IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.313 of 2011

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1. Anita Devi wife of late Amod Kumar Tiwary
2. Mikki @ Sapna Kumari
3. Sadhana Kumari
4. RakeshKumar @ Rakesh Kumar Tiwary

All Daughters of and son of Late Amod Kumar Tiwary

5. Sarika Kumari
6. Bikash Kumar

Both minor daughter and son of Late Amod Kumar Tiwary through their mother guardian Anita Devi

7. Deogyani Devi wife of Late Jyotindra Prasad Tiwary

All R/o Mohalla- Tilkamanjhi,P.s.- Tilkamanjhi, District- Bhagalpur……………………………………………..... .... Appellants

Versus

1. Bihar State Road Transport Corporation, through Administrator, Pari Vahan Bhawan, Beer Chand Patel Marg, Patna… the Owner of the vehicle
2. Bihar State Road Transport Corporation, through Divisional Manager, Barari Road, Tilkamnjhi, Bhagalpur
3. Bihar State Road Transport Corporation, through Divisional Manager, Agri Co Depot, Jamshedpur
4. Sunil Kumar son of Ram Bachan Prasad, R/o Bhiyadih, Nandnagar, AgriCo Depot, Jamshedpur (driver of the vehicle
5. National Insurance Co.Ltd. through Divisional Manager, Patna
6. National Insurance Co. Ltd. through Divisional Manager, Central Jail Road, Tilkamanjhi, Bhagalpur (Insurer of the vehicle)

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ganpati Trivedi

For the Respondent/s : Mr. R.C.L. Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

8 30-08-2016 The instant miscellaneous appeal has been preferred against the judgment and award passed in

Claim Case No. 165 of 2008 dated 02.12.2010 and 20.01.2011 respectively by learned 4th Additional District & Sessions Judge-cum-Motor Vehicle Claim Tribunal, Bhagalpur whereby and whereunder the learned Tribunal has awarded an amount of Rs. 5,13,196/- as against the claim of Rs. 7,71,690/-. The claimants are themselves the appellants and opposite parties are respondents.

The amount of award as granted by the learned Tribunal has already been paid to the claimants.

Enhancement of amount has been claimed on the ground that 1/3rd deduction was done towards personal expenses which is wrong. In the present case there are 7 dependents and where the number of dependents exceeds from six, the deductions should be 1/5th and this matter has been settled in the case of **Sarla Verma Vs. DTC reported in (2009) 6 SCC 121**. Further enhancement has been sought that future prospect of the deceased has not been taken into consideration. Here, the deceased was conductor and he died at the age of 46 years in motor accident and from Ext. 1 it is manifest that he was getting salary at the rate of Rs. 5,324/- per month and as such the deceased might have got 30 per cent of actual salary as he was aged between 40-50 years but in this regard nothing has been given by the learned Tribunal. Further regarding loss of estate, loss of consortium, loss of love and affection and funeral ceremony expenses also only Rs. 9500/- was given which is too less.

In view of the judgment **reported in (2012) 9 SCC 54** in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors.,** loss of consortium should be Rs. 1,00,000/- at least, funeral expenses Rs. 25,000/- and loss of care and guidance to minor children should be Rs. 1,00,000/-.

On behalf of appellants it is submitted that the award granted is not proper and just and as such for just compensation aforesaid points should be considered.

On behalf of respondents it is submitted that just compensation has been defined in various ways and it depends upon age and income of the deceased and number of dependents. There was no proof as to whether the deceased was a permanent employee of Bihar State Road Transport Corporation. Only Ext. 1 has been brought on record which is a salary certificate of one month of the deceased. It is also argued that all these matters have been referred to a larger Bench for authoritative decision and as per schedule, compensation has been duly granted.

Having considered the rival submissions urged at the bar, after going through the records and impugned judgment and award, I am of the considered opinion that the deceased at the time of death was getting salary of Rs. 5,324/- per month and as such he was getting annual salary of Rs. 63,888/- and deductions, as per number of dependents, should not be $1/3^{rd}$ rather it should be $1/5^{th}$ and as such if $1/5^{th}$ is deducted towards his personal expenses then, the deceased might have given Rs. 51,110 to his family members annually. Multiplier taken 13 by learned Tribunal is also correct and as such if the same is multiplied by 13 then, it comes to Rs. 6,64,430/-. So far as future prospect is concerned, 30 % of annual salary has been claimed but it is in respect of an employee who is in permanent job but, here, on behalf of claimants no document has been brought on the record that the deceased was a permanent employee of Bihar State Road Transport Corporation and also for authoritative decision the matter has been referred to a larger Bench. So far as the loss of consortium, funeral expenses, loss of care and guidance of minor children are concerned, amount of Rs. 9,500/- granted by the learned Tribunal appears not proper and it requires enhancement. Considering the income of the deceased at the time of death, in these conventional heads, in addition to the claims, the claimants are entitled to a sum of Rs. 5,000/- under the head of loss of estate, Rs. 5000/- towards funeral expenses and the widow will be entitled to Rs. 10,000/- as loss of consortium. Thus the total compensation will be Rs. 6,84,430/- and after deducting Rs. 5,13,196/- which has been paid with interest awarded by the learned Tribunal the enhancement would be Rs. 1,71,234/-. Accordingly, this miscellaneous appeal is partly allowed and it is held that the appellants are entitled to get sum of Rs. 1,71,234/- in addition to what is already awarded with interest at the rate of 6% per annum from the date of claim petition till the date of realization. Accordingly, National Insurance Company respondents no. 5 and 6 are directed to pay the aforesaid amount to the appellants within three months from the date of receipt/production of a copy of this order.

(Jitendra Mohan Sharma, J)

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