

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.5 of 2011

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1. Most. Shahnaz Khatoon, widow of Late Md. Tahiyat
 2. Nausad Khatoon, wife of late Najeem
 3. Rohit Praveen, minor daughter of late Md. Tahiyat
 4. Anjum Praveen, minor daughter of late Md. Tahiyat
 5. Jinat Praveen, minor daughter of late Md. Tahiyat,, sl.no.3 to 5 are minor daughter of late Md. Tahiyat under the guardianship of their mother-appellant no.1. All are resident of Village Baruraj (South Tola) Baruraj, District Muzaffapur

.... Appellant/s

Versus

1. Sri Radhe Shyam Sah, son of Permashwar Sah, resident of H. No.39, Motipur East, P.S. Motipur, District Muzaffapur
2. The Divisional Manager, National Insurance Company Ltd. Motijheel, P.S. Town, District Muzaffapur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. MUKESH PRASAD SINGH, Advocate.

For Respondent No.2 : Mr. Sanjay Kumar No.1, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-12-2015

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

In the present appeal the appellants are challenging the judgment and award on certain grounds, such as compensation has been fixed on the notional income of Rs.15,000/- per annum where as it should have been at the rate of Rs.3,000/- per month. Further it has been submitted that the court below has not given the proper relief under the consortium as well as has not granted any amount under the category for future prospect.

Learned counsel for the Insurance Company has pointed out that the court below has wrongly applied the multiplier 16, in view of the age of the deceased it should have been 15 which has

not been disputed by the learned counsel for the appellants.

The victim was going by vehicle bearing registration no. BR 06F/3774 but suddenly the said vehicle met with an accident near Akuraha and led to the death of the victim. Apart from criminal case vide Kanti P.S. Case No.72 of 2008 registered for the offences under Sections 279 and 304A of the Indian Penal Code, the wife of the victim and other dependants have filed claim case vide Claim Case No. 119 of 2008.

While dealing with the issue the Tribunal has treated the application under Section 163A of the Motor Vehicle Act and taken notional income of Rs.15,000/- per month whereas claim was filed under Section 166 of the Motor Vehicle Act. In the case of Laxmi Devi v. Md. Tabbarf, reported in (2008) 12 SCC 165 the Hon'ble Supreme Court held in view of inflation and the consumer price index, any unskilled labour will earn at least Rs.100/- per day, if that principle is applied the victim was treated to be earning of Rs. 3000/ per month and Rs.36,000/- per annum. As the size of family is of higher number of 5, in view of judgment in the case of Sarla Verma v. DTC, reported in (2009) 6 SCC 121 it will be 1/4th deduction in place of 1/3rd as also the tabulator chart that has been given in the case of Sarla Verma (supra) in stead of multiplier 16 it be 15.

In the present case it appears that the court below has not

granted the relief under the future prospect in view of the judgment in the case of Rajesh v. Rajbir, reported in (2013) 9 SCC 54 placing reliance on Santosh Devi v. National insurance Company Ltd. (2012) 6 SCC 411 has held that additional amount of 50% of the actual income of the deceased will be part of the compensation amount. The court below has granted Rs.5,000/- as consortium, funeral and other expenses which is a meager amount, that is enhanced to Rs.30,000 as total amount. It is an admitted fact that amount awarded has already been paid to the appellants.

In this view of the matter, the order of the court below is modified and the court below is directed to recalculate the compensation amount and prepare the revised award and the Insurance Company will pay the difference amount within a period of three months including interest at the rate of 6% from the date of filing of the application.

With the aforesaid observation/direction this appeal is allowed.

Vinay/-

(Shivaji Pandey, J)

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