

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.716 of 2011

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1. Most. Bebi Devi, wife of late Mantu Rajak
 2. Neera Devi, wife of Madho Rajak alias Mahadeo Rajak
 3. Mahadeo Rajak alias Madho Rajak, son of late Kali Charan Rajak, all resident of Village Naya Tola Deshri, P.O. & P.S. Jagdishpur, District Bhagalpur.

.... Appellant/s

Versus

1. Jeevan Jay Rajhans (driver) son of Mahavir Rajhans, at present resident of Champa Nagar P.S. Nath Nagar, District Bhagalpur.
2. Smt. Parwati Devi, wife of Birendra Singh Chandel Permanent address Alipur Hatta, P.S. Mahnar, District Vaishali, at present resident of Champa Nagar, Nath Nagar, P.S. Nath Nagar, District Bhagalpur (owner)
3. The Manager, New India Assurance Company Ltd. Muzaffarpur, Poddar Complex, Muzaffarpur
4. Through to the Manager, New India Assurance Company, Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. VIVEKANAND VIVEK

For the Respondent/s : Mr. Mahendra Prasad

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-12-2015

Heard learned counsel for the appellants and learned counsel for the Insurance Company.

I.A. No.8113 of 2014 has been filed for condonation of delay in filing the appeal

This Court is satisfied with the explanation made in the aforesaid interlocutory application.

Accordingly the delay in filing the appeal is hereby condoned and I.A. No.8113 of 2014 is disposed of.

In the present appeal the appellants are challenging the judgment and award dated 14.9.2010/22.11.2010 by the

Additional Sessions Judge, Fast Track Court No.I-cum-Motor Vehicle Accident Claim Tribunal Judge, Bhagalpur in Claim Case No.150 of 2002 by which the Tribunal has calculated the amount of compensation of Rs. 1,53,000/-.

From the record it appears that one Mantu Rajak was crushed on account of rash and negligent driving of vehicle no. BR 06E-8787, led to filing of the application.

The Tribunal has fixed the notional income of Rs.1,000/- per month, annual income of Rs.12,000/-. As per Motor Vehicle Act even notional income cannot be less than Rs.15,000/-. The court below has erroneously fixed the annual income of Rs.12,000/-. In view of judgment of Hon'ble Supreme Court in the case of Laxmi Devi and others v. Mohammad Tabbar and another, reported in (2008)12 SCC 165 where the Court has said that looking to the facts and attending circumstances and rise in the consumer price. Index and reduction money value a general labour would earn at least Rs.100/- per day and in the nutshell the income of Rs.3,000/- per month and Rs.36,000/- per year deducting 1/3rd under the category of personal expenses the compensation is to be fixed on Rs.24,000/-. The compensation will be calculated on Rs.24,000/- per annum. The funeral expenses has also fixed in a very lower side, minimum it should

be Rs.5,000/- and consortium has been fixed Rs.5,000/- but it should be Rs.20,000/-. The Tribunal has not considered the future prospect. In terms of Rajesh v. Rajbir Singh, reported in (2013) SCC 54, he will be entitled to additional 50% in view of facts that person below 40 years of age will be entitled to 50% of compensation amount.

The court below is directed to recalculate the amount of compensation and revised the award as per the aforesaid direction. The Insurance Company is directed to pay the deference of amount within a period of three months from the date of fresh award. The difference of amount will carry interest of 6% from the date of the filing of the application.

In this view of the matter, the order of the Tribunal is modified to that extent.

Accordingly this appeal is allowed with the aforesaid observation.

(Shivaji Pandey, J)

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