Heading of Decision in Claim Petition

In the Court of Additional District & Sessions Judge -VIth -cum-Chairman, M.A.C. Tribunal, Patna.

District: Patna. Dated, Patna, the 18th day of February, 2020.

Present:

Sri Awadhesh Kumar, Addl. District Judge -VIth-cum-Chairman, M.A.C. Tribunal, Patna.

Ref: Claim Case No. 99 of 2017/CIS No. 99/2017

- 1. Mini Kumari, W/O late Anil Kumar, aged about 28 years,
- 2. Ansu Kumar, S/O late Anil Kumar, aged about 02 year,
- 3. Ashlok Kumar, S/O late Anil Kumar, aged about 05 month.
- 4. Manorama Devi, W/O Shiv Kumar Yadav, aged about 50 years,
- 5. Shiv Kumar Yadav, S/O Lal Das Yadav, aged about 52 years.

All are resident of village- Dharamchak, P.O.- Sadawah, P.S.- Dulhin Bazar, District- Patna.

.....Applicants/claimants.

Vs.

- 1. Golu Kumar, S/O Mani Bhushan Prasad Singh, R/O village- Bahilbara (Khorampur), P.S.- Saraiya, District- Muzaffarpur.
 - Driver of Damfar Truck No.BR31Q-9612.
- 2. Bachcha Singh, S/O Ishwar Singh, R/O village- Damodarpur, P.O. Saraiya, P.S. Jandaha Saray, District- Vaishali, Pin- 844125.
 - Owner of Damfar Truck No.BR31Q-9612.
- 3. Shriram General Insurance Company Limited trough its legal manager, 3rd floor, Kedar Bhawan, S.P. Verma Road, Patna-800001.

..... Insurer of Damfar Truck No.BR31Q-9612.

..... Opposite Parties.

For the Applicant: Mr.Rambrat Kumar Singh, Ld. Advocate.

For the O.P. No.3: Mr. Rajesh Chandra Narayan, Ld. Advocate.

Mr. Anuj Kumar, Ld. Advocate.

AWARD

1. Applicants of this claim petition are parents, wife and sons of deceased late Anil Kumar, resident of village- Dharamchak, P.S. Dulhin

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Bazar, District- Patna. They have filed this case under Section 163 of Motor Vehicle Act, Claiming compensation to the tune of Rs.10,00,000/- for the accidental death of said Anil Kumar in a road accident.

- 2. The case of the applicants, in brief, is that on 02.02.2017, at about 4:30 P.M., when deceased along with his friends was returning to his home Dharamchak from Bikram Bazar by the motorcycle bearing Registration No. BR 01 CM 2105 and when they reached near Kashimchak turning, a Truck (Damfar) Bearing Registration No. BR 31Q 9612 being driven by its driver rashly and negligently, dashed the motorcycle, as resulted deceased sustained injury and died in course of treatment.
- 3. In this regard one Bashista Yadav has given Fardbeyan regarding the accident at P.H.C. Dulhin Bazar. Said fardbeyan was recorded by the S.I. Sanjeev Kumar of Dulhin Bazar Police Station, District Patna on 02.02.2017 at about 6:15 P.M.

It has been stated by the informant that he along with Anil Kumar and Chandan Kumar, were coming by the motorcycle bearing registration no. BR 01CM 2105 from Bikram Bazar to his house Dharamchak. When they reached near the Kashimchak turning, offending vehicle Truck (Damfar) no. BR 31W 9612 driven by its driver rashly & negligently dashed their motorcycle. Due to such accident all the persons, who were boarded on motorcycle sustained injury. Local residents took the injured persons at P.H.C., Dulhin Bazar, Patna, and treatment was started.

In course of his treatment one Anil Kumar died.

- 4. On the basis of fardbeyan of Bashista Yadav, Dulhin Bazar P.S. Case No. 21 of 2017 was registered and investigation of the case was taken up. After due investigation I.O. of this case has submitted charge-sheet under Section 279, 337, 338 and 304(A) of IPC in this case.
- 5. By filing this claim petition, it has been submitted by the claimants that deceased was in private service, his monthly income was about Rs.10,000/- per month. The claimants were totally depends on the deceased income, they have no other source of income. It is stated that deceased was in prime of his carrier and he was aged about 28 years. Applicants were maintained by the deceased from his earning and due to accidental death of deceased, applicants suffered irreparable loss. So, it has been submitted by the applicants to award the compensation amount as prayed by them.
- 6. By filing this compensation petition applicants have made party to the following persons.:-
- i) Golu Kumar, S/O Mani Bhushan Prasad Singh.

