

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.479 of 2010

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Rekha Dutta w/o Late Sunil Chandra Dutta, Mother of deceased Jhantu
Dutta, resident of village Shanti Nagar, Baghmara P.S. K.Nagar, Purnea.

.... Appellant/s

Versus

Chamkaur Singh & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : M/s. Pramod Kumar Sinha, Arvind Kumar
Sharma, Chetan Kumar and Bijay Kumar Sinha, Adv.

For the Respondent/s : Mr. Shailendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 06-10-2015

Heard counsel for the appellant and the respondents.

In the present case, appellant is challenging the judgment and award dated 19th January 2010 and 18th March 2010 respectively by which the lower court has assessed and calculated the amount of compensation to the tune of Rs.84,000/- and paid Rs.50,000/- and the counsel for the respondents submits that rest amount of Rs.34,000/- has also been given.

In the present case the victim was killed by a Tanker bearing Regd.No. WBQ 9900 on account of negligent and rash driving. A criminal case as well as present complaint case was filed. Appellant has claimed that the deceased was running a grocery cum-vegetable shop and was earning Rs.5,000/- per month. The court below has disbelieved the claim of the appellant and computed the compensation on the basis of notional income of

Rs.15,000/- per annum.

In the judgment in the case of Laxmi Devi v. Mohd. Tabbar (2008)12 SCC 165 Hon'ble Supreme Court has taken a judicial notice of the prevailing market rate of wage of unskilled labour and arrived to a conclusion even unskilled labour will earn at least Rs.100/- per day and that has been taken as the notional income for computation of compensation amount. So the income of the deceased will be Rs.3,000/- per month and Rs.36,000/- per annum for computation of compensation amount . In the present case, as the deceased was unmarried, 50 per cent will be excluded from the said amount.

In view of the judgment of the Hon'ble Supreme Court in the case of Munnalal Jain v. Vipin Kumar Sharma 2015)6 SCC 347 the age of the victim will be taken into consideration and not the age of the dependants. So the Tribunal has wrongly taken into consideration the age of the dependants so much so it has not taken into consideration the incidence of future prospect. At the relevant time, the age of the victim was 22 years and in terms of judgment of the Hon'ble Supreme Court in the case of Rajesh v. Rajbir Singh (2013)9 SCC 54 claimant will be entitled to 50 per cent of the total amount of compensation as well as the Rs.25,000/- as lump sum for funeral and loss of love of parents.

The court below is directed to make revision in the award in terms of the directions given hereinabove, in turn, the Insurance Company is directed to pay the revised amount of compensation after adjusting the amount already paid with 6 per cent interest from the date of filing the claim case within a period of three months from the date of award.

Accordingly, this appeal is allowed.

Office is directed to return the lower court records forthwith.

(Shivaji Pandey, J)

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