

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.526 of 2013

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1. Lalita Devi wife of late Saryug Rishi
 2. Sajni Devi wife of Late Tamatar Rishi
 3. Sunari Kumari daughter of Late Saryug Rishi
 4. Rahul Rishi son of Late Saryug Rishi
 5. Mamta Kumar daughter of Late Saryug Rishi.

Claimant no. 1 is wife of the deceased Late Saryug Rishi, Claimant no. 2 is mother of the deceased Saryug Rishi and Claimant nos. 3 to 5 are minor children of Late Saryug Rishi represented through Claimant no. 1 as natural guardian and next friend of the aforesaid minors.

All are residents of village-Ketare, PS-Dagarua, Distt.-Purnia. Appellant/s
Versus

1. Majid Sekh son of Abdul Kayem Sekh, resident of Sitesh Nagar, PS-Pakur, District-Pakur (Jharkhand), driver of the vehicle bearing registration no. WB-57A-1592.
2. Ainul Seikh son of Jasi resident of village-Seikhpur, PO-Bhaisai Paikar, PS-Samsherganj, District-Murshidabad, PIN-742202(WB), owner of the vehicle bearing registration no. WB-57A-1592.
3. Bajaj Allianz General Insurance Company Ltd., 25/26 Prince Towers, 4th Floor, College Road, Nungambakkam, Chennai-600006, Insurer of the vehicle bearing Registration No. WB-57A-1592. Respondent/s

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Appearance :

For the Appellant/s : Mr. Harshvardhan Shivsundaram, Adv.
For the Respondent/s : M/s Rajesh Chandra Narayan and
Durgesh Kumar Singh, Advs.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-08-2015

Heard learned counsel for the appellants and learned counsel for the respondents.

In this case, the claimants have filed an appeal being not satisfied with the amount of compensation which has been decided by the trial Court, vide judgment and award dated 22nd March 2013, passed by Additional District Judge No.VIII-cum-Adhoc M.V.A. Claims Tribunal No.VIII, Purnea in Compensation Case No. 21 of 2008/Trial No. 03 of 2012, fixed the

compensation amount of Rs. 1,19,500/-,

The short facts of this case is that on 31st January 2008 deceased Saryug Rishi was engaged in playing with his child near his house by the side of the road and when a truck bearing registration no. WB57A-1592 crushed him who died at the spot which led to institution of Baisi (Dagarua) P.S. Case No.11 of 2008 for offences under Sections 279/304A of the Indian Penal Code.

Claim application was filed. The Tribunal found the accident has taken place due to negligence of the driver, the vehicle itself was covered under the insurance coverage, calculated the amount of compensation, treating the notional amount of Rs. 15,000/- per annum.

Counsel for the appellants submits that in view of the judgment, in **Sarla Verma vs. DTC**, reported in **(2009) 6 SCC 121**, a daily wages earner will be treated to have earned Rs.100/- per day which has been disputed by the counsel for the Insurance Company who has submitted that in his pleading he himself has stated that the victim was earning Rs.80/- per day. In such view of the matter, in a case of specific pleading, it cannot be notional income of Rs. 100/- per day, at best, he will get the benefit of compensation treating that the victim was earning Rs. 80/- per day.

In such view of the matter, it requires modification of

the award, as Rs. 80/- will be treated to be daily earning, it will be multiplied by 30 comes Rs.2400/- and it will be multiplied by 12 comes Rs.28,800/- and from there 1/4th has to be deducted for personal expenses, as five persons were dependent upon him on the amount of Rs.21,600/- will be taken into consideration for compensation and in that amount, for the future prospects 50% should be added, consortium and funeral amount of Rs. 20,000/- will be included therein.

Counsel for the appellants has also raised a grievance that the court below has wrongly taken the multiplier of 16, it should have been 17 so the court below will make necessary amendment to the compensation amount after proper calculation, prepared the revised award that should be done within a period of three months from the date of production of a copy of this order. In turn the Insurance Company would pay the compensation amount.

Accordingly, the appeal is allowed to the aforesaid extent.

Lower Court Records of the court below be returned back to the proper court.

(Shivaji Pandey, J)

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