

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.473 of 2012

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The ICICI Lombard General Insurance Company Limited, Zenith House, Keshav Rao Khadeo Marg, Mahalaxmi (Mumbai) through its Constituted Attorney Legal Manager, Regional Office, Eldico Corporate Chamber 1, 4th Floor, Vibhuti Kund, Gomti Nagar, Lucknow

.... Appellant

Versus

1. Bhagwat Mistri S/O Late Trilok Mistri resident at Vill. Abgila, P.O. Abgila, P.S. Chandradeep, Distt. – Jamui

.....Applicants/Respondents.

2. Dr. Mazhar Akhtar Shakil S/O Late Md. Sakil resident of Vill. - Tatarpur, P.O. Tatarpur, P.S. Tatarpur, Distt. – Bhagalpur

(Owner of Jeep no. BR-10M-0786)

.....Opposite Party-1/Respondnt

3. Md. Nasim S/O Md.Dhargahi resident of Vill.. - English Chaurawan, P.O. & P.S. Sultanganj

(Driver of Jeep no. BR-10M-0786)

.....Opposite Party-2/Respondnt

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Appearance :

For the Appellant/s : Mr. Rajesh Ranjan, Advocate

For the respondent no. 1 : Mr. Abhay Kumar Sinha, Advocate

For the respondent no. 2 : Mr. Najim Hoda, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-09-2015

Heard learned counsel for the appellant and learned counsel for the respondents.

In this Miscellaneous Appeal, the appellant is challenging the judgment and award dated 19.05.2012 by which the court below has arrived at a conclusion that appellant is entitled to amount of Rs. 4,60,000/- along with the simple interest @ 8% per annum from the date of the order.

In the present case, the Insurance Company is

challenging the quantum of compensation on the ground that the court below without any substantive material accepted the earning of the victim of Rs. 4,000/- per month should have calculated the amount on the basis of notional income.

The Counsel for the appellant submits that there is no substantial basic material available before the tribunal to arrive at the conclusion that the victim was earning Rs. 4,000/- per month and as such, the amount computed would collapse under its own weight whereas the counsel for the respondents submits that even though there is no documentary evidence to show that the victim was earning the said amount but the Tribunal on examination of oral evidences from the side of applicant rightly recorded that the victim was earning Rs. 4,000/- from the Coaching and private tuition and as such, this Court should not interfere with the said finding in absence of perversity or against the weight of evidence.

The short facts of this case are that the victim namely, Gayatri Devi @ Malti Devi was going to Nawada on 12.05.2011 along with her son namely, Ramjanam Kumar by Hero Honda Splendor motorcycle bearing Registration No. JH 10D/7105. When they reached near the village Barki Madhal on Nawada Jamui Pakki road, one Tata Sumo Victa bearing registration no. BR 10M/0786, coming from the side of Nawada, dashed the motorcycle, which



caused accident to Gayatri Devi and her son Ramjanam Kumar had sustained injuries. With the help of villagers, both injured were brought to the Sadar Hospital, Nawada, Gayatri Devi had died in course of treatment whereas her son died in the way to the Sadar Hospital. The present case is related to the death of Ramjanam Kumar and not related to Gayatri Devi. The witnesses on behalf of the claimant were examined as A.Ws. They have claimed that Ramjanam Kumar was earning Rs. 6,000/- per month from the tuition and the coaching but the Court has arrived to a finding of earning of Rs. 4,000/-.

The counsel for the appellant submits that when the tribunal has disbelieved earning of Rs. 6,000/-, there is no material to show that the victim was earning Rs. 4,000/- and without any basis or material either placed by appellant or Respondent computed the compensation at monthly income of Rs. 4,000/-, the Tribunal either can accept or reject earning of Rs. 6,000/- monthly income, but should not have picked up the earning of Rs. 4,000/- per month to calculate the compensation is without any basis is wrong and not sustainable in law. The Tribunal took note of the deceased was bachelor and has deducted half amount towards his personal expenses, added Rs. 40,000/- for future prospect. He further submits that the tribunal have computed the compensation amount on the basis of notional income

as Rs. 100/- per day as has been decided by Supreme Court in ***Laxmi Devi and Others Vs. Mohammad. Tabbar and Another (2008) 12 SCC 165.***

The counsel for the respondents submits that the tribunal has not committed any error and after considering oral and other material evidence arrived at a finding of Rs. 4,000/- per month of earning which cannot be interfered with, even the notional income is taken on the basis of judgment reported in (2008) 12 SCC 165, whereby the Hon'ble Supreme Court has held, even an unskilled workers would earn of Rs. 3,000/- per month. If Rs. 3,000/- per month will be taken income of Rs. 36,000/- per annum the half of the amount will be Rs. 18,000/- for the purpose of computation of compensation amount so much so in terms of the judgment of Hon'ble Supreme Court in the case of ***Rajesh and others versus Rajbir Singh and Others reported in (2013) 9 Supreme Court Cases 54***, the age of the victim was 22 years, there will be additions of 50 per cent of computed amount under the future prospect where as granted Rs. 40,000/- is not the proper approach. The tribunal has taken the multiplier 17 whereas in terms of ***Sarla Verma (SMT) and Others versus Delhi Transport Corporation and Another reported in (2009) 6 Supreme Court Cases 121*** the tribunal should have taken multiplier 18. Even if the contentions of Appellant is accepted, the Court below

has wrongly taken Rs. 4,000, situation would remain static, there is hardly chance that the quantum of amount will vary in situation of addition of amount of future prospect when the multiplier will be changed from 17 to 18.

Having considered rival contentions of the parties, the appellant is right in one sense that the plea taken by the appellant that the victim was earning of Rs. 6,000/- from coaching and private tuition has not been accepted and the tribunal without discussing and without any material abruptly arrived at a finding that he was earning Rs. 4,000/- per month which cannot be upheld.

In such view of the matter, taking help of the judgment of Laxmi Devi (supra), the computation of compensation amount would be on the notional earning of Rs. 3,000/- and annual income would be Rs. 36,000/- per annum even if after taking away the half towards his personal income the amount for computation will come to Rs. 18,000/- the multiplier should have been taken 18 instead of 17 in terms of *Sarla Verma (SMT) and Others versus Delhi Transport Corporation and Another reported in (2009) 6 Supreme Court Cases 121* where the Court has fixed multiplier 18 for the person in between 21 to 25 and in terms of *Rajesh and others versus Rajbir Singh and Others reported in (2013) 9 Supreme Court Cases 54*, the person below the age of 40 years will be entitled to an additional amount of

50 per cent compensation under the heading of future prospect would not change the amount computed by Tribunal.

In such view of the matter, it will not meet the end of justice for this Court would to interfere with the award and accordingly, this appeal is dismissed. Statutory amount will be remitted back to the court below and the same would be released in favour of the claimant and that will be adjusted towards against award.

The office is directed to return the Lower Court Records forthwith.

This application is, accordingly, dismissed.

(Shivaji Pandey, J)

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