

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.454 of 2014

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1. Sita Devi Wife of Late Sadhu Sahni aged about 40 years.
2. Manoj Kumar Sahni Son of Late Sadhu Shaani aged about 20 Years Resident of Village - Tarwa Majhaulia, P.O.- Chochahi Chapra, P.S.- Paroo, Distti- Muzaffarpur.

... .. Appellant/s

Versus

1. Diwakar Prasad Shahi and Anr. Son of Bisheshwar Pd. Shahi Resident of Village - Chandua, P.S.- Karhani, District - Muzaffarpur
2. The Divisional Manager Insurance Co. National Insurance, Co. Ltd. Near PNT Colony, Mithanpura, Muzaffarpur

... .. Respondent/s

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Miscellaneous appeal under section 173 of the. M.V ACT 1988. - For enhancement of compensation amount awarded by the judgment dated 11/4/2014 and award dated 29/04/2014. Passed by sixth additional District Judge cum Motor Accident Tribunal, Muzaffarpur. Granting compensation of Rs 1,72,750 with 6% interest.

Tribunal has held that due to rash and negligent driving of the motorcycle, the accident took place. – Deceased. Sabu Sahni. Also contributed. 50% Percent to the accident by act of his own negligence --. As such reduced the compensation by 50%. For contributory negligence of the deceased

Appellants pleaded that. Although the. The insurance company has taken plea. -- That deceased was also negligence., but no evidence has been

led by opposite party no. 2 to establish contributory negligence on the part of deceased. In police report/charge sheet as submitted against the rider of the offending motorcycle but has not found any fault on part of deceased in contributing to said accident.

Held. Contributory negligence has to be established by evidence. It cannot be inferred even there-. Is any negligent act. - On behalf of the deceased. As such, deduction of 50% of the compensation. For contributing negligence of

deceased is not sustainable and accordingly set a side.

On the basis of admitted fact. The compensation for which claimant are entitled. Has been reassessed by this court which comes total of RS. 4,90,000. (Rupees four lakhs and ninety thousand only) -Clement are entitled to get the above amount.

The insurance company after deducting the compensation amount Already paid to Claimant. from Rs ₹4,90,000. Is directed to pay the remaining amount to the claimant appellant with interest at the rate of 6% per annum. On remaining compensation amount from the date of application. Till its realization.

Miscellaneous Appeal. Stand Allowed.

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Resident of Village - Tarwa Majhaulia, P.O.- Chochahi Chapra, P.S.- Paroo,
 Distti- Muzaffarpur.

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Versus

1. Diwakar Prasad Shahi and Anr. Son of Bisheshwar Pd. Shahi Resident of
 Village - Chandua, P.S.- Karhani, District - Muzaffarpur
2. The Divisional Manager Insurance Co. National Insurance, Co. Ltd. Near
 PNT Colony, Mithanpura, Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sunil Kumar Pandey, Adv
 For the Respondent no.2 : Mr. Abhay Kumar Sinha, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT

Date : 03-09-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed under Section 173 of the M.V. Act, 1988, for enhancement of compensation amount awarded by judgment dated 11.04.2014 and award dated 29.04.2014 passed in Claim Case No. 287 of 2011 passed by 6th Additional District Judge-cum-Motor Accident Claims Tribunal, Muzaffarpur, (hereinafter referred to as the Tribunal) granting compensation of Rs. 1,72,750/- with 6



per cent interest.

3. Briefly stated, the facts of the case as set out in claim application is that on 03.08.2011 at about 8:30 pm when husband of claimant Sadhu Sahni was crossing the road in front of his Bathan, a motorcycle bearing no. BR 06K 6409 dashed against him on the pitch road due to which he received serious injuries and was taken to S.K.M.C. Hospital, Muzaffarpur where he succumbed to his injuries on 11.08.2011.

4. With respect to said incident Paroo P.S. Case No. 219 of 2011 was registered against the rider of the motorcycle and after completion of investigation police found the case to be true and submitted chargesheet against the rider of the motorcycle.

