

Anita Devi and ors. Vs. Jai Narayan Kumar Singh and ors.

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Court : Patna

Decided On : Apr-16-2004

Judge : M.L. Visa, J.

Acts : [Motor Vehicles Act, 1988](#); Code of Civil Procedure (CPC) - Order 41, Rule 11

Appeal No. : M.A. No. 480 of 2001

Appellant : Anita Devi and ors.

Respondent : Jai Narayan Kumar Singh and ors.

Disposition : Appeal dismissed

Judgement :

M.L. Visa, J.

1. This miscellaneous appeal which is directed against the judgment dated 28.4.2001 and award dated 27.8.2001 passed by Mr. Mahendra Narain Singh, Third Additional District Judge, Bhagalpur in Claim Case No. 92 of 1998, with the consent of parties, is finally disposed of at this stage of hearing under Order 41, Rule 11, Code of Civil Procedure.

2. Brief facts of the case are that wife of deceased Ram Bilas Mandal, appellant No. 1 and his minor daughters and sons, appellant Nos. 2 to 5, had filed a

compensation case claiming a sum of Rs. 2,00,000 as compensation after the death of Ram Bilas Mandal who died in an accident by a truck No. BHA 2665. Respondent No. 1 is the owner, respondent No. 2 is the driver of the vehicle and respondent No. 3 is the insurance company with which the vehicle on the date of accident is said to have been insured. After hearing the parties, the court below allowed a sum of Rs. 1,00,000 as compensation and held respondent No. 3, the insurance company responsible for this payment and directed respondent No. 3 to pay the aforesaid compensation amount after adjusting a sum of Rs. 50,000 which was paid as ad interim compensation with an interest at the rate of 9 per cent per year. The appellants are aggrieved by the award of court below because according to them, multiplier factor in awarding compensation has not been applied and the court below has awarded less compensation by ignoring the Schedule appended to [Motor Vehicles Act, 1988](#). According to appellants, considering the age and income of deceased, multiplier factor of 17 should have been applied by the court below and by applying this multiplier factor, the amount of compensation comes to Rs. 4,76,000 which has not been awarded. Case of the respondent Nos. 1 and 2 is that on the day of accident, since the vehicle was insured with the respondent No. 3, they are not liable to pay any compensation. Case of the insurance company, respondent No. 3, is that in fact appellants are not liable to any compensation because the court below has already held that at the time of accident, deceased was sleeping by the side of a road and he himself invited the accident but taking a lenient view, the court below has granted a sum of Rs. 1,00,000 as compensation to appellants. Learned counsel for respondent No. 3 has further argued that before the court below, insurance company had taken the plea that neither the appellants nor the owner of the vehicle brought any material on record to show that at the time of the accident, the driver who was driving the vehicle, was holding proper licence and if the owner of the vehicle, in breach of conditions of insurance policy, knowingly allowed a person to drive the vehicle who was not having any driving licence in that case the insurance company is not liable to pay any compensation. It has also been argued that the witnesses examined on behalf of appellants before the court below have stated that deceased used to get his land cultivated on bataidar and death of deceased has not caused any monetary loss to appellants. The learned counsel for the

appellant has argued that before the court below evidence was led on behalf of the appellants that at the time of death, the age of deceased was thirty-five years and his monthly income was Rs. 3,500 and in this view of the matter, multiplier factor of 17 as given in the Schedule to [Motor Vehicles Act, 1988](#) is applicable and applying this factor, the compensation amount comes to Rs. 4,76,000 but the court below has awarded only a sum of Rs. 1,00,000.

3. From perusal of the judgment of the court below, I find that the appellants had claimed a sum of Rs. 2,00,000 as compensation. I further find that after considering the evidence on record, the court below held that it is not true that the accident took place only because of rash and negligent driving of the vehicle and because deceased at the time of accident was sleeping on a cot by encroaching the road, he was equally responsible for the accident. Court below has further found that to hold only the driver responsible for the accident does not appear to be proper. The court below has also given its finding that from the description of materials on record, it came to light that deceased had invited the accident by sleeping by the side of road but it granted compensation simply on the ground that death of the deceased occurred in the accident by the truck. In the case of *Indrani Raja Durai v. Madras Motor & Genl. Ins. Co.* : [1996]1SCR564 , the Apex Court, considering the case in which a person driving motor cycle on highway, in order to save himself from being sandwiched between a car and a speedy bus, took extreme right and in doing so, hit the left bumper of the bus and died at the spot, held that negligence can be apportioned as 60 per cent and 40 per cent and set aside the judgment of the High Court which had reversed the finding of Tribunal awarding a sum of Rs. 1,00,000 as compensation on the ground that the driver of the bus was equally negligent and awarded a sum of Rs. 60,000 with interest to the claimants. As in the present case, I find that appellants claimed a sum of Rs. 2,00,000 as compensation and the court below held deceased equally responsible for his death in the accident because at the time of accident, he was sleeping by the side of the road but still observing, that the deceased died in accident by a vehicle which was insured with respondent No. 3, granted compensation of Rs. 1,00,000 to the appellants with interest at the rate of 9 per cent per annum.

4. I find that the compensation awarded by the court below is just and proper in the present case. In the result, I find no merit in this appeal which is, accordingly, dismissed.

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