

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.536 of 2012

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1. Most. Gayatri Devi W/O Late Kaushal Kishore Singh Permanent Resident Of Village - Laxminiya, P.S. Baruraj, District - Muzaffarpur

2. Rajiv Kumar Minor Son Of Late Kaushal Kishore Singh And Under Guardianship Of Their Mother Permanent Resident Of Village - Laxminiya, P.S. Baruraj, District - Muzaffarpur

3. Sanjiv Kumar Minor Son Of Late Kaushal Kishore Singh And Under Guardianship Of Their Mother Permanent Resident Of Village - Laxminiya, P.S. Baruraj, District - Muzaffarpur

.... Appellant/s

Versus

1. Sri English Prasad Yadav S/O Baidyanath Rai R/O Mohalla - Krishna Toli, Brahampura, P.S. Brahampur, District - Muzaffarpur

2. The Divisional Manager, United India Insurance Company Ltd. Motijheel, P.S. Town, District Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Prasad Singh, Adv.

For the Respondent/s : Mr. Durgesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

11 07-09-2015

Heard counsel for the appellants and the respondents.

In this case, the appellants are challenging the judgment and award dated 5th April 2012 and 12th April 2012 respectively by which the appellants have been granted compensation amount of Rs.3,93,000/- along with 6 per cent interest per annum from the date of filing the application.

Basically the appellants are aggrieved by the amount as awarded by the Tribunal. In the present case, there is no dispute on the merits of the case. The only dispute between the parties is with respect to quantification of the amount of compensation.

Short facts of the case is that on 22nd April 2010, one Kaushal Kishore Singh was going with his cousin Vinod Singh from Baruraj Chanahi Chowk to his house, as soon as both proceeded ahead, a vehicle bearing Regd.No. BR-06P / 1189 came from Motipur side being driven rashly and negligently and dashed Kaushal Kishore Singh as well as Vinod Singh as a result of which both of them died at the spot.

In the present case, claimants are dependents of Kaushal Kishore Singh. At the time of death he was 39 years old and was earning Rs.4,000/- per month, including Rs.50/- per day as food allowance, i.e. in total, claim has been made of compensation of Rs.6,50,000.

In support of proof of earning, five witnesses have been examined and all of them have said that he was engaged in brick kiln and was getting Rs.4,000/- per month and Rs.50/- per day as food allowance. One of the witnesses, namely, A.W.4 Binay Kumar Singh, Munshi of kiln has stated that the owner of the kiln was paying Rs.4,000/- per month and Rs.50/- per day as food allowance to the victim but the Tribunal in absence of any documentary evidence has calculated the amount on the basis of notional income of Rs.3,000/- per month and the annual income Rs.36,000/- deducting 1/3rd for personal expenses.



Counsel for the appellant submitted that when five witnesses have deposed before the Court that the deceased was earning Rs.4,000/- including Rs.50 per day as food allowance, in that circumstance brushing aside the evidence of the appellant and decide compensation on the basis of notional income is not the correct approach of the Tribunal so much so the Tribunal has not granted any compensation under the head, future prospect as age of the victim was below 40 years, the compensation for future prospect is to be added 50 per cent of the compensation amount so much so the Tribunal has also wrongly calculated the amount of consortium only at Rs.5,000/-, rather it should have been Rs.1,00,000/- and for funeral Rs.25,000/- and on that basis calculation should have been made.

Counsel for the respondents submitted that the victim was engaged in the brick kiln which is a seasonal industry, works only for six months in a year and there is no work for the rest six months in such a situation, the Tribunal has taken right approach in taking notional income for calculation of compensation amount. At the same time the owner of the kiln was not examined nor the payment register showing payment to the deceased and other staff was not brought by the Munshi of the Kiln, when he was in possession of the same. Counsel for the Insurance Company

submitted that there is no material to suggest that A.W.4 was the Munshi of the brick kiln which has been resisted by the appellant.

Having considered the rival contention of the parties, it is not in dispute that the brick kiln is a seasonal industry it works in season only and for rest period, no work is available. The industrial unit engaged in brick kiln does not keep staff off reason, except very few for sale of bricks. A.W.4 has not produced any document in support of his statement. The appellant has also not brought the owner of the brick kiln to support his claim of earning. It is also not the case that the appellant took step for appearance of owner of the brick kiln but the owner has refused to appear. So except the oral evidence, no documentary evidence is available to support the case of appellant, in such a situation when the Munshi has purposely not produced the payment register which would have supported the claim, this Court does not find any error in the order of the court below taking notional income for computation of compensation amount and, as such, this Court rejects the submission of the appellant that the compensation should have been calculated on the basis of his salary Rs.4,000/- per month, including Rs.50/- per day. Hence, this Court does not find any error in the matter of taking basis for the calculation made by the Tribunal.

In view of judgment in (2013)9 SCC 54 (Rajesh v. Rajbir Singh) where the Hon'ble Supreme Court placing reliance on (2012)6 SCC 421 (Santosh Devi v. National Insurance Co. Ltd. has held that even a person having been employed in fixed salary or is self employed will be entitled to compensation for future prospect.

Counsel for the Insurance Company submitted that the issue of granting compensation for future prospect to self employed person came for consideration in the case of Pushpa Devi and the matter has been referred to larger Bench. Appellants are not entitled to compensation or future prospect. As before this Court, there is authoritative pronouncement of Hon'ble Supreme Court, hence this Court decides the appellant s are entitled to compensation for future prospect.

As the deceased was below 40 years of age, the appellants are entitled to get fifty per cent additional amount of compensation for future prospect, so far consortium and for funeral expenses the Insurance Company will pay an amount of Rs.25,000/- including 6 per cent simple interest from the date of filing application.

The court below is directed to revise the award of compensation and recalculate the amount and prepare a fresh

award in terms of directions as aforesaid and the Insurance Company is also directed to make payment of revised compensation amount within a period of there months from the date of receipt of revised award. In case of failure to pay the said amount within the said period, the Insurance Company will have to pay nine per cent interest.

Let the records of the court below be transmitted.

Accordingly, this petition is allowed.

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(Shivaji Pandey, J)