

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.346 of 2012

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1. Surendra Singh 'Suman' Son Of Late Balbhadra Narayan Singh R/O Mohalla- Ward No. 17, Ganga Sadan, P.O.- Saharsa, Distt.- Saharsa
 2. Ganga W/O Late Balbhadra Narayan Singh R/O Mohalla- Ward No. 17, Ganga Sadan, P.O.- Saharsa, Distt.- Saharsa

.... Appellant/s

Versus

1. Sri Jitendra Narayan Singh Son Of Late Balbhadar Narayan Singh R/O Mohalla- Ward No. 15, Ganga Sadan, Ganj Tala, Distt. Saharsa (Owner Of The Vehicle)
2. The Divisional Manager, The New India Insurance Co. Ltd. Club Road, Muzaffarpur

.... Respondent/s

with

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Miscellaneous Appeal No. 327 of 2012

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1. Ganga W/O Late Balbhadra Narayan Singh R/O Ward No. 17, Ganga Sadan, P.O- Saharsa, District- Saharsa.

.... Appellant/s

Versus

1. Sri Jitendra Narayan Singh S/O Late Balbhadar Narayan Singh R/O Mohalla Ward No 13, Ganga Sadan Ganga Toli, Distt- Saharsa
2. The Divisional Manager, The New India Assurance Co Ltd., Club Road, Muzaffarpur.

.... Respondent/s

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Appearance :

(In MA No. 346 of 2012)

For the Appellant/s : Mr. Sunil Kumar Pandey

For the Respondent/s : Mr. SANJAY SINGH

(In MA No. 327 of 2012)

For the Appellant/s : Mr. SUNIL KUMAR PANDEY

For the Respondent/s : Mr. SANJAY SINGH

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-05-2015

Heard counsel for the appellants and the
respondents.

In both the appeals, identical points are involved and, as such, they have been heard together and are being disposed of by this common order.

In the present case Balbhadra Narayan Singh (father) and Dharmendra Kumar Singh (son) were going to Dehri-on-sone on 14th March 2007, on way they met with a motor accident on NH-31 at Ranipur in the district of Begusarai. They were traveling on a Scorpio bearing Regd. No BR/19A -8654. The accident took place as the said Scorpio dashed against a standing truck at the P.O. for which Balia P.S. Case No 49 of 2007 under Sections 279, 304A and 427 IPC was registered. Both, the father and the son died in the accident. Balbhadra Narayan Singh was assessed between 49-50 years of age and Dharmendra Kumar Singh was assessed between 25 – 30 years. As both could not produce any material to substantiate their earning, the Tribunal has taken the notional amount of Rs.15,000/- per annum and on that basis the amount of compensation was calculated.

Counsel for the appellants submitted that in view of judgment of the Hon'ble Supreme Court in

In (2009)6 SCC 121 (Sarla Verma v. DTC), (2009)10 SCC 648 (National Insurance Company Ltd. V. Khimlibai), (2012)6 SCC 421 (Santosh Devi v National Insurance Co. Ltd.) and (2013)9



SCC 54 (Rajesh v. Rajbir Singh) the compensation amount cannot stand. The Hon'ble Supreme Court has altogether taken a different policy in assessing the compensation amount as in Sarla Verma case (supra), the Hon'ble Supreme Court has prepared its own table for calculation of compensation amount apart from table provided in the Act, on the basis of which compensation amount has to be calculated, so much so Rs.15,000/- which has been taken by the Tribunal for the purpose of compensation is not correct as during 2007 a unskilled labour would earn at least Rs.100/- per day so much so deduction for personal expenses would be dependant on the principle of number of dependants.

In the case Santosh Devi (supra) the Hon'ble Supreme Court also granted compensation for future prospect even for self employed persons and the persons below 50 years have been allowed 50 per cent of the amount and also granted fair compensation for consortium as well as funeral expenses.

Counsel for the appellants submitted that the amount calculated is not fair and proper and it requires revision in the higher side.

Counsel for the Insurance Corporation submitted that the driver who was driving the Scorpio was not holding valid licence and sought permission to place reliable photo copy of

licence.

Counsel for the Insurance Company has fairly submitted that his plea was not taken before the Tribunal. If it was not taken earlier, this Court cannot allow to raise such plea at this stage. In such view of the matter, the plea of having no valid licence cannot be allowed to be raised by the Insurance Company.

Having considered the rival contention of the parties, even if the appellants could not show before the Tribunal the earning of the deceased at least the accident had taken place on 15th March 2007 and unskilled worker will at least earn Rs.100/- per day. In view of Sarla Verma case (supra) calculation has to be made as per table provided therein and deduction of 1/3rd has to be made under persona expenses. So far Balbhadra Narayan Singh, deduction will be 1/3rd as he was aged between 40-50, for future prospect, there will be enhancement of 30 per cent, so far funeral expenses, this Court is enhancing the amount from 2000/-, to Rs.5,000/- and consortium of Rs.5,000/- is enhanced to Rs.20,000/-. This Court is not interfering with the interest.

With respect to Dharmendra Kumar Singh, the calculation has to be made as like Balbhadra Narayan Singh except view variations so far deduction for personal expenses, this

Court does not find any error. As age of Dharmendra Kumar Singh was between 25-30, the compensation for future prospect is enhanced to 50 per cent, so far funeral expenses is concerned, Rs.2000/- is revised to Rs.5,000/-. Accordingly, the award and judgment passed by the Tribunal stand modified to the aforesaid extent.

The Tribunal is directed to recalculate the amount as per the direction given above. The Insurance Company is directed to pay the revised award amount in terms of recalculation within two months from the date of revision of the award.

Office is directed to return the LCR, if received by this Court, at the earliest.

Accordingly, these two appeals are allowed to the extent indicated above.

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(Shivaji Pandey, J)