

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.510 of 2012

=====

Babita Kuer @ Babita Devi & ors

.... Appellant/s

Versus

The National Insurance Co. Ltd. and others.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Rajesh Kumar Singh, Adv.

For the Respondent/s : Mr. Alok Priyadarshi, Adv

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL ORDER

7 08-09-2015

Heard learned counsel for the appellants and the respondents.

In this case, appellants are challenging the judgment and award dated 19th May 2012 and 12th June 2012 respectively to the extent of amount compute d.

Short fact s of the case is that deceased Chandan Sah @ Chandan Saw was going to Dehri-on-sone from his village Kanchanpur along with other villagers by tractor and when the tractor reached on G.T.Road near Mohan Bigha, a truck bearing Regd. No. HR 385/2092 came very rashly and negligently without blowing horn, dashed the tractor as a result of which the deceased died on the spot which led to institution of Dehri P.S.Case No. 25 of 2009 under Sections 279, 337, 338, 304A, 427 IPC.

The claim case was filed making out a claim that the deceased was a whole sale dealer of vegetable, was earning Rs.5,000/- per month but the court below in absence of

documentary evidence showing his monthly income in absence of the same, has taken notional income of Rs.15,000/- per annum for calculation of compensation amount.

Counsel for the appellants submitted that the court below has committed an error in not taking monthly income which has been supported by number of witnesses in their deposition.

The notional income of Rs.15,000/- per annum is to be substituted by Rs.3,000/- per month as per number of judgments including *Laxmi Devi v Mohd. Tabbar*: (2008)12 SCC 165. He further submitted that as the number of persons dependent on the victim was six, as such, deduction towards personal expenses cannot be more than $\frac{1}{4}^{\text{th}}$. The court below has not granted the relief under the heading future prospect. The amount of consortium including expenses for funeral and other expenses have not been properly calculated.

Counsel for the Company resisted the argument of the appellant and submitted that the court below did not commit any error in calculating the amount of compensation as there was no positive material to show the earning of victim.

Having considered the rival contention of the parties, first this Court will consider whether the court below has committed any error in refusing to accept the amount of earning of the deceased, which has been claimed. For that it has to be

seen what material were available before the court below for arriving to finding the reference of earning Rs.5,000/- as it has been claimed that the victim was engaged in whole sale business of vegetable and from that business he was earning Rs.5,000/- per month. If that be so, he must have been maintaining some book of account showing entries maintained. In case of bulk purchase and sale, business man maintains book of account In absence of such material, earning of victim, cannot be said Rs.5,000/- per month.

The judgment that has been cited by the appellant on that basis victim should be treated was earning of Rs.5,000/- is not applicable. As in the case of Syed Sadiqu Etc. vs. United India Insurance Co. 2014 Accident CR 424) the Court has taken income of Rs.6,500/- as earning of a vegetable vendor took basis for calculation of compensation amount. In that case, victim was retail seller of vegetable, was procuring vegetable from the market and was selling in the retail market.

In the present case, it is categorical case of appellant that the deceased was whole sale dealer of vegetable as such, he must have been maintaining account showing profit and loss but as there is no material, save and except oral evidence, as such, this Court finds that the court below has not committed any error in taking notional income the basis of calculation but Rs.15,000/- per annum has to be substituted by notional income of Rs.3000/- per month taking person would earn minimum of Rs.100/- per day

and in such view of the matter, notional income of Rs. 15,000/- per annum is substituted by Rs.3,000/- per month which comes to Rs.36,000/- per annum income and after deducting 1/4th towards personal expenses, it will come to Rs.27,000/- which will be basis for computing the compensation amount.

In the present case, the court below has taken multiplier of 18 but according to Sarla Verma case,(2009)6 SCC 121, multiplier will be '17', as the age of the victim is 30 years he will get additional amount of 50 per cent under the heading future prospect as well as for consortium and funeral expenses, is assessed to be Rs.20,000/- will be appropriate amount to be added to the compensation amount.

In such view of the matter, the award is modified to the aforesaid extent and the court below is directed to revise and recalculate the amount of compensation and the Insurance Company would pay the revised amount of compensation within three months from the date of passing of the revised award.

With this observation and direction, this petition is allowed.

Jay/-

U			
---	--	--	--

(Shivaji Pandey, J)