

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.899 of 2010

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1. Yogendra Prasad Yadav S/O Sri Bairo Prasad Yadav R/O Dhamul Trukban , P.S.- Dhamul, Distt-Nawada At Present Residing C/O Rem Rai , Rikabganj, Patna City , P.S.- Malsalami , Distt- Patna.
 2. Koshila Devi W/O Yogendra Prasad Yadav R/O Dhamul Trukban , P.S.- Dhamul, Distt-Nawada At Present Residing C/O Rem Rai , Rikabganj, Patna City , P.S.- Malsalami , Distt- Patna.

.... Appellant/s

Versus

1. Sri Ashok Kumar S/O Sri Rajendra Prasad Rai R/O S.D.O.Road, Hajipur At Present Residing At Hajiganj, Patna City , P.S.- Chowk , Distt- Patna.
2. Sri Rajesh Kumar Sahu S/O Parichan Sahu R/O - Bidupur Saran, P.S.- Bidupur , Distt- Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. SUDHIR KUMAR BYPURIA, Advocate.

For the Respondent No.3 : Mr. Arun Kumar Shrivastava, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-09-2015

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

2. In the present appeal the appellants are challenging the judgment and award dated 25.6.2010 passed by the Additional District Judge XIth, Patna in Claim Case No.95 of 2002 to the extent of enhancing the amount of compensation on the ground that the Tribunal has computed the amount in a very lower side without proper consideration.

3. Brief facts of the case is that on 31.12.2001 at 1 P.M. the son of the claimant, namely, Manoj Kumar, had proceeded



from his house at Malsalami for tuition and when he reached near Bazar Samiti Katra one truck bearing registration no. BR-1G-2224 came from opposite direction rashly and negligently dashed the deceased who fell down, the said truck crushed his head, he died at the spot which led to filing of Malsalami P.S. Case No.209 of 2001 over and above the claim application as aforesaid was also filed claiming that the deceased was aged about 17 years earning Rs.2500/- per month.

4. To support the claim of earning the claimant has examined altogether four witnesses, namely, A.W.1 Deepak Kumar Chaudhary, A.W.2 Yogendra prasad Yadav, A.W.3 Srikant Pandey and A.W.4 Subhash Kumar. They have stated that the victim was earning in between Rs.2,000/-to Rs.4,000/- while working as sales man in the shop of general merchant. As there was no specific material the Tribunal has taken notional income of Rs.15,000/-, on that basis the Tribunal after deducting 1/3rd towards personal expenses arrived to the amount of Rs.1,14,500/-.

5. Learned counsel for the appellants submits that in the claim application specific averment has been made with respect to earning of Rs.2,500/- as well as during deposition the witnesses have specifically stated about earning of Rs.2,000/- to

Rs.4,000/- by the victim should not have been brushed aside by the Tribunal and on the basis of notional income of Rs.15,000/- calculated the amount.

6. Learned counsel for the Insurance Company has submitted that the victim was a minor as well as there is no documentary material before the Tribunal, the Tribunal has rightly taken notional income of Rs.15,000/- which was prevalent at the relevant time and the Tribunal has not committed any error for deciding the issue. So much so he has also submitted that as the victim was a minor and the compensation amount with respect to the minor has been considered in the case of Reshma Kumari V. Madan Mohan, reported in (2013)9 SCC 65 so much so for minor, deduction towards personal expenses should be 50% and as such the Tribunal instead of 1/3rd should have adjusted half towards the personal expenses.

7. Here is the question the Tribunal has taken notional income of Rs.15,000. In terms 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 the Hon'ble Supreme Court has considered very aspect of the matter and notional income of Rs.15,000/- has been substituted. On

consideration having no any documentary evidence the person to be treated have been earning of Rs.100/- per day.

8. In such view of the matter, if a person is earning Rs.100/- per day the amount will be Rs.3,000/- per month and notional income of Rs.36,000 person a bachelor so there will be deduction of half towards personal expenses. So it will be Rs.18,000 per annum for computation of compensation amount. In terms of the judgment in the case of Sarla Verma v. DTC, reported in (2009) 6 SCC 121 where the court has framed structured formula court below has taken the multiplier 16 but in terms of Sarla Verma (supra) it should be 18 as the age of victim is 17 years the court has not considered the amount under the future prospect as well as the amount under the love for parents. Under the future prospect in terms of the judgment in the case of Rajesh and others v. Rajbir Singh and others, reported in 2013(9) SCC 54 the person below the age of 40 years will be entitled to an additional 50% amount of the total compensation and as the victim has to be shown to be 17 years the Tribunal is required to add 50% of the total amount for future prospect under the heading for funeral expenses as well as under the heading of loss of love for parents including under other headings of Rs.25,000 to be appropriate amount to be

added with the amount of compensation.

9. In such view of the matter, the order of the Tribunal is modified to the extent that the Tribunal will again recalculate the amount of compensation in terms as aforesaid and revised the award. If the amount goes in higher side the Insurance Company would liable to pay the said amount within a period of three months from the date of preparation of award.

10. Accordingly the appeal is allowed to the aforesaid extent. Office is directed to remit back the lower court records to the court below forthwith.

Vinay/-

(Shivaji Pandey, J)

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