

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.561 of 2012

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1. Sri Shyam Sundar Prasad, son of Late Raghunath Prasad.

2(1). Rajendra Prasad alias Raju.

2(2). Chanchal Kumar.

2(3). Indal Prasad.

2(4). Vicky Kumar.

Sons of Sri Shyam Sundar Prasad.

All Resident of Mohalla Tekari Road, Kotwali, P.S. Kotwali, District Gaya.

.... Applicants/Appellants.

Versus

1. United India Insurance Company Ltd. through its Branch Manager, A.N. Road, Kotwali, Gaya.

2. The Oriental Insurance Company Ltd. through its Divisional Manager, Chauk Bazar Near Kiran Picture Kotwali, Gaya.

3. Sri Ram Nirakhan Roy, 36, Vivekanand Road, Calcutta-700007,

4. Harish Chandra Verma, son of B.N. Verma, C/O Sri Nitya Nand Diary, Opp. Laxmi Takies M.C. Road, B. 52 E, W.B.

.... Opposite Parties/Respondents.

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Appearance :

For the Appellant : Mr. Birendra Kumar, Advocate.

For the United India Insurance Company Ltd. : Mr. Ashok Priyadarshi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 01-04-2015

I.A. No.7552 of 2014.

Heard learned counsel for the appellants and the United India Insurance Company Limited.

This Interlocutory Application has been filed on behalf of the appellants for condoning the delay of about 2 months and four days in filing this Misc. Appeal.

For the reasons mentioned in this Interlocutory Application, the delay of about 2 months and four days in filing this Misc. Appeal is

condoned and this Interlocutory Application No.7552 of 2014 is, accordingly, disposed of.

Now I proceed to consider this Misc. Appeal on its own merit.

Heard learned counsel for the appellants and the United India Insurance Company Limited.

2. The claimants-appellants have filed this appeal under Section 173 of the Motor Vehicles Act against the Judgment dated 04.08.2011 and award dated 21.02.2012 passed by the Additional District Judge-III-cum- Motor Accident Claim Tribunal, Gaya (hereinafter referred to as “the Tribunal”) in M.A.C. Case No.44 of 1996/91 of 2009 questioning the quantum of compensation.

By the said Judgment and Award, the learned Tribunal directed the Opposite Party No.1/Respondent No.1, United India Insurance Company Limited, the insurer of the truck in question, to pay compensation of Rs.94,830/- with interest at the rate of 6% per annum from 08.02.1999 to the claimants-appellants within sixty days from the receipt of the award.

3. The brief facts leading to this Misc. Appeal is that on 03.06.1999, the deceased, Surendra Kumar alias Chamru Prasad and others were returning after marriage function boarding at a Maruti Van bearing Registration No.BR-2/8790. When the Maruti Van at about 02.00 P.M. reached 3 kilometers west from Bhalua near Chenari

Bridge, a truck bearing Registration No. WB-03A/1747 suddenly dashed the Maruti Van which resulted into the death of two persons including the deceased, Surendra Kumar alias Chamru Prasad at the spot and one injured also died later on.

4. The sole grievance of the appellants is that while there is oral evidence of AW-1 and AW-2, respectively Ritesh Kumar and Shyam Sundar alias Shyam Sundar Prasad, the father of the deceased, Surendra Kumar alias Chamru Prasad, that the deceased, Surendra Kumar alias Chamru Prasad, used to earn Rs.3000/- per month by running the medical shop but the learned Tribunal illegally assessed his monthly income as Rs.1032.20/- per month by multiplying 26 days of month with per day wages of Rs.39.70/- and, accordingly, assessed the annual income of the deceased, Surendra Kumar alias Chamru Prasad, as Rs.12,386.40/-. He further submits that the learned Tribunal has directed to pay compensation amount Rs.1,44,880/- after deducting Rs.50,000/- as paid by way of interim compensation with interest at the rate of 6% per annum from the date of filing the claim petition while the interest ought to have been awarded at the rate of 12% per annum.

5. From perusal of the impugned Judgment, it appears that AW-1, Ritesh Kumar, has stated in his evidence that the deceased, Surendra Kumar alias Chamru Prasad, used to earn Rs.7000/- to 8000/-

per month by doing the business with his father, Shyam Sundar alias Shyam Sundar Prasad. AW-2, Shyam Sundar alias Shyam Sundar Prasad, the father of the deceased, has stated in his evidence that the deceased, Surendra Kumar alias Chamru Prasad, used to earn Rs.3000/- per month by running the medical shop. In absence of any documentary evidence regarding the earning of the deceased, Surendra Kumar alias Chamru Prasad, the learned Tribunal has assessed the earning of the deceased, Surendra Kumar alias Chamru Prasad, Rs.1032.20/- per month by multiplying 26 working days of the month with Rs.39.70/- per day wages in view of the Notification No.849 dated 21.12.1995 of Labour Resources Department, Government of Bihar, Patna. So far as the submission with regard to the of the payment of 12% per annum interest on the payable amount by the Opposite Party No.1/Respondent No.1, United India Insurance Company is concerned, I find no infirmity in the same in view of the decision in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another {(2009) 6 SCC 121}**. As such, I find no illegality in the impugned Judgment in respect of assessment of income of the deceased as Rs.1032.20/- per month under the Minimum Wages Act in absence of any documentary evidence by the learned Tribunal and awarding 6% interest on the payable amount by the United India Insurance Company Limited to the claimants-

appellants.

6. Having regard to the facts and circumstances of the case, I find no merit in this Misc. Appeal, which is, accordingly, dismissed.

(Rajendra Kumar Mishra, J)

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