IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.294 of 2013

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Reliance General Insurance Co. Ltd. through its Manager, Himalaya House, 8th Floor, 38 B, J.L. Nehru Road, Kolkatta, West Bengal

.... Appellant/s

Versus

1. Pinki Kumari @ Pinki Devi, W/O Late Ashwanil Kumar Alias Sunil Kumar
2. Khusbu Kumari (Minor) D/O Late Ashwanil Kumar Alias Sunil Kumar, Under The Guardianship Of Mother, Respondent No.- 1
3. Suhani Kumari (Minor) D/O Late Ashwanil Kumar Alias Sunil Kumar, Under The Guardianship Of Mother, Respondent No.- 1
4. Kundani Kumari (Minor) D/O Late Ashwanil Kumar Alias Sunil Kumar, Under The Guardianship Of Mother, Respondent No.- 1
5. Amrita Kumari (Minor) D/O Late Ashwanil Kumar Alias Sunil Kumar, Under The Guardianship Of Mother, Respondent No.- 1
6. Shakuntala Devi W/O Tansen Pd. Singh
7. Tansen Prasad Singh S/O Late Shivdani Pd. Singh

Resident Of Village- Hasanpur, P.S.- Lakhisarai, Po- Mahshona, District- Lakhisarai

… respondent/claimants- 1 to 7

8. Shyam Nandan Prasad Singh Son Of Ram Chandra Singh Resident of 122, Mokama Municipality, Bari Bazar, Mokama Khas, Po + P.S.- Mokama, District- Patna

…………..respondent /opposite party no.1 (owner)

9. Yogendra Singh S/O Sri Ram Singh Resident Of Village- Jalalpur, P.S.- Hathidah, District- Patna, Bihar

…………..respondent /opposite party no.2 (driver)

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Appearance :
For the Appellant/s : Mr. A. K. Shahi, Advocate
Ms. Archana Sinha, Advocate

For the Respondent/s : Mr. Ashok Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 09-03-2015

Re. Interlocutory Application No. 3277 of 2013.

In view of the assertions made in the interlocutory application the delay in filing of this appeal is condoned.

Accordingly, interlocutory application stands disposed of.

Re. Miscellaneous Appeal No.294 of 2013.

Heard.

2. This is an Appeal preferred against judgment dated 5th November 2012 in Claim Case No. 28 of 2010 by the 2nd Ad-hoc Additional District Judge-cum-M.A.C.T., Lakhisarai.

3. Since the Appeal is on very limited issue, simply about quantum of Award, there appears no need to go in other details except the relevant one's for the purpose.

4. Deceased Ashwanil Kumar @ Sunil Kumar died on 30th January 2010 at the age of 32 years in an accident involving truck under valid insurance of the appellant leaving behind his widow, four minor daughters and parents.

5. As per claimant respondent deceased had hotel business beside agriculture and had been earning of Rs.8,000/- per month.

6. The claim Tribunal below on the basis of Exhibit 1, the certificate issued by Circle Officer, certifying the income Rs.8,000/- per month awarded a sum of Rs.4,13,000/- with interest @ 9% per annum. The aforesaid amount includes not

only the income based on Exhibit -1 but also other expenses.

7. Submission is that Exhibit-1 is issued 2 years after death of the deceased is indicative of income of claimant no.1 i.e. widow of the deceased there is no document in the name of the deceased either showing his income or any land or details of agricultural income etc. but the claim Tribunal below assuming the income of claimant no.1 as to the deceased awarded exaggerated amount.

8. After some arguments, learned counsel representing the claimant respondent had left with no option but to agree that in view of the decision of the Apex Court rendered in the case of ***"Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another"*** reported in ***"(2009) 6 SCC 121"***, amount of Award may calculated be only on basis of a notional income of the deceased including future prospect and other expenses.

9. The law is very much clear on the point that in such a case notional income cannot be less than Rs.3,000/- per month and that comes to Rs.36,000/- per annum and since the deceased was aged about 32 years due multiplier 16 is applicable.

10. Taking into consideration number of dependency only 1/5th of the annual income can be deducted as

personal expenditure of the deceased, this brings the amount to Rs.28,800/- which on being multiplied with 16 comes to Rs.4,60,800/- wherein 50% of future prospect is required to be added making the same Rs.6,91,200/- wherein Rs.25,000/- may also be added as additional expenses bring the amount to Rs.7,16,200/- on being rounded up to Rs.7,20,000/-. The said amount shall also carry interest @ 6 % per annum from the date of filing of the application till actual payment is made.

11. With the above modification in the Award of the claim Tribunal below, the Appeal stands disposed of. Simultaneously, the appellant is directed to satisfy the Award within a month from today, failing which the interest shall go up to @ 9 % per annum as awarded by the Tribunal.

12. Let statutory amount be remitted back to the claim Tribunal below for further needful

(Akhilesh Chandra, J)

Ashwini/-

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