

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.45 of 2013

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1. Reliance General Insurance Co. Ltd. Through Its Manager, Himalaya House, 8th Floor, 38, J.L. Nehru Road, Kolkatta, West Bengal

.... Appellant/s

Versus

1. Sunita Kumar W/O Late Ramanuj Singh R/O Village - Revra, P.S. Kashichak, District - Nawada
2. Abhishek Kumar S/O Late Ashutosh Kumar Jha R/O Village - Revra, P.S. Kashichak, District - Nawada
3. Sudhir Singh S/O Jawahar Singh R/O Village - Dakhingawa, P.S. Wasirganj, District - Gaya

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Shahi,
Mrs. Archana Sinha, Advocates.

For the Respondent/s : Mr. Rajesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-07-2015

Heard the parties.

2. In the present appeal the appellant is challenging the order dated 9.8.2012 and award dated 29.8.2012 by which the court below has calculated the amount of compensation Rs. 8,55,000/-

3. Brief facts of the case is that on 12.12.2010 at 11 A.M. deceased Ramanuj Singh was coming by his motorcycle bearing registration no. BR-27-8338 along with his friend from Hisua to Nawada and when they reached at Dhamaul petrol pump NH-52 a Tata 407 Maxi bearing registration no. BR-2F-4599 coming with the opposite side was being driven very rashly and

negligently, dashed the said motorcycle whereupon Ramanuj Singh received serious injuries and died on the spot. After the death a police case was registered as Hisua P.S. Case No.172 of 2010 for the offences under Sections 279, 337 and 304A of the Indian Penal Code.

4. A claim application was filed where plea was taken that the victim was a very hard working having well personality was doing the job of contractor (Thikedari) as well as engaged in agricultural of his eight Bighas of culturable land growing paddy crop, wheat and vegetable thereby earning annually Rs.1,45,000/- as a contractor and also from agriculture on that basis made claim of compensation for Rs.20,00,000/-.

5. The Insurance Company on receipt of notice appeared and challenged the claim application. Limit of challenge in the present appeal is with respect to the earning of the victim as Tribunal has arrived to a conclusion that the victim was earning of Rs. 96,000/- per annum without giving any reason. He has claimed that the claimant in the claim application has asserted earning of Rs.1.45,000/- per annum. The Tribunal while recording a finding on income of Rs.96,000/- without any materials on record and recording without any reason, the same is not sustainable. He has further submitted that in absence of

material on earning of appellant as per the Hon'ble Supreme Court judgment, the order is based on no evidence is nullity. The person having no fixed income will be deemed to be earning a notional income of Rs.1,00/- per day, Rs.3,000/- per month and annually income Rs.36,000/- and on that basis the calculation is to be done.

6. Counsel for the respondent has vehemently opposed the argument of learned counsel for the appellant and has submitted that claimant has made a complaint on the basis of certificate granted by the Circle Officer showing income of Rs.1,45,000 which was based on the report of Halka Karamchari as well as on the report of the Circle Inspector. He has further submitted that the Tribunal has by and large made income of half and on that basis this calculation has been made.

7. Having considered the rival contentions of the parties it appears that the Circle Officer is not a proper authority to grant of income certificate of a person. The Halka Karamchari and Circle Inspector are not supposed to know the annual income of the appellant and as such certificate issued by them for Rs.1,45,000/- is not a proper document for arriving to this finding of income of the victim. For income of any person can be arrived from the income tax return, in absence of such

document it will be presumed that the claimant has not produced any authentic document inspire confidence for the purpose of calculation of compensation the fact that the Tribunal has not accepted the claim of the claimant income of Rs.1,45,000/-. Any finding without any basis and reason is not sustainable. In absence of any material as per the Hon'ble Supreme Court judgment the notional income will be treated Rs.100 per day which comes to Rs.3,000 per month in turn annual income comes to Rs.36,000/-. In Such view of the matter, income of Rs.96,000/ is not sustainable in law.

Accordingly the order and award dated 9.8.2012 and 29.8.2012 are hereby set aside and the matter is remanded back to the court below to calculate the compensation amount in accordance with law treating income of Rs.36,000 per annum.

Accordingly this appeal is allowed.

Learned counsel for the appellant submits that the entire compensation amount Rs.9,61,957/- has been deposited in terms of the award and that amount has been invested in the Bank. In such view of the matter, statutory amount which has been deposited will be released in favour of the appellant.

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(Shivaji Pandey, J)