5. The age of deceased Sadhu Sahni was about 45 years and his monthly income was Rs. 6000/- from the business of fishery. The offending motorcycle was insured with National Insurance Company Limited. The claimants are widow and son of the deceased.

6. Notices were issued to opposite parties. O.P. No. 1 owner of the vehicle but he has neither appeared nor contested the case. However, O.P. No. 2-Insurance company has appeared and filed its written statement denying the claim of



compensation to the claimants-appellants.

7. On the basis of the pleading of the parties, the Tribunal framed five issues for its determination.

8. Six witnesses were examined on behalf of claimants-appellants.

9. In support of their claim case documentary evidence were also adduced, which have been marked as Exhibits by the Tribunal. Exhibit-1 is the FIR, Exhibit-2 is the chargesheet submitted by the police, Exhibit-3 is the post mortem report of the deceased.

10. No evidence oral or documentary was adduced on behalf of opposite parties.

11. The Tribunal has held that due to rash and negligent driving of the motorcycle, the accident took place in which husband of the claimant no. 1 died. The Tribunal has held that deceased Sadhu Sahni has contributed 50 per cent to the accident by his own negligence as such has reduced compensation by 50 per cent for contributory negligence of deceased. Tribunal has found the age of the deceased to be 45 years on the date of death and 14 to be appropriate multiplier. His monthly income has been assessed as Rs. 3000 per month, however, nothing has been granted towards future prospect. The



Tribunal has deducted 1/3rd from the income of the deceased towards his personal expenses and has found loss of dependency to be Rs. 24,000/- and has assessed Rs. 3,36,000/- as compensation and thereafter under conventional head for loss of estate, funeral expenses and loss of consortium has awarded Rs. 9000/- and has quantified total compensation as Rs. 3,45,500/- to be just and proper compensation amount. However, on account of contributory negligence, 50 per cent amount has been reduced and Tribunal has found Rs. 1,72,750/- as compensation amount for which claimants are entitled and since the vehicle was insured with National Insurance Company Ltd. the Tribunal has directed to pay the compensation amount to the claimants with interest @ 6 per cent per annum and aggrieved by which the present appeal has been filed on behalf of claimants.

12. Although in their written statement, the Insurance Company has taken plea that deceased was also negligent and contributed to the accident for his negligence act but no evidence has been led by the opposite party no. 2 to establish contributory negligence on the part of the deceased. Police also after investigation has submitted chargesheet against the rider of the offending motorcycle but has not found any fault on part of deceased in contributing to said accident.



13. Contributory negligence has to be established by evidence and it cannot be inferred even there is any negligent act on behalf of the deceased. The opposite parties are required to establish said negligent act which contributed to the accident, as such the deduction of 50 per cent of the compensation amount for contributory negligence of deceased is not sustainable and accordingly set aside.

14. On the basis of admitted facts the compensation for which claimants are entitled is being reassessed by this Court.

Annual income -	Rs. 36,000/-
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Future Prospects (25%)	Rs. 9000/-
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Total Income	Rs. 45,000/-
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Personal Expenses (1/3rd)	Rs. 15,000/-
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Loss of dependency	Rs. 30,000/-
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Multiplier	14
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Compensation Amount	Rs. 4,20,000/-
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Conventional Heads	Rs. 70,000/-
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Total =	Rs. 4,90,000/-
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(Four Lacs Ninety Thousand).

15. Claimants-appellants are entitled for



compensation of Rs. 4,90,000/-(Four Lacs Ninety Thousand).
The Insurance Company after deducting the compensation amount already paid to claimants-appellants from Rs. 4,90,000/- is directed to pay the remaining amount to the claimants-appellants with interest @ 6 per cent per annum on the remaining compensation amount from the date of application till its realization.

16. The miscellaneous appeal is allowed to the extent as indicated above.

LCR of this case be returned to the court concerned forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	24.06.2019
Uploading Date	04.09.2019
Transmission Date	NA

