

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 201 of 2014

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Branch Manager, Oriental Insurance Company Limited, Branch Patna City, Patna. Appeal and Appellant through the Deputy Manager & Authorized Signatory, Regional Office, The Oriental Insurance Company Limited, Pirmohani, Patna.

... ... Appellant/s

Versus

1. Santosh Kumar S/O Late Ramdas Thakur. Resident Of Rosera, District-Samastipur.

..... ...Claimant /....Respondent.

2. Abhay Pratap S/O Vijay Pratap. Resident Of Badar Ghat, P.S. Guljarbag, District – Patna.
3. Awadh Singh S/O Uttam Singh. Resident Of Chaturbhuj Chapra, P.S. Baniyapur, District – Saran.

... ... Respondent/s

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The Motor Vehicle Act, 1988---Section 140, Section 173—appeal against judgment of Additional Motor Accident Claim Tribunal—legal representative is brother of Manoj Kumar Thakur who died in a motor vehicle accident by a bus on which deceased was a passenger—Tribunal awards compensation only to dependents—the deceased had no earning—legal representative is a non-earning person—not dependent on the deceased—liability does not cease because of absence of dependency—Tribunal directed payment of Rs 3,59,000 to claimant with six percent interest as compensation.

Held: The appeal partly allowed with direction to the appellant to pay Rs. 50,000 minus the amount already paid.

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... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Advocate
For the Respondent No.1:		Mr. Satya Prakash Sinha, Advocate
For the Respondent No.3:		Mr. Anirudh Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-02-2019

Heard the parties.

2. This appeal has been preferred, under Section 173 of the Motor Vehicle Act, 1988 by the *Oriental Insurance Company Limited* against the judgment dated 12.12.2013 and award dated 17.12.2013, respectively passed by the 1st Additional District Judge-cum-1st Additional Motor Accident Claim Tribunal, Hazipur, Vaishali in Claim Case No.13 of 1994, whereby the Tribunal has directed the appellant to pay the compensation of Rs.3,59,000/- (Rupees Three Lacs and Fifty Nine Thousand) to the claimant along with six percent interest.



3. The appeal is barred by limitation of 09 days. The delay is explained in I.A. No.9453 of 2014. Hence, the delay is condoned.

4. *Manoj Kumar Thakur* died in a motor vehicle accident on 10.10.1993 caused by a bus bearing registration No.*BRK-7561* on which the deceased was a passenger.

5. Submission of learned counsel for the appellant is that initially father of the deceased was a claimant and after his death, the full brother of the deceased, *Santosh Kumar*, respondent No.1 herein was substituted before the Tribunal.

6. Contention is that *Santosh Kumar* comes within the definition of legal representative, who can bring a case for compensation before the Tribunal. However, the Tribunal shall award compensation only to the dependents as held by the Hon'ble Supreme Court in *Smt. Manjuri Bera versus the Oriental Insurance Company Limited and Another*, vide *Civil Appeal No.1702 of 2007 decided on 30th March, 2007*.

7. The impugned order would reveal that the deceased was aged about 28 years. He had no earning. Therefore, notional income of Rs.100/- (Rupees One Hundred) was taken as multiplicand.



8. In para 11 of the judgment of *Manjuri Bera's* case, the Hon'ble Supreme Court observed as follows:-

“There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163A”.

9. Apparently, the applicant was not a dependent on the deceased, who was himself a non-earning person. Hence, the appellant would be entitled to the extent of Rs.50,000/- (Rupees Fifty Thousand) only, in view of the aforesaid judgment.

10. Hence, this appeal stands partly allowed with direction to the appellant to pay Rs.50,000/- (Rupees Fifty Thousand) minus the amount already paid.

11. Learned counsel for the appellant submits that the remaining amount of Rs.25,000/- (Rupees Twenty Five Thousand) has been deposited as statutory amount at the time of filing of this appeal. Hence, let the same be paid to the claimant through cheque.



12. The Registry shall sent down the cheque in the name of the claimant.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.02.2019
Transmission Date	08.02.2019

