

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.765 of 2010

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1. Nasiruddin Ahmad son of Late Naziruddin Ahmad
 2. Asma Begum wife of Nasiruddin Ahmad
Both resident of Mohalla-Dinara, PO and PS-Dinara Bazar, District-Rohtas (Sasaram).

..... Appellant/s

Versus

1. National Insurance Co. Ltd. Registered office, 3, Middleson Street, Kolkata-700071(WB), through (1) the Branch Manager, National Insurance Co. Ltd. Patna Branch No. III, Patna (ii) The Branch Manager, National Insurance Co. Ltd., Kankarbagh Branch, Patna-20.
2. Binod Kumar Singh son of Nawlakh Singh, permanent resident of village-Sakari, PO-Sakri Chouk, District-Arwal, present address at and PO-Khagaul, District-Patna (Owner Mahindra Max Pick up Van, Regd. No. BR-IX-0941).
3. Sirajuddin Khan son of late Nezamuddin Khan, permanent address Mohalla-Dinara, PS-Dinara Bazar, District-Rohtas, present address at and P.O. and P.S.-Bhabua, District-Kaimur. (Owner of Mahindra LMV Jeep Regn. No. BR-45-9143).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amir Alam, Adv.

For the Respondent/s : Mr. Raj Kumar Singh Vikram, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-11-2015

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

This appeal has been filed against the Judgment and Award dated 17th June 2010 by which the court below has directed for payment of compensation amount of Rs. 1,39,500/- adjusting the earlier amount of Rs. 50,000/- which was paid as an interim compensation and in nut-shell, direction has been given to pay Rs.89,500/-.

The short facts of this case is that on 25th January



2006 at about 7.00 A.M., the deceased Arif Ahmad @ Md. Arif son of Nasiruddin coming from Dinara to Patna, was going with cash for purchase of medicines for his shop, namely, Shama Medical Hall at Dinara. He caught a private passenger daily Jeep, vide Mahindra LMV Jeep Registration no. BR-45-9143, in the morning of that fateful day. The said vehicle was passing through NH-30, while crossing near village Mahadeoganj, all of sudden another Mahindra Max Pick-up Van No. BR-IX-0941 was coming very rashly and negligently from the opposite side of Ara, drivers of both vehicles lost their control and dashed to each other near petrol pump at NH-30 opposite to village Mahadeoganj under the Police Station Nawanagar, District-Buxar at about 8.00A.M. The Mahindra LMV jeep was badly damaged in that incident and all passengers boarded therein including the deceased sustained head injury as well as other grievous injuries. The condition of jeep and passenger including the deceased was much critical.

The applicant after getting the telephonic information about the said accident, rushed towards the place of accident with some of his well wishers, namely, Md. Sharfuddin and Sri Radha Prasad Seth etc. On reaching the spot, the son of applicant was found dead and others were found injured. Some of them were taken to Ara and some were shifted to Patna for treatment, for that incident, a criminal case, vide Nawanagar P.S. Case No. 6/2006 for offence

under sections 279, 337, 304(A) IPC, was registered.

The dead body of Arif Ahmad @ Md. Arif was brought to Sadar Hospital, Ara where Post Mortem was conducted.

It has been claimed that the victim was 23 years old, educated and energetic young person. Details of his educational achievement has been given in the claim application. The claimant has averred that his son was earning Rs. 10,000/- per month from the business of P.C.O. and on that basis, Rs.10,24,500/- has been claimed as a compensation amount.

The claimant has examined altogether five witnesses, namely, Narisuddin Ahmad who has been examined as C.W. 1, Radha Prasad Seth has been examined as C.W. 2, Md. Sarfuddin Idrisi has been examined as C.W. 3, Asma Begum has been examined as C.W.4 and Ram Jee Pandey has been examined as C.W. 5.

Certified copy of the First Information Report of Nawanagar P.S. Case No 6/2006 dated 25/1/2006 is Ext.-1. Certified copy of charge sheet of the same police station has been marked as Ext.-2. Ext.-3 is the photo copy of Insurance policy. Ext.-4 is photo copy of post mortem report. Ext.-5 is certificate of Matric. Ext.-6 is the marks sheet of B.A. and Ext.-7 is the certificate of Training Division of Frankfinn Aviation Service Pvt. Ltd. All the witnesses have said that the victim was a very brilliant, technical educated

person, was earning Rs. 10,000/- per month and on account of his death, his family suffered a heavy loss.

The Tribunal has disbelieved the claim of earning of Rs.10,000/ per month, as the same has been claimed on oral evidence. In absence of any valid document regarding the claim, the compensation amount has been calculated on the notional income of Rs.15,000/- deducting 1/3rd for the personal use, fixed the compensation @ Rs.10,000/- treating the age of victim 23 years.

In **(2008) 12 SCC 165** (Laxmi Devi vs. Md. Tabbarf) the Hon'ble Supreme Court has taken a view that even though a person/employee on a daily wages will earn Rs. 100/- per day, taking the same into consideration, compensation to be calculated as the notional income of Rs. 3,000/- per month and Rs. 36,000/- per annum. Taking clue from that judgment, the notional come of Rs. 15,000/- that has been taken by the Tribunal, cannot be a good basis for computation of the amount of compensation and accordingly, in terms of Laxmi Devi case (supra), this Court takes income of Rs. 100/- per day as the notional income and on that basis, the person would get Rs. 36,000/- per annum.

As the victim was a bachelor, instead of deduction 1/3rd it will be deduction of 1/2, on that account the calculation has been made on Rs. 18,000/- per annum.

In terms of Sarla Verma vs. DTC, reported in **(2009) 6 SCC 121**, as the age of the petitioner is assessed to be 23 years, accordingly, 18 will be proper multiplier for the purposes of calculation of the compensation amount.

For the future prospects, the counsel for the petitioner has relied upon a judgment reported in **(2014) 4 SCC 505** (Savita vs. Bindar Singh and others) there the Court has fixed percentage of increase for future prospects as 30% for the person as self employed, as in the present case, though the oral evidence has been brought to show that the victim was earning Rs. 10,000/- but he could not produce any documentary evidence to this Court affirming the view of the court below of taking a notional amount for the purposes of computation of the compensation, but there is another judgment of the three Judges bench, reported in **(2013) 9 SCC 54** (Rajesh vs. Rajbir Singh) there the Court has considered all the facets in the matter for computation of the compensation amount and in paragraph 8 of the judgment, the Court has taken note of Santosh Devi case, reported in **(2012) 6 SCC 421**, where the Hon'ble Supreme Court has held to be entitled 30% increase for the future prospects. Elaborating further the Court has held that if the person is below 40 years, will be entitled to additional 50% of actual income while computing the future prospects. In such view of the matter, it will be better for this Court to

follow the judgment of the three Judges i.e. Rajesh case (supra) where the Court has decided to grant the compensation amount or for future prospects 50% to those who are below 40 years. Accordingly, as the age of the victim is 23 years, will be entitled to additional of compensation of 50% for future prospects, for funeral expenses and under the category for love of parents total Rs.25,000/- to be added additionally.

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 if already not paid the amount, will pay the same within a period of three months from to-day including interest at the rate of 6% from the date of filing of the application.

It goes without saying that if the Insurance Company is of the view that the person who was driver of the vehicle, having no valid license and the vehicle does not have a valid permit, will take a suitable action in accordance with law.

With the above observation/direction, this appeal is allowed to the aforesaid extent.

The Office is directed to return the lower court records forthwith.

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(Shivaji Pandey, J)