

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.585 of 2013

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1. Bandana Devi wife of Late Manoj Kumar Gupta.
 2. Rahul Kumar (Minor) son of Late Manoj Kumar Gupta.
 3. Akash Kumar (Minor) son of Late Manoj Kumar Gupta.
- Petitioner Nos. 2 and 3 represented through petitioner no. 1, Bandana Devi mother and natural guardian.
4. Radhika Devi, wife of Mohan Lal Gupta,
- All are residents of Mirganj, P.O. and P.S.- Mirganj, District.-Gopalganj.

.... Appellant/s

Versus

1. Shailendra Kumar Singh son of Late Kapildeo Singh L 4/10, Adityarpur - 2, Jamshedpur (Jharkhand) present address at village Purania, P.O. Sharsar, District-Siwan, owner of (Taxi Mahindra Savari bearing Registration No. JH 05 B-7613).
2. Upendra Kumar Prasad son of Ramdeyal Prasad, Temporary Address Thawe Gopalganj, present address at village Puraina, P.O. Sharsar, District Siwan (Driver of Taxi Mahindra Savari bearing Registration No. JH 05B 7628).
3. The New India Assurance Company Limited Branch Jamshedpur, at P.O. Jamshedpur, District Jamshedpur (Notice to be served through the Branch Manager).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shanti Kumar, Binod Kr. Singh and
Dhananjay Kr. Tiwary, Advs.
For the Respondent/s : Mr. Raj Kr. Singh Vikram, Sanjay Singh and
Bimlesh Kr. Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 06-08-2015

Heard learned counsel for the appellants and learned
counsel for the respondents.

In this case, appellants are challenging the judgment and
award dated 5th July 2013 passed by 2nd Additional District Judge-
cum-Motor Accident Claim Tribunal, Gopalganj in M.A.C.T. Case
No. 29 of 2002 whereby and whereunder he has fixed the amount of

compensation of Rs. 2,00,000/-.

Claim has been made by the appellants that the amount of compensation is a lower side so it should be in a higher side, as the court below has not taken into consideration the proper incidence and also different heads while making fixation of the compensation amount.

It appears from the record that the accident took place on 25th October 2002 at about 1.30 P.M. at Mirganj-Siwan road near East of Chhap Chauk P.S.- Mirganj, District-Gopalganj. At that time, the deceased was going to attend the shop situated near Siwan but in mid way due to rash and negligent driving, the vehicle jumped to the ditch resulting injuries to the occupant, ultimately the victim died during the treatment on 26th October 2012 at Nursing Home Saidpur, Patna. The case was instituted as Mirganj P.S. Case No. 210 of 2002 under Sections 279, 337, 338 and 304(A) of the Indian Penal Code. At the time of accident, the victim was aged 27 years old, doing the business having dealership of “Nirma” detergent, running a Firm in the name and style of Deoria Enterprises, Rampur Bujurag, Deoria (UP).

An application was filed where the plea was taken, the victim was a businessman, earning substantial amount but on account of the vehicular accident, he lost his life, entitled to the compensation amount.

It is not in dispute that demised vehicle was insured by the New India Assurance Company Ltd.

The Court, after discussing the evidence, has found the victim met with accident in which he received injuries and ultimately died. While discussing the issue of the income of the deceased, appellant no. 1 has produced the oral and documentary evidences to show that her husband was a businessman, running a business of dealership of *Nirma Detergent Powder* through the firm in the name and style of Deoria Enterprises, Rampur Bujurag, Deoria (UP). The Court, while discussing the claim of the applicant, has discussed the evidence on record for arriving to the income of the deceased. The Exhibit-8 was filed to show that the deceased was Proprietor of the Firm of Deoria Enterprises, Rampur Bujurag, Deoria (UP) but the Court has ignored it, giving a plea that there is no material to show that the deceased was running a business separately and individually and so much so, the said document shows the registration form No. 5 under the Sales Tax Department, Deoria but no chit of paper was filed to show the income of the victim and has taken the notional amount of income of Rs. 15,000/-.

Counsel for the appellants submits that the material shows that the victim was a businessman, running a business as wholesaler/dealership of *Nirma Detergent Powder* at Deoria (UP).



The court below should not have taken notional income of Rs. 15,000/- but he should have assessed the amount in a higher side, even if a person was a daily wager, at least, his income will be Rs. 100/- per day, that view has been taken in **Sarla Verma vs. DTC**, reported in **(2009) 6 SCC 121**, in a case, there is no material for arriving to the income of victim, the Court was of the view that at least, a person to be treated to have been earning Rs. 100/- per day, if it will be taken into consideration then the notional income will be Rs. 3,000/- per month, annul income will be Rs. 36,000/-, 1/3rd will be deducted for his personal expenses, the Tribunal was to compute the amount at Rs. 24,000/- per annum whereas the court below has calculated the compensation at Rs. 10,000/- though the victim was a businessman from the material on record. In this view of the matter, Tribunal will compute compensation amount at Rs. 24,000/-. In **Rajesh Vs. Rajbir Singh (2013) 9 SCC 54** and **Santosh Devi vs. National Insurance Company Ltd. (2012) 6 SCC 421**, have held that, even person is businessman will be entitled to compensation under the heading for future prospect and the person in the age group below 40 years, 50% additional amount to be added.

In such view of the matter, the court below will add 50% of the compensation amount under the heading for future prospects. The appellants are also entitled to the compensation under the heading

for consortium and funeral amount of Rs. 20,000/- and interest will be counted from the date of award.

This Court, accordingly, directs the Tribunal to recalculate and revise the compensation amount as per direction aforesaid.

The Insurance Company submits that the owner was running the vehicle without proper permission.

This Court is not giving any view, if still, the Insurance Company is of the view that amount should be recovered from the owner. They are at liberty to take steps for the realisation of compensation.

Accordingly, the Award is modified and the appeal is allowed to the aforesaid extent.

Lower Court Records of the court below be returned to the court concerned.

The counsel for the Insurance Company submits that entire compensation amount has been paid.

If paid, the Insurance Company will pay the difference amount arising from revised amount of compensation.

(Shivaji Pandey, J)

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