

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.36 of 2013

Branch Manager Oriental Insurance Company Ltd, Mirzapur Darbhanga Through Sri Anil Kumar Biswal, Deputy Manager and Duly constituted Attorney, The Oriental Insurance Company Ltd. Regional Office Pir Mohani Kadam Kuna, Patna(Opp. Party No. 3)

.... Appellant/s

Versus

1. Janki Devi wife of Late Bishundeo Sah, resident of Village-Kurha, P.O. & P.S.-Sahebpur Kamal, District-Begusarai, at present Mohallah-Bahadurpur, Ward No. 1, Near Middle School, P.O./P.S./District-Begusarai
2. Md. Akram, son of Late Md. Alim, resident of Village-Islampur Pokharia Danaul, Phulwaria, P.S.-Balua, District-Begusarai
3. Phuleshwar, son of Sri Lakshmi Chaudhary, C/O-Md. Akram, resident of Village-Islampur Pokharia Danaul Phulwaria, P.S.-Balua, District-Begusarai

.... Respondent/s

with

Miscellaneous Appeal No. 704 of 2014

Janki Devi Wife of Late Bishundeo Sah Resident of Village-Kurha, P.S.-Sahebpur Kamal, District Begusarai at present resident in Mohalla-Bahadurpur, Ward No.-1, P.S.-Samastipur, District-Samastipur.

.... Appellant/s

Versus

1. Branch Manager, Oriental Insurance Company Ltd. Mirzapur Darbhanga, P.S. and District-Darbhangha.
2. Mr. Akram Son of Late Md. Alim, Resident of Village-Islampur Pokharia Danaul, Phulwaria, P.S.-Balua, District Begusarai.
3. Phuleshwar Son of Sri Laxmi Choudhary, C/o Md. Akram, Resident of Village-Islampur Pokharia, Danaul Phulwaria, P.S.-Balua, District-Begusarai.

.... Respondent/s

Appearance :

(In MA No.36 of 2013)

For the Appellant/s : Mr. ASHOK PRIYADARSHI

For the Respondent/s : Mr.

(In MA No.704 of 2014)

For the Appellant/s : Mr. Shailendra Kumar

For the Respondent/s : Mr.



CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 04-08-2017

As both these appeals by the Insurance Company and the claimants arise out of common award and decree passed by the Additional District Judge-cum-Claims Tribunal(F.T.C-I), Samastipur in Motor Vehicle Claim Case No. 23 of 2006, they are being decided by this common order.

The claimant is the mother of deceased Sri. Jitendra Kumar who died in the road accident which occurred on 01.07.2003 at 10:00 A.M when the vehicle in question Tata Scorpio bearing BR-09B-1498 driven by respondent No. 2, belonging to respondent No. 1 and ensured with the Insurance Company in question.

After evaluating the material available on record, learned Tribunal has awarded compensation of Rs. 4,10,000/- on various counts along with interest at the rate of 6 per cent per annum from the date of filing of the application.

The grievance of the Insurance Company is that the deceased Jitendra Kumar was a bachelor and therefore, towards self dependency, 50 per cent should be deducted and by deducting 1/3 towards self dependency, an error has been committed.

As far as claimants are concerned, they



challenged the quantification on two counts. The fact that the deceased was earning his living by selling of fruits and according to the evidence that came on record, he would be earning at least Rs. 5000/- per month, but ignoring this evidence, the earning of the deceased has been assessed as Rs. 3000/- per month. That apart, it is stated that the age of the deceased was 23 years and therefore multiplier applied would be 18.

Having heard learned counsel for the parties and taking note of the circumstances, the contentions of the Insurance Company to the extent that dependency towards self expenses of the deceased should be assessed at 50 per cent, is allowed. As far as applying of the multiplier is concerned, once the age of the deceased is found to be 23 years, the multiplier applied should be 18. That apart, as far as the assessment of the income of the deceased is concerned, in the absence of their being any documentary evidence to show that the earning of the deceased was Rs. 5000/- per month, learned Tribunal has assessed the income of the deceased as Rs. 3000/- per month. Even though the documentary evidence was not available, the income of the deceased could be assessed at least at Rs. 150/- per day looking to the facts and circumstances of the case and accordingly his earning should be fixed at Rs. 4500/- per month.

Accordingly, both these appeals are allowed and



disposed of in the following directions.

The Tribunal shall recalculate the amount by applying the multiplier of 18. The Tribunal shall deduct 50 per cent towards self dependency of the deceased concern and after assessing the monthly income of the deceased at Rs. 4500/- per month, the entire enhanced amount shall be paid to the claimants on the Insurance Company depositing it within sixty days from the date of receipt/production of the certified copy of this order.

Rs. 25000/- deposited by the Insurance Company before this Court be transferred to the Tribunal for necessary payments and compliance.

With the aforesaid, the appeals stands disposed of.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11/08/2017
Transmission Date	NA

