IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.571 of 2012

==

1. SMT. RAKHI DEVI KEDIA, W/O LATE SANJAY KUMAR KEDIA, RESIDENT OF CITY ROAD AT AND P.O- GULABBAGH, P.S- SADAR, DISTRICT- PURNIA
2. NAMAN KUMAR KEDIA, MINOR S/O LATE SANJAY KUMAR KEDIA, REPRESENTED BY HIS NATURAR GUARDIAN MOTHER SMT. RAKHI DEVI @ SMT. RAKHI DEVI KEDIA RESIDENT OF CITY ROAD AT AND P.O- GULABBAGH, P.S- SADAR, DISTRICT- PURNIA
3. SMT. NIRMALA DEVI KEDIA, W/O LATE SATYA NARAYAN KEDIA, RESIDENT OF CITY ROAD AT AND P.O- GULABBAGH, P.S- SADAR, DISTRICT- PURNIA

.... APPELLANT/S

VERSUS

1. KULDEEP SINGH, S/O SRI PAL SINGH, RESIDENT OF VILLAGE-BINDAR KALA, DISTRICT MOGA (PUNJAB) DRIVER OF TRUCK NO. PB. 29F/9639.
2. HARDEO SINGH, S/O CHAUHAN SINGH, RESIDENT OF VILLAGE AND P.O- DALA, DISTRICT- MOGA (PUNJAB).
3. M/S UNITED INDIA INSURANCE COMPANY LTD., DIVISIONAL OFFICE-II, LUDHIANA PUNJAB THROUGH ITS BRANCH OFFICE GIRLS HIGH SCHOOL ROAD, AT AND P.O AND DISTRICT- KATIHAR (INURER OF THE TRUCK NO. PB- 29E/9639

.... RESPONDENT/S

==

Appearance :
For the Appellant/s : Mr. Jagdish Prasad Bhagat, Advocate.
For the United India Insurance Company Ltd.: Mr. Ram Chandar Lal Das, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 01-04-2015

Heard, Mr. Jagdish Prasad Bhagat, learned counsel for the appellants and Mr. Ram Chandra Lal Das, leaned counsel for the respondent no. 3, United India Insurance Company Limited.

2. The claimants have filed this miscellaneous appeal, under Section 173 of the Motor Vehicle Act, 1988, against the judgment/award dated 30.04.2012/13.07.2012 passed in Claim Case

No. 57 of 2007/ Trial No. 30 of 2010 by the Additional District Judge (F.T.C.2)-cum-Motor Accident Claim Tribunal, Purnea (hereinafter referred to as "the Tribunal"), for enhancement of the compensation. Vide judgment/award dated 30.04.2012/13.07.2012, the learned Tribunal directed the opposite party no.3/ respondent no. 3, United India Insurance Company Limited, to pay compensation Rs.3,43,500/- within two months from the date of order through account payee cheque in the name of claimants in any National Bank, from which the amount shall be realized, failing which the claimants are entitled to get the amount through the process of law along with interest at the rate of 4% per annum from the date of order till the date of realization.

3. The sole grievance of the claimants/appellants is that in spite of the evidence available on record that the earning of deceased was Rs.95,000/- per annum by running shop of motor parts but the learned Tribunal illegally assessed the income of Rs.36000/- per annum on the basis of Rs.100/- per day earning of the deceased.

4. Learned counsel for the opposite party no.3/respondent no. 3, United India Insurance Company Limited, submits that except photo copy of the return, no other documentary evidence was filed on behalf of the claimants to show the income of the deceased to the motor parts shop of the deceased as claimed by the claimants. As such, the learned Tribunal has rightly disbelieved the

evidence of the appellants regarding earning of Rs.95,000/- per annum of the deceased to his motor parts shop and assessed the income of deceased Rs.36,000/- per annum on the basis of Rs.100/- per day.

5. On perusal of the impugned judgment, it appears that the learned Tribunal has considered the evidence available on record regarding earning of appellants in paragraphs 8 and 15 of the judgment and due to absence of reliable documents regarding running the shop of motor parts by the deceased disbelieved the earning of deceased Rs.95000/- per annum and assessed the income of deceased Rs.36,000/- per annum on the basis of Rs.100/- income per day. I find no illegality and infirmity in the impugned judgment and award in assessing the income Rs.36,000/- per annum of the deceased. As such, I find no merit in the miscellaneous appeal, accordingly, this miscellaneous appeal is dismissed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

U			