IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.829 of 2012

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1. Parwati Devi, wife of Manmohan Singh.
2. Manmohan Singh, son of Late Rajdeo Singh.
   Both are permanent resident of village-Surgahia, P.S. Parihar, District-Sitamarhi. (Claimants No.1 and 2).

.... Appellants.

Versus

1. Sri Nitesh Kumar Singh, son of Late Govind Prasad Singh, resident of Naya Tola Mehsaul, P.S. and District-Sitamarhi (Owner of Bus No.BR-06P/1189).
   (Opposite Party No.1).......Respondents.
2. Branch Manager, National Insurance Company Limited, Rajopatti, Dumra Road, Sitamarhi (Insurer of Bus No.BR-31AP/6363P).
3. Divisional Manager, National Insurance Company Limited, Gosala Road, P.S. Mithanpura, Muzaffarpur (Inusrer of Bus No.BR-31A/6363P)

....(Opposite Party No.2 and 3 respectively).... .... Respondents.

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Appearance :
For the Appellants : Mr. Mukesh Prasad Singh, Advocate.
For the Respondent Nos.2 and 3 : Mr. Sanjay Kumar Sharan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 13-04-2015

<u>I.A. No.2002 of 2014:</u>

Heard learned counsel for the claimants-appellants and Respondent Nos.2 and 3.

This Interlocutory Application has been filed on behalf of the appellants to condone the delay of about 24 days in filing the instant Misc. Appeal.

For the reasons mentioned in this Interlocutory Application, the delay of about 24 days in filing the instant Misc. Appeal is condoned and this Interlocutory Application bearing I.A.

No.2002 of 2014 is, accordingly, disposed of.

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

Heard learned counsel for the claimants-appellants and Respondent Nos.2 and 3.

2. This is the claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, for enhancement of the compensation against the Judgment/Award dated 28.05.2012/02.08.2012 passed by the District Judge-cum-Motor Accident Claims Tribunal, Sitamarhi (hereinafter referred to as "the Tribunal") in Claim Case No.33 of 2009, whereunder the learned Tribunal allowed the aforesaid Claim Case of the claimants-appellants and directed the National Insurance Company to pay compensation to the tune of Rs.3,04,500/- including ad-interim compensation to the claimants with interest at the rate of 6% per annum from the date of filing of the claim petition within one month.

3. Learned counsel appearing on behalf of the claimants-appellants submits that the claimants-appellants, who are the parents of the deceased, Gunjan Kumar, were examined as AW-2 and AW-1 respectively before the learned Tribunal and they have stated that the age of the deceased was 21 years at the time of accident and his earning was Rs.3500/- per month (Rs.42000/- per annum) and on that point the said witnesses are not cross examined by the respondents but the learned Tribunal has illegally assessed the earning of the deceased as Rs.3000/- per month (Rs.36000/- per annum). It is further submitted that the age of the deceased is assessed by the learned Tribunal 21 years at the time of accident but the learned Tribunal has applied the multiplier 15 to the dependency amount to assess the amount of compensation while the multiplier should be 18. Further submission is that since the deceased was unmarried, therefore, 1/2 should be deducted as personal expenses of the deceased to the income of the deceased but the learned Tribunal deducted 1/3 as personal expenses of the deceased to the income of the deceased.

4. From perusal of the claim petition, it appears that the earning of the deceased has been detailed as Rs.3500/- per month (Rs.42,000/- per annum). The claimants, Parwati Devi and Manmohan Singh, who are mother and father of the deceased, have been examined as AW-2 and AW-1, and deposed in their evidence that the monthly income of the deceased was Rs.3500/-. The earning of the deceased as deposed by the said witnesses has not been disputed in any manner in cross examination by the opposite parties-Respondents. As such, the earning of the deceased should be assessed as Rs.3500/- per month, which would come to Rs.42000/- per annum. Since the deceased was unmarried at the time of accident, therefore, 1/2 should be deducted as personal expenses from his monthly income and not 1/3 and the multiplier with the dependency amount, i.e., Rs.21000/- should be 18 in view of the decision of the Hon'ble Apex Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another {(2009) 6 Supreme Court Cases 121}.** Accordingly, the compensation amount would come to Rs.3,78,000/-. To this amount, by adding Rs.2000/- and Rs.2500/- respectively as funeral expenses and loss of estate, as added by the Tribunal, the total amount of compensation would come to Rs.3,82,500/-, which would be paid by the National Insurance Company Limited to the claimants-appellants with interest @ 6% per annum from the date of filing of the claim case.

5. Accordingly, the impugned Judgment and Award is modified to the extent, as indicated above, in respect of the amount of compensation and this Misc. Appeal stands disposed of.

(Rajendra Kumar Mishra, J)

P.S./-

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