

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.827 of 2011

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1. Geeta Kuer, wife of Brij Kishore Singh alias Munna Singh
 2. Rajan Kumar Singh, minor son of late Brij Kishore Singh alias Munna Singh
 3. Bandana Kumari, Minor daughter of late Brij Kishore Singh alias Munna Singh
 4. Sapna Kumari, Minor Daughter of late Brij Kishore Singh alias Munna Singh
- Nos. 2 to 4 are under guardianship of their mother and natural guardian
appellant no.1, Geeta Kuer, all resident of Village Jigani, P.S. Bhabua, District-
Kaimur (Bhabua)

.... Appellant/s

Versus

1. Collector, Kaimur at Bhabhua, Bihar
2. New India Assurance Company, G.T. Road, Ganesh Market, Sasaram (Rohtas)
3. Abhimanyu Singh, son of late Awadesh Singh, Village Jigani, P.S. Bhabua,
District Kaimur (Bhabua)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhimanyu Sharma,
Mr. Prakrilita Sharma, Advocates.
For the State : Mr. Kundan Bahadur Singh, SC 22
Mr. Narendra Kumar, AC to SC-22.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-07-2015

Heard the parties.

2. This appeal is directed against the judgment and award dated 26.5.2011 and 14.7.2011 passed by the Additional District Judge (F.T.C. Vth)-cum- Motor Vehicle Claim Accident Tribunal, Bhabhua in Motor Vehicle Claim Case No. 37 of 2006 and 37 of 2004 by which he has wrongly fixed amount of compensation of Rs.2,63,5000 at reduced rate and applied wrong multiplier against the material on record.

3. The short facts of the present case, that the husband of



appellant no.1, namely, Brij Kishore Singh alias Munna Singh was a driver of Jeep bearing registration MH 03 B-2745. The police has taken the said jeep on hire for the purposes of operation of police against Naxalite under leadership of Deputy Superintendent of Police. When the said jeep arrived near the Village Saraiya and Gangudih then the jeep was blasted by dynamite mines which was planted by Naxalite, which caused severe injuries to the deceased and other police party. On account of that blast the driver Brij Kishor Singh along with six constables who were occupying the jeep died. A police case vide Chainpur P.S. Case No.108 of 2001 was registered for the offences under Sections 147, 148, 149, 353, 323, 326, 341, 307, 302, 427 and 379 of the Indian Penal. Section 27 of the Arms Act, Sections 3/4 of the Explosive Substance Act and 17 of the C.L.A. Act. An application was filed for compensation amount by Gita Kuer and other minor children through her.

4. The State has filed an affidavit where the State has admitted that the death has taken place on account of blast of dynamite planted by the Naxalite and that led to death of Brij Kishore Singh and others. At the time of death, Brij Kishore Singh, was holding a valid driving licence of the vehicle and

after thorough discussion the Tribunal arrived to a finding that the State is liable to pay lump sum compensation amount of Rs. 263,500/-.

5. The dependents are not satisfied with the compensation amount and submitted the compensation amount fixed by the Tribunal is in lower side suffers from various infirmities, as Tribunal has wrongly taken the age of deceased to 35 years but should have taken the age 22 years. Further submitted that compensation has not been given on other heading.

6. Today a supplementary affidavit has been filed before this Court annexing the matriculation certificate but this certificate was not filed during the trial nor any explanation has been offered as to why that matriculation certificate was not produced during trial by the appellants and as such, this Court has two options either to remand back the matter for proper consideration giving liberty to the appellants to bring on record the matriculation certificate through proper manner or this Court should decide the case on the basis of the material available on record leaving aside the matriculation certificate.

7. The appellants was required to produce the aforesaid certificate and Tribunal adjudicated this case without



matriculation certificate. The counsel for the appellants submitted that the trial court has committed wrong on three counts, as the Tribunal has wrongly taken Rs.2,000/- as salary of a driver whereas Hon'ble Supreme Court looking nature of skill has taken judicial notice that the driver would earn at least Rs.6,000/- per month in the case of Minu Rout and another V. Satya Pradyumna Mohapatra, reported in (2013) 10 SCC 695, Paragraph 20. Another point that has been submitted that the Tribunal has wrongly taken multiplier of 16 but it should be 18 on the basis of age of victim to be 22 years but this Court is not inclined to apply multiplier submitted by the counsel rather the multiplier has been taken by the Tribunal is correct. The counsel for the appellants drew the attention that no compensation has been given under the category for future prospect, consortium, loss of care and guidance for minor children.

8. Learned counsel for the State has submitted that the court has rightly taken the age of the deceased as 35 years but could not dispute the claim on the basis of enhanced salary of the driver as has wrongly been fixed as Rs.2,000/- as well as the Tribunal has not given the benefit of compensation under future

prospect, consortium and loss of care and guidance of minor children.

9. Having considered the rival contentions of the parties, this Court can not take into account the certificate of matriculation for the first time. The appellants should have brought on record properly before the Tribunal. In such view of the matter, the matriculation certificate which has been produced by the appellants at this stage is of no relevance. So this Court feels that the age assessed by the doctor cannot be said to be illegal. So far future prospect is concerned, the Court has not granted any benefit under that heading and admittedly age was 35 years. However, in view of judgment in the case of Rajesh Vs. Raghubir, reported in (2013)9 SCC 54 he is entitled compensation for 50% future prospect, consortium and loss of care and guidance for children under the both headings the appellants is entitled to Rs.50,000/-. The appellants will be entitled to interest from the date of filing of application till the date of actual payment.

10. Accordingly the award is modified to that extent. The court below is directed to re-calculate the amount as aforesaid direction and prepare the fresh revised award within a period of

two months from the date of receipt/production of this order.

The State is directed to pay the revised amount within three months from the date of preparation of fresh award.

11. With the aforesaid observation and direction this appeal is disposed of.

(Shivaji Pandey, J)

Vinay/-

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