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- ii) Bachcha Singh, S/O Ishwar Singh.
- iii) Shriram General Insurance Company, Limited, through its Legal Manager.

Notices and summons were issued to the opposite parties.

- 7. It appears from the case record that opposite party no. 3 Shri Ram General Insurance Company, Limited, appeared and filed objection. Opposite party no. 1 and 2 have not appeared and court has proceeded to hear the matter against them ex-party. It has been submitted by the opposite party no. 3 by filing written statement that present claim petition, filed by the claimants is not maintainable either in law as well as on fact and it is fit to be dismissed. It is further submitted that claimants have got no valid cause of action. It is also submitted that insurance company is not liable to pay compensation. Claim of this opposite party no.3 is that accident was taken place due to gross negligence of the deceased as three persons were traveling on the motorcycle. They violated the provision laid down in the Motor Vehicle Act and Rules. It has been also submitted that insurance company denying liability because the driver who are driving the Truck (Damfar) had not a valid license to drive vehicle. It is also submitted that said vehicle has also no valid permit and fitness to ply the vehicle on the place of accident and due to violation of terms and conditions of the policy, the insurance company is not liable.
- 8. The insurance company has also denied the earning of the deceased of Rs.10,000/- per month, as he was in private service. On the basis of said avarments, made in the written statement, it has been submitted by the opposite party no.3 that claimants are not entitled for any compensation as claimed in the present claim case. This claim petition may kindly be rejected with cost.
- 9. On the basis of pleading of both the parties the following issues are framed for adjudication of this claim case of course on recast.

ISSUES

- I. Whether the applicants have got valid cause of action or right to file the claim case.
- II. Whether the claim case, is maintainable?
- III. Whether the deceased Anil Kumar died in the accident due to rash and negligent driving of the offending vehicle of Truck (Damfar) no. BR 31Q 9612?
- IV. Whether at the time of accident said Truck (Damfar) was insured?

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V. Whether the applicants are entitled for compensation, and, if so, up to what extent?

- VI. Whether the applicants are entitled for any other relief or reliefs?
- 10. In support of their case, the applicants have adduced oral and documentary evidence. They have examined following witnesses:-
- A.W.1. Shiv Kumar Yadav,
- A.W.2. Bashista Yadav,
- A.W.3. Madan Yadav,
- A.W.4. Mini Kumari,
- A.W.5. Yadunath Yadav,
- 11. Following documentary evidence has also been brought on record:-
- Ext.1.- Written Report.
- Ext.2.- Charge-sheet.
- Ext.3.- Postmortem Report.
- Ext.4.- Certificate-cum-policy Schedule.
- Ext.5.- Identity Card of Anil Kumar.
- Ext.6.- Certificate issued by Company.
- Ext.7, 7/A and 7/B.- salary slip of Anil Kumar.
- Ext.8.- Employees' State Insurance Corporation certificate.

On the other hand opposite party no. 3 has adduced no oral or documentary evidence.

On the basis of evidence brought on record by the applicant. It is being discussed herein below under different issues.

Issue No. III and IV .:-

- 12. The specific case of the applicants is that on 02.02.2017, when deceased Anil Kumar was coming from Bikram Bazar to his village Dharamchak under the Police Station Dulhin Bazar, District- Patna, and when he reached at Kashimchak turning a Truck (Damfar) bearing Registration No. BR 31Q 9612 came rashly & negligently and dashed the motorcycle. Three persons were boarded at the said motorcycle, they all sustained injury and they have been brought P. H. C. Dulhin Bazar for treatment.
- 13. On the basis of fardbeyan to the police of one Bashista Yadav, Dulhin Bazar P.S. Case No. 21 of 2017 was registered under Section 279, 337, 338 of IPC. In course of treatment one injury Anil Kumar died. Postmortem Report shows that postmortem of deceased Anil Kumar was done on 04.02.2017 by the Doctor K. K. Singh, Medical Officer, Sub-Division Hospital, Danapur. Written report and postmortem report shows

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that at the time of accident, Anil Kumar was aged about 28 years. Written Report has been marked as Ext.1, charge-sheet has been marked as Ext. 2 and postmortem report has been marked as Ext.3. The claim of applicants are that the applicants were being maintained by the deceased from his earning and due to accidental death of deceased, applicants suffered irreparable loss.

14. **A.W.1. Shiv Kumar**, who is a applicant of this case has stated before the court that Anil Kumar (deceased) was his son. Other applicants are the wife, son and mother of the deceased. He has submitted that accident was taken place on 02.02.2017 at about 4:30 P.M. At that very time his son along with others were coming from Bikram Bazar to his village- Dharamchak. When they reached near Kashimchak turning, a Truck (Damfar) bearing registration no. BR 31Q 9612 came rashly & negligently and dashed his son Anil Kumar and others. In course of treatment his son Anil Kumar died at the hospital. This witness has stated that his son was working at Salem (Tamil Nadu) in a Company, his monthly income was Rs.10,000/- per month. It is stated that his son has maintained them by his income and due to accidental death of said Anil Kumar, applicants suffered irreparable loss.

This witness has been cross-examined by this opposite party no.3. In course of cross-examination this witnesses has admitted that his son was working in a company and he will file certificate of the salary of his son.

15. **A.W.2. Bashista Yadav.** This witness has stated that on the day of accident on 02.02.2017 he was coming along with deceased Anil Kumar by motorcycle from Bikram Bazar to his village Dharam Chak. When they reached near Kashim chak turning, a Truck (Damfar) bearing no. BR 31Q 9612 came rashly & negligently and dashed their motorcycle, as resulted they sustained injury. It is stated that in course of treatment deceased Anil Kumar died. This witness was an injured of the said accident.

This witness has been cross-examined at length by the adversary. It has been stated by this witness that truck has dashed his motorcycle from backside.

16. **A.W.3. Madan Yadav.** He has stated before the court that on the day of occurrence i.e. on 02.02.2017 at about 4:30 P.M., he was at the place of accident near Kashimchak turning. Three persons boarded on motorcycle were going towards Dulhin Bazar and near the Kashim Chak turning a Truck (Damfar) no. BR 31Q 9612 dashed the said motorcycle from backside. The persons who were boarded at motorcycle, sustained injury. One of the injured Anil Kumar died in course of treatment at Hytech

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Emergency, Hospital, Saguna More. This witness has also stated that accident was done due to rash & negligent driving of the Truck (Damfar) bearing registration no. BR 31Q 9612. This witness has been also cross-examined at the length by the opposite party no.3. It has been stated by this witness that he saw the occurrence, said truck dashed the motorcycle from backside. It is also stated that one person has already wearing helmet at the time of driving of the motorcycle.

17. **A.W.4. Mini Kumari.** She is the wife of deceased Anil Kumar. She has stated that on the day of occurrence, her husband was coming from Bikram Bazar to his house on motorcycle with other persons. When they reached near the Kashimchak turning a Truck (Damfar) no. BR 31Q 9612 coming rashly and negligently dashed her husband from backside. In course of treatment her husband died. She has also stated that her husband was working at Meta-Bright Engineers Company, at Salem (Tamil Nadu). His earning was Rs.10,000/- per month. It has also stated that her husband maintaining all the family from his income.

Cross-examination was also done by opposite party no.3 to this witness. She has stated that her mother-in-law and father-in-law are also alive and she has two sons. She has stated that she has no any documentary certificate but her husband was working in a company.

- 18. **A.W.5. Yadu Nath Yadav.** This witness has come to say before the court that he is also working at Meta-Bright Engineers Company. Deceased Anil Kumar was also working at that very company. He had come back from Salem before two or three month from the day of occurrence. He has also stated that they are receiving their salary in their account number. Earlier they are taking their salary in cash. This witness has proved Photo Identity Card of deceased Anil Kumar issued by the Meta-Bright Engineers Company marked As Ext.5. A certificate issued by the company has also been brought which has been marked as Ext.6. Salary slip of deceased Anil Kumar has been marked as Ext.7, 7/A and 7/B. Employees' State Insurance Corporation certificate has been marked as Ext. 8 in this case. This witness has stated that salary of deceased Anil Kumar was Rs.13,000/- monthly. It has also stated by this witness that accident of Anil Kumar was done by the Truck (Damfar) no. BR 31Q 9612.
- 19. After scrutinizing the evidence it appears that all the witnesses have stated before the court that accident of the Anil Kumar was done by the Truck (Damfar) no. BR 31Q 9612. Formal FIR, written report, charge-sheet and postmortem have been brought by the applicant to prove the death of

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deceased Anil Kumar to show that it was an accidental death by the offending vehicle on a public road. In spite of documentary evidence all the witnesses of this claim case have stated that the death of deceased Anil Kumar was caused by the offending vehicle.

- 20. Against this nothing on record to disbelieve the case of applicants on the point of accident, as well as rash and negligent driving done by the driver of the offending vehicle. Certificate-cum-policy Schedule issued by the Shriram General Insurance Company Limited shows that offending vehicle was insured at the time of accident. The period of insurance shows that it was valid since 13.07.2016 to midnight of 12.07.2017 bearing the registration number of vehicle BR 31Q 9612.
- 21. From the above discussions it is held that deceased Anil Kumar died in a road accident due to rash and negligent driving of the driver of the offending vehicle bearing registration no. BR 31Q 9612. The said vehicle was insured.

Accordingly, this issue is decided in favour of applicants.

Issue No. I, II and V.

22. On the basis of discussions made above, it is has been held that deceased was died in a road accident by the offending vehicle Truck (Damfar) No. BR 31Q 9612. The said Truck (Damfar) was insured. So, my opinion is that the applicants had a valid cause of action for filing this claim petition and claim petition is maintainable.

By filing this claim case the prayer of the applicant is that the deceased was working in a private factory and his monthly income was about Rs.10,000/- per month. The claimants claimed for compensation of Rs.10,00,000/- with loss of estate, love and affection along with funeral expenses and loss of consortium with future prospects with the interest of 12 per cent per annum from the filing of this case till realization of this compensation amount.

- 23. It has been already discussed that mother and father of the deceased are alive, his two sons and his wife are also depend on him. The age of deceased was about 28 years at the time of accident.
- 24. In course of examination of witnesses, it has been brought that deceased was an operator at Meta-Bright Engineers Company, his Identity Card valid from 10.05.2016 to 30.06.2016 has been brought on record, E SIC card of the deceased has been brought on record. Salary slip of August, 2016, September 2016 and October 2016 has been brought on record.

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- 25. The accident was taken place on 02.02.2017. It has come in the evidence of witnesses that at the time of accident deceased had came at his house before two or three months from his working place. So, as per above discussion it is held that deceased was hell and hearty and aged about 28 years.
- 26. As per claim petition monthly income has been shown Rs.10,000/-per month. But after perusal of certificate-cum-pay slip, the income of deceased has been shown Rs. 7,540/- basis + incentives Rs.580/- + over time Rs. 5800/- Total Rs.13,920/-.

After deducting over time, the monthly income of the deceased would be Rs.8120 per month (Rs. 7540 + 580 = 8120).

On applying a multiplier of 17, the total income of deceased worked out $8120 \times 12 \times 17 = 16,56,480/$ - rupees.

From the aforesaid income of the deceased, 1/3 of the amount is deducted as expenses of deceased himself, if he had been alive. So,16,56,480 x 1/3 = 5,52,160

Rs. 16,56,480 - 5,52,160 = 11,04,320/- rupees.

The applicants are also entitled to:-

Rs.15,000/- for loss of estate,

Rs.40,000/- for loss of consortium and

Rs.15,000/- for funeral expenses

The total amount which to be paid by the insurance company to the applicants of Rs. 11,74,320/-.

27. Accordingly, these issues are decided in favor of applicants. They have cause of action for filing this claim case and this claim case is also maintainable. They are entitled to receive claim amount as noted above.

Opposite parties Nos.1 and 2 have not appeared. The insurance company would be liberty to take recourse of law if any default was done by him as per provision and condition laid down in their policy.

Issue No. VI.

28. Accept the amount which is awarded, applicants are not entitled to other relief or reliefs.

Accordingly,

it is ordered

that this claim petition is **allowed.** O.P. No. 3 Shriram General Insurance Company, Limited, is directed to pay compensation to the applicants of Rs. 11,74,320/- with 12 per cent interest till realization of the said amount from

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In the court of Addl. District Judge-VIth-cum-Chairman, M.A.C. Tribunal, Patna Claim Case No. 99 of 2017 the filing of this compensation petition. The said amount would be realized in the accounts of the applicants in equal share.

29. Office is directed to realize the balance of court fee, if any, payable by the applicants from the awarded amount

(Dictated and corrected by me.)

(Dictated by)

(Awadhesh Kumar)

Addl. District Judge -Vith-cum-Chairman, M.A.C. Tribunal,

Patna.

Dated: 18.02.2020

(Awadhesh Kumar)

Addl. District Judge -Vith-cum-Chairman M.A.C. Tribunal,

Patna.

Dated: 18.02.2020.

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