

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.848 of 2011**

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1. Most. Neelam Devi wife of Late Ram Bhajan Thakur.
  2. Veenita daughter of Late Ram Bhajan Thakur.
  3. Anuradha daughter of Late Ram Bhajan Thakur.
  4. Manoj Kumar Thakur son of Late Ram Bhajan Thakur.
  5. Shakuntla daughter of Late Ram Bhajan Thakur.
- Village Souria P.S. Nanpur District Machubani.

.... .... Appellant/s

Versus

1. Awdhesh Kr. Singh s/o Sudama Prasad Singh, village & P.O. Chatauni P.S.
2. Shiv Shankar Thakur son of Raaghunath Thakur Vill, P.O. and P.S. Gae Ghat District Muzaffarpur.
3. Chief Regional Manager, New India Assurance Comp. Lt d. BSFC Building, Frazer Road, Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Mukesh Prasad Singh &  
Mr. Statya Nand Shukla, Adv.

For the Respondent/s : Mr. Shailendra Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 13-05-2015**

In the present case, limited question has been raised by the appellants making a prayer for enhancement of compensation amount under different heads. On that account, order passed by the 2<sup>nd</sup> Additional District Judge cum-Claims Tribunal, Darbhanga is under challenge before this Court.

The claim of the parties is that the victim Ram Bhajan Thakur was travelling in a Mini bus bearing Regd. No. BR 06P – 8401 on 2<sup>nd</sup> November 1995 and proceeded to Jalley from Muzaffarpur. When the Mini bus had reached Zero mile Ahiyapur at 9.50 P.M. , the informant conductor requested the passengers who were at the top of the bus to come down and occupy seat inside the bus. As 2-3 persons were traveling at the roof of the bus, maximum persons followed the request but one person refused to adhere to the request and subsequently he fell down and in course of treatment died in S.K. Medical College Hospital, Muzaffarpur. His name was Ram Bhajan Thakur son of Late Lakshmi Thakur, village Sauria, P.S. Nanpur district Sitamarhi for which Singhwara P.S. Case No. 148 of 1995, GR No. 2213 of 1995 was registered.

All the issues were decided in favour of appellant. The Tribunal assessed the amount at Rs.1,65,000/- and also directed for interest from the date of order, which led to filing of the present appeal.

Claim has been made that the compensation is in lower side in view of price rise and no person can get the minimum salary than Rs.60/- per day on relevant day and if calculation is made on that basis, then a person will get about Rs.2,000/- per month. Claim has also been made that the Tribunal has wrongly deducted 1/3<sup>rd</sup> as personal expenditure as looking to the number of dependents upon him, it cannot be more than 1/4<sup>th</sup>. He has further submitted that funeral expenditure shown as Rs.5,000/- is on the lower side and it should have

been on the higher side.

A further plea has been taken that future prospect has not been taken into consideration. As the age of the deceased was 35 years, there should be 50 per cent additional amount and it has further been argued that while passing the order, the Court has not taken into consideration the loss of consortium to the wife of the deceased and has claimed that interest given from the date of passing the order, should have been given from the date of filing of the application.

Reliance has been placed on the judgments in (2009)6 SCC 121 (Sarla Verma v. DTC), (2009)10 SCC 648 (National Insurance Company Ltd. V. Khimlibai), (2012)6 SCC 421 (Santosh Devi v National Insurance Co. Ltd.) and (2013)9 SCC 54 (Rajesh v. Rajbir Singh).

Counsel for the respondents in contra submitted that the Tribunal has not gone beyond the law as there was no material available before the Tribunal, he has arrived to a finding on the basis of tabular chart provided under the Motor Vehicle Act. As the order has been passed on 9<sup>th</sup> June 2010, at that time prevalent practice was to deduct 1/3<sup>rd</sup> as personal expenditure and only on that basis compensation was to be assessed so much so the court in India were not granting any relief for future prospect as well as compensation for loss of consortium was not prevalent and as such grant of compensation by the Tribunal is fair and proper and submitted that interest should be from the date of filing of the claim case.

The Hon'ble Supreme Court, in Sarla Verma (supra) has not granted any compensation for future prospect to persons having been self employed but later on in the cases of Santosh Devi and Rajesh (supra) the Hon'ble Supreme Court has changed the policy and granted compensation for



future prospect, arrived to the conclusion that persons below 40 years will be given 50 per cent amount and the Court has also taken care of the rise in the price and the Court has said that even a person employed for 20 days in a month, will compensate themselves by engaging himself in the other work and the court has taken earlier view uniformly and directed compensation for the loss of consortium. It is true that a person cannot be employed entire month would earn livelihood by different engagement during relevant period, for unskilled labour minimum wages was not be below Rs.60/-. Uniformly it would be taken to be engaged for 30 days which comes to Rs.1,800/- and this Court comes to a conclusion that in stead of Rs.15,000/-, it should be calculated in terms of Rs.1,800/- per month minus personal expenditure is correlated to the number of persons dependant on the deceased. As it appears from the pleadings, five persons were depending upon the earning of the deceased a normal person cannot incur more than 1/4<sup>th</sup> of his earning. So for funeral expenses is concerned, the court feels that the amount is correct and this Court does not feel inclined to increase the amount under the said heading. For loss of consortium, looking to the income of the deceased, the claimants will be entitled to Rs.15,000/- and the interest will be calculated from the date of filing of the application. For future prospect claimant is entitled to 50 per cent additional amount to the to the award amount.

The Court below is directed to make recalculation in terms of direction as aforesaid and modify the amount of award and at the same time the respondent Insurance Company is also directed to make payment within two months from the modification of award amount by Tribunal.

With this observation/direction, this petition is allowed to the aforesaid extent

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(Shivaji Pandey, J)

