IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.155 of 2012

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1. Priyanka Kumari W/o Late Ramanuj Kumar
2. Anant Prakash S/o Late Ramanuj Kumar

   Both R/o of Mohalla-Ramna, P.S. Sherghati, District-Gaya.

.... Appellant/s

Versus

1. Reliance General Insurance Company Limited, Himalya House (Next to American Centre) 8^{th} floor 38, B Jawahar Lal Nehru Road, Kolkata-71 (Insurer of the Truck no. HR-38J/9987)
2. Md. Sahzad Khan S/o Vasi Ahmad, R/o House no. 12, Satbari New Delhi-110 062 (Owner of the truck no. HR-38J/9987)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Sinha

For the Respondent/s : Mr. Durgesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 07-12-2017

Heard learned counsel for the appellants and learned counsel for the respondent no. 1 on this miscellaneous appeal.

2. This miscellaneous appeal has been filed against the judgment dated 21.04.2011 and award dated 29.08.2011 passed by learned Additional District Judge-4^{th}-cum-Motor Vehicle Accident Claim Tribunal, Gaya in Claim Case no. 87 of 2010/144 of 2009 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the opposite party no.1 (Reliance General Insurance Company Ltd.) to pay compensation to the tune of Rs.

7,29,500/- only subject to deduction of Rs. 50,000/- already paid to the claimants under Section 140 M.V. Act along with interest @ 6% per annum from the date of filing of the case.

3. Factual matrix of the case is that the Claim Case no. 87 of 2010/144 of 2009 was filed by the claimants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 24,60,048/- along with interest @ 9% per annum on account of death of their husband and father respectively, namely, Ramanuj Kumar in the motor vehicle accident with the case in succinct that on 11.04.2009 at around 08:00 PM said Ramanuj Kumar who happened to be Assistant Business Development Manager in Tata AIG, Life Insurance Company Limited, Gaya was proceeding to his office on his motorcycle and when he arrived near Gopalpur Chain Basera Hotel located at G.T. road under P.S. Sherghati, a truck bearing registration no. HR-38J-9987 being driven rashly and negligently by its driver dashed him resultantly he died on the spot. The said Ramanuj Kumar was aged about 30 years and he used to earn Rs. 16,667/- per month from the said vocation. He has died leaving behind his widow and son as his legal representatives/dependants.

4. The Opposite Parties put their appearance in the case and filed their written statement. The claimants adduced ocular and documentary evidence in buttress of their case.

5. After hearing the parties and perusing the record, learned Tribunal passed the impugned judgment and award as stated in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred the present appeal.

7. It is submitted by the learned counsel for the appellants that the deceased was employee of Tata AIG, Life Insurance Company Limited, Gaya and was drawing salary of Rs. 16,667/- per month from the said vocation. The claimants filed and proved the salary certificate as well as compensation summary sheet of the deceased marked as Ext-1 and 2 respectively. They have also examined AW-5 (Upendra Prasad) who happens to be one of the employees of the said Insurance Company in substantiation of their case and the said Upendra Prasad (AW-5) has validly and legally proved the aforesaid documents. But, learned Tribunal ignoring the aforesaid documents and disbelieving the statement of AW-5 has ignored the aforesaid income of the deceased and wrongly and without any basis, considered the income of the deceased as 5000/- per month. It is further submitted that the amount of compensation awarded towards funeral expense, loss of estate and loss of consortium is very meager. It is also submitted that learned Tribunal has also not awarded the future prospect.

8. It is submitted by the learned counsel for the respondent no. 1 that the aforesaid documents filed by the claimants have not been proved by the person issuing the same. It is also submitted that the claimants are not entitled to any sort of allowances as mentioned in the aforesaid documents rather to only actual salary drawn by him and as the basic salary has been mentioned as Rs. 5,000/- per month in the said document, the amount of compensation awarded by the learned Tribunal considering the aforesaid salary of the deceased happens to be just adequate and proper. It is also submitted that there is no pleading regarding future prospect in the claim application, hence, the claimants-appellants are not entitled for the same.

9. On perusal of Exts-1 and 2 and deposition of AW-5 (Upendra Prasad), it appears that Ramanuj Kumar was permanent employee as Assistant Business Development Manager in Tata AIG, Life Insurance Company Limited, Gaya. He used to draw the gross salary to the tune of Rs. 16,667/- per month. The aforesaid documents have been validly and legally proved by AW-5 (Upendra Prasad) who happens to be employee of the said Insurance Company by candidly stating in his deposition that the aforesaid documents were prepared before him on the letter pad of the company and he has also identified the signature of the issuing authority namely, Sanjay Kumar, Branch Manager on the said documents. In cross-examination of the said witness, nothing convincing and material has been elicited having potential to disbelieve the aforesaid deposition of the said witness and negate the said documents.

10. From perusal of aforesaid documents, it appears that the deceased used to get basic pay Rs. 5,000/- per month. Besides the aforesaid salary, he was also getting several allowances. But Bench of five judges of Hon'ble Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and Ors reported in 2017 (4) PLJR 261 (SC)*** has been pleased to held that it is the actual salary which should be basis of computation of the income of the salaried employee. The actual salary should be read as actual salary less tax. As the deceased was getting Rs. 5,000/- per month as basic salary, the said amount is considered to be his actual income. Besides that, I also think it proper and appropriate to award medical allowance to the tune of Rs. 1250/- per month. Thus, the total income drawn by the deceased comes to the tune of Rs. 6250/- per month i.e. Rs. 75000/- per annum. Though, the appellants have not claimed future prospect of the deceased in their claim petition, but in my considered opinion, there is no bar to grant compensation in any head if found entitled by the claimant though not claimed by him. As the deceased was aged about 30 years at the time of his death and was a permanent employee in the said private company, hence in light of the judgment of Hon'ble Apex Court in ***National Insurance Company Ltd.*** (supra), 40% of the basic salary i.e. Rs. 2000/- per month i.e. Rs. 24000/- per annum is awarded as future prospect. On addition of the aforesaid future prospect, total amount of income comes to the tune of Rs. 99,000/- per annum. As the deceased has died leaving behind him two legal representatives/dependants, hence, 1/3rd of the aforesaid income i.e. Rs. 33,000/- is deducted as personal expense of the deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to the tune of Rs. 66,000/- per annum. As the deceased was aged about 30 years at the time of accident, multiplier of 17 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 11,22,000/- per annum. From perusal of record, it appears that amount of compensation awarded by learned Tribunal towards conventional head is Rs. 9500/- which is quite inadequate, hence in the light of judgment of Hon'ble Apex Court in ***National Insurance Company Ltd.*** (supra), Rs. 70,000/- is awarded towards conventional head. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 11,92,000/-. As the claimants have already received Rs. 50,000/- by way of adinterim compensation, hence now they would be entitled to get the rest amount of compensation to the tune of Rs. 11,42,000/- along with interest at the rate of 6% per annum from the date of filing of the claim case till the date of its realization**.** Accordingly, the respondent no. 1 is directed to pay the aforesaid amount of compensation to the tune of Rs. 11,42,000/- along with interest at the rate of 6% per annum from the date of filing of the claim case to the claimants after deducting the amount, if any paid by it, within three months from the date of receipt/production of a copy of this order.

11. As the appellant no. 2 happens to be minor son of the deceased, hence, the appellant no. 1 is directed to deposit $1/3^{rd}$ share of the aforesaid amount in some Nationalized Bank of India having branch in the local area of the resident of the appellants in some fix deposit scheme renewable after every five years till attaining majority by the said minor. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.12.2017
Transmission Date	N.A.