

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.461 of 2011

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Gyani Lata & Ors

.... Appellant/s

Versus

Sri Surinder Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Sinha, Advocate.

Mr. Binod Kumar Jha, Advocate.

For the Respondent No.2 : Mr. Durgesh Kumar Singh, Advocate.

Mr. Rajesh Chandra Narayan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 29-01-2016 Heard learned counsel for the appellants as well as learned counsel for the respondent no.2. In spite of Vakalatnama, having executed by respondent no.1, none appears on his behalf.

The instant appeal has been filed by the claimants. The appellants are aggrieved by the quantum of compensation, having been granted by the learned lower Court to a tune of Rs. 3,69,500/- and the basis thereof, has been discussed under para-11 of the Judgment, under Issue No.5 which, as per submission, happens to be wrong. Therefore, it has been submitted on behalf of the appellants that calculation in its right perspective should be directed to be done whereupon claimants would be entitled to receive the appropriate as well as legal entitlement as has been discussed and held by different judicial pronouncements by the Hon'ble Apex Court in the light of Savita Vs Bindar Singh &

Others, **reported in (2014) 4 SCC Page 505.**



Learned counsel for the respondent no.2 has vehemently challenged the submission made on behalf of the appellants and contended that whatever being decided in the above referred case, cannot be held applicable in the present facts and circumstances of the case, because of the fact that the Hon'ble Apex Court has not decided the issue rather in particular case, the aforesaid view has been taken. It has also been submitted that there happens to be some sort of disagreement, on the score of mode of calculation of the compensation under different heads and on account thereof, Santosh Devi case, which has been relied upon in the aforesaid case along with others, have already been referred to the larger Bench. That being so, till the finding is finally adjudicated upon and a principle is decided, the claimants are not at all entitled to the amount more than whatever being granted by the learned Tribunal. So submitted that, contention of the appellants has got no leg to stand by.

It has further been submitted that although, there happens to be disclosure in the petition that deceased Birendra Kumar was a Home Guard Constable but, on that very score, his permanent employment cannot be accepted rather his employment is always based upon requisition and, in the aforesaid background, the



learned Tribunal had rightly considered and accepted the monthly income of the deceased treating notional income of Rs.100/- per day which calculating for a month comes to Rs.3,000/-, annually goes to Rs.36,000/-. That calculation is also wrong in the background of own submission made on behalf of the appellants that he is employed only for 26 days and being so, the monthly income comes to Rs.2,600/- and the annually comes to Rs.31,200/- deducting 1/3rd therefrom, it comes to Rs.20,800. It has also been submitted that as per celebrated judgment of Sarla Verma case, a lamp post on this issue, permits multiplier of 14 instead of 15 granted by the learned Tribunal and it goes to Rs.2,91,200/-. Further more, as per chart, in terms of section 163(A), the amount admissible against funeral expenses, loss of consortium, loss of Estate comes to Rs.9,500/- which, the Tribunal had already given, calculating the same comes to Rs.3,00,700/- against which, the insurance had paid Rs.3,69,500/-. So submitted that, the judgment impugned, needs no interference.

It has also been submitted on behalf of learned counsel for the insurance company that with regard to future prospects, neither there happens to be pleading nor evidences have been laid at least speaking about any sort of blooming future at the end of deceased Birendra Kumar, therefore, the plea of the appellants that

there should be reason for future prospect is non-permissible. In likewise manner, it has been submitted that judgment of consortium in light of Savita case (Supra) as well as funeral expenses cannot be granted at the present moment in the background of the fact that whenever the Hon'ble Apex Court considered that was under its extraordinary power in terms of Article-142 of the Constitution.

Gone through the Lower Court Records in consonance with the judgment impugned. Although, the learned lower Court has framed Issue No.5 as "*whether the claimants are entitled to have the compensation, if so to what amount and from whom*" but in casual manner, had decided the issue under para-11 of the Judgment. What was the basis for appreciating, Rs.100/- per day against notional income should have been explained. It happens to be distinguished in two ways either for unskilled labour or skilled labour with a further bifurcation whether the notional income of per day has been identified on the basis of disclosure having made in the petition regarding his (deceased) status as Home Guard Constable or in terms of Minimum Wages Act or the wages so fixed, under Manrega Scheme by the Central Government, on the alleged date of incidence. Apart from this, the learned lower Court also failed to acknowledge whether there was any scope available

with regard to grant of compensation under different heads away from the chart as disclosed under section 163(A) of the Motor Vehicle Act. Further more, the income so calculated, is also not found, in accordance with Sarla Verma and Others Vs Delhi Transport Corporation and Another, **reported in (2009) 6 SCC 121.**

Accordingly, the judgment and award impugned, is set aside. The appeal is allowed.

The matter is remitted back to the learned lower Court on limited score to identify properly the quantum of compensation. The amount already so paid, on behalf of insurance company will be deducted therefrom.

(Aditya Kumar Trivedi, J.)

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