the learned

Tribunal allowing the claim petition filed by the claimants-respondents, directed the O.P. no. 3 National Insurance Company Ltd. to pay compensation

to the tune of Rs. 1,77,700/- along with interest @ 14% per annum from the date of filing of the claim case.

3. Factual matrix of the case is that the Claim Case no. 45 of 2006 was filed by the respondents-claimants Kamla Devi and Ishwar Ram under

Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 2,28,000/- on account of death of Geero Ram, who happened to be

husband of claimant-respondent Kamla Devi and father of claimant-respondent

Ishwar Ram, subsequently, Kamla Devi passed away during pendency of the case, with the case in succinct that on 30.05.2005, Geero Ram was proceeding on tractor bearing registration no. BR-8-5265 hailing to Nawal Kishore Prasad Singh to Lakhisharai Bazar for purchasing articles for marriage of daughter of Raghu Singh as representative of said Raghu Singh who had hired the aforesaid vehicle. As soon as the said tractor arrived on Mankatha Road near Balgudar, it turned turtle due to rash and negligent driving of the offending vehicle by its driver resulting into death of Geero Ram on the spot. Regarding the aforesaid incident, Lakhisarai P.S. Case no. 169 of 2005 was lodged against the driver of the offending vehicle. Further case of the claimant-respondent is that Geero Ram was 48 years old at the time of accident and was labourer and used to get Rs. 2100 per month from the said vocation.

4. The Opposite Party nos. 1 and 2 who happen to be owner and driver of the offending vehicle did not put their appearance in the case despite service of notice. So the case proceeded ex parte against them while the Opposite Party no. 3 filed its written statement. The claimants-respondents adduced ocular and documentary evidence in buttress of their case.

5. After hearing the parties and perusing the record, learned Tribunal passed the impugned judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the O.P. no. 3 National Insurance Company Ltd. has preferred the present appeal.

7. The appellant has preferred this appeal on the ground that the deceased was travelling on the said tractor sitting on its mudguard as a gratuitous passenger. He neither happened to be owner nor representative of the owner of the tractor and the said tractor was insured under the farmers

package policy for the purpose of agricultural use and not as a passenger vehicle and the premium of the said person was not covered under the

insurance policy. Hence, there is utter violation of the terms and conditions of policy and the appellant is not liable to pay any compensation to the

respondent-claimant indemnifying the owner of the vehicle. He has relied upon the verdict of Honâ??ble Apex Court rendered in National Insurance

Co. Ltd. Vs. Bommithi Subbhayamma & Ors. reported in 2005 (12) SCC 343 and New India Assurance Co. Ltd. Vs. Vedwati & Ors. reported in

2007(3) SCALE 397 in buttress of his argument.

8. On the other hand, learned counsel for the respondent-claimant submitted that the deceased was travelling in the trolley attached with the tractor

for fetching some articles for marriage of daughter of Raghu Singh as the representative of Raghu Singh who had hired the said vehicle and in course

of travelling he met the accident and succumbed to his injury. He does not happen to be gratuitous passenger. By citing case law of Honâ??ble Apex

Court rendered in Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors. reported in 2017(2) PLJR 110 (SC), he has submitted that Honâ??ble

Apex Court in the case of â??gratuitous passengerâ? finding the Motor Vehicle Act as benevolent legislation, has directed the Insurance Company to

pay awarded amount of compensation to the claimant and then recover said sum from owner of the offending vehicle.

9. On perusal of F.I.R. marked as Ext-1, it appears that the deceased was proceeding on the tractor to Lakhisharai Bazar to fetch articles for

marriage of daughter of Raghu Singh and in course of travelling, he met the accident which proved fatal. PW-1 (Ishwar Ram) who happens to be son

of the deceased has deposed before the court in paragraph 2 of his examination-in-chief that on 30.05.2005 at around 7:00 AM, Raghu Singh arrived

at his house and asked his father to fetch cereals and other edible materials from Lakhisharai Bazar for marriage of his daughter on the tractor

bearing registration no. BR-8-5268 which he had hired from its owner Nawal Kishore Prasad Singh. The said statement of respondent-claimant itself

indicates that the tractor, in question, was hired by Raghu Singh and the deceased was travelling on the said tractor to fetch the articles for marriage

of daughter of Raghu Singh on his instruction. It is admitted case of the parties that the tractor, in question, was insured under the farmers package

policy only for the purpose of agricultural use. But, the deceased appears to have been travelling in the said tractor not for the agricultural purpose

rather some other purpose after hiring the same by Raghu Singh and moreover the deceased does not happen to be either owner or representative of

owner of the offending vehicle. Hence, in my considered opinion, the deceased was travelling on the tractor, in question, as a â??gratuitous

passengerâ?.

10. Though Honâ??ble Apex Court in National Insurance Co. Ltd. (supra) and

New India Assurance Company Ltd. (supra) has been pleased to held that the liability of the insurer would be limited to a third party and not to a gratuitous passenger and the insurance company is not liable to pay any compensation indemnifying the owner of the offending vehicle in case of death of gratuitous passenger in the accident. But, Honâ??ble Apex Court in Manuara Khatun & Ors. (Supra) has been pleased to held that the deceased was travelling in offending vehicle as â??gratuitous passengerâ?, hence Insurance Company cannot be held liable for payment of compensation to the claimant. However, in view of the benevolent object of the Act and other relevant factors, directed the insurance company to pay awarded compensation to the claimant and then to recover the paid sum from owner of the offending vehicle.

11. In view of the aforesaid facts and circumstances and the aforesaid case law of the Honâ??ble Apex Court, I find and hold that the deceased was travelling on the offending vehicle as a â??gratuitous passengerâ? hence, Insurance Company is not liable to pay any compensation to the respondent-claimant indemnifying the owner of offending vehicle. However, as the Motor Vehicle Act happens to be benevolent and beneficial legislation, hence, the appellant (National Insurance Company Ltd.) is directed to pay amount of compensation as awarded by learned Tribunal to the respondent-claimant and then recover the aforesaid paid amount from owner of the offending vehicle.

12. The interest awarded by the learned Tribunal appears to be exaggerated and exorbitant. In my considered opinion, it ought to be 6% per annum from the date of filing of the claim case till its realization. The appellant is directed to pay aforesaid amount of compensation to the respondent-claimant along with interest within two months from the date of this judgment.

13. Accordingly, this miscellaneous appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

14. Let the statutory amount deposited by the appellant be sent down to the learned Tribunal in the name of respondent-claimant through cheque for its adjustment in the compensation amount.