IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.751 of 2012

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1. Mithilesh Devi W/O Late Dinesh Mahto.
2. Kajal Kumari Aged About 3 Years D/O Late Dinesh Mahto
3. Nilesh Kumar Aged About 6 Months S/O Late Dinesh Mahto
   Appellant Nos. 2 to 3 minor and are living under the guardianship of mother appellant No. 1)
   All resident of Village- Dekuli Dharampur, P.O. Kamrauli, P.S. Piprari, District Sheohar.

.... Appellant/s

Versus

1. Rajdeo Paswan S/O Late Kushun Paswan, resident of village- Rusulpur, Salem, P.O. Bhikanpur, P.A. Ahiyapur, District Muzaffarpur.
2. The Divisional Manager Oriental Insurance Co. Ltd. Daya Complex, Kalam Bagh, Road, Aghoriya, Bazar, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Pandey, Advocate

For the Respondent/s : Mr. