IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.6 of 2011

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1. Most. Sunita Devi, wife of Late Bharat Ram alias Ganaur Ram (aged 25 years).
2. Rampari Devi, wife of Sri Ram Sagar Rai (aged 50 years).
3. Ram Sagar Ram, son of Late Rajbal Ram (aged 55 years).
4. Santosh Ram, minor son of Late Bharat Ram alias Ganaur Ram (aged 5 years).
5. Rekha Kumari, minor daughter of Late Bharat Ram alias Ganaur Ram (aged 3 years).
6. Mantosh Ram, minor son of Late Bharat Ram alias Ganaur Ram (aged 1 year).

Serial No.4 to 6 are minor sons and daughter of Late Bharat Ram alias Ganaur Ram under the guardianship of their mother-appellant no.1.
All are resident of village-Koralhiya Gudari Bazar, P.S. Runi Saidpur, District-Sitamarhi, at present Akhahara Ghat, P.S. Ahiyapur, District-Muzaffarpur.
(Claimants No.1 to 6)

.... Appellants.

Versus

1. Sri Shyam Prakash Shahi, son of Late Shivkumar Prasad Shahi.
Resident of Mohalla-Nayatola, P.S. Kazimohammaedpur, District-Muzaffarpur
…..(Opposite Party No.1).... .... Respondents.
2. The Divisional Manager, the New India Assurance Company Limited, Poddar Complex, Club Road, P.S. Mithanpura, District-Muzaffarpur.
…..(Opposite Party No.2).... .... Respondents.

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Appearance :
For the Appellants : Mr. Mukesh Prasad Singh, Advocate.
For the Respondent No.2 : Mr. Arun Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 26-03-2015

Heard Mr. Mukesh Prasad Singh, learned counsel appearing on behalf of the claimants-appellants and Mr. Arun Kumar Singh, learned counsel appearing on behalf of the opposite party no.2/Respondent no.2.

2. This is the claimants' appeal for enhancement of the compensation against the Judgment/Award dated 20.09.2010/25.09.2010 passed by the Additional District Judge-VIcum-Motor Accident Claims Tribunal, Muzaffarpur, in Claim Case No.130 of 2007, whereunder the aforesaid Claim Case of the claimants/appellants was allowed with a direction to the opposite party no.2/Respondent no.2 to pay compensation of Rs.1,39,500/- to the claimants/appellants within 45 days from the date of filing of the claim case with 6% interests per annum with a further direction that out of the aforesaid compensation amount, 75% of the same shall be deposited in the Post-Office under the Monthly Income Scheme in the name of the claimants for a definite period to meet out future expanses of the minors and rest 25% shall be deposited in the Savings Account to meet the day to day expanses of the claimants.

3. Learned counsel appearing on behalf of the claimants-appellants submits that while there is evidence of AW-1, Sunita Devi and AW-2, Ram Sagar Ram, who are the claimants, that the deceased, Bharat Ram alias Ganaur Ram, was aged about 28 years at the time of accident and he used to do the work of Khalasi and earn Rs.100/- per day as wages and Rs.20/- per day as Khoraki. AW-5, Manoj Kumar Singh, who is the Manager of Alok Travels, also deposed before the Tribunal that the deceased was earlier Khalasi in the Alok Travels and used to earn Rs.120/- per day as wages and Rs.20/- as Khoraki and he has also proved the certificate issued by the Manager of the Company as Ext.1 but the learned Tribunal illegally disbelieved their evidence and assessed the notional income of the deceased as Rs15000/- per annum. As such, the income of the deceased ought to be assessed as Rs.36000/- per annum according to the evidence of the claimants. Learned counsel for the appellants-claimants further argued that there are six claimants, as such, hardly $1/4^{th}$ should be deducted as personal expanses of the deceased to the income of the deceased but the learned Tribunal has deducted $1/3^{rd}$ as personal expenses to the notional income.

4. On the other hand, learned counsel appearing on behalf of the opposite party no.2/Respondent no.2, the Divisional Manager, the new India Assurance Company Limited, while has not disputed about the evidence of AW-1 and AW-2 regarding Rs.100/-per day income of the deceased as Khalasi but submitted that the age of the deceased has been assessed about 28 years at the time of the accident, as such, in view of the decision in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another {(2009) 6 Supreme Court Cases 121},** the multiplier should be 17 and not 18 to the dependency amount, which has been applied by the Tribunal to assess the amount of compensation.

5. AW-1, Sunita Devi and AW-2, Ram Sagar Ram, who respectively are the widow and father of the deceased, has stated in their evidence that the deceased was about 28 years at the time of accident and he used to do the work of Khalasi and earn Rs.100/- per day as wages and Rs.20/- per day as Khoraki. AW-5, Manoj Kumar Singh, who is said to be the Manager of Alok Travels, also deposed before the Tribunal in his evidence that the deceased was earlier doing the job of Khalasi in the Alok Travels and used to earn Rs.120/- per day as wages and Rs.20/- as Khoraki and he has also proved the certificate of earning issued by the Manager of the Company as Ext.1. Learned trial court while has discussed the evidence of AWs in detail but disbelieved the evidence of earning of the deceased only on the ground that there is no evidence to show that just before the occurrence of accident the deceased was doing the job of Khalasi or not which appears to be not proper. As such, the annual income of the deceased, Bharat Ram alias Ganaur Ram, should be considered on the basis of Rs.100/- per day wages as stated by AW-1 and AW-2. Accordingly, the annual income of the deceased would come to Rs.36,000/- per year. It is apparent from the record itself that out of the six claimants, two are parents and rests four are widow and minor children of the deceased, as such, $1/4^{th}$ should be deducted as personal expanses of the deceased. After deducting $1/4^{th}$ as personal expanses to the income of the deceased Rs.36,000/- per annum, the dependency amount would be 27,000/- per year. It is not in dispute that the deceased was aged about 28 years at the time of accident. As such, in view of the decision in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another {(2009) 6 Supreme Court Cases 121},** the multiplier with dependency amount of Rs.2700/- should be 17 and, accordingly, the compensation amount would come to Rs.4,59,000/-. To this amount, by adding Rs.2000/-, Rs.2500/- and Rs.5000/- as funeral expanses, loss of estate and loss of consortium, the total amount of compensation would come to Rs.4,68,500/-, which will be paid by the Respondent no.2, the New India Assurance Company Limited to the claimants-appellants with interest @ 6% per annum from the date of filing of the Claim Case. Any amount which has been paid by way of interim compensation or as a result of the Tribunal's order to the claimants, would be deducted while making the payment by the opposite party no.2/Respsondent No.2 to the claimants.

6. Accordingly, this Misc. Appeal is allowed to the extent of modification indicated above in the impugned Judgment and Award.

(Rajendra Kumar Mishra, J)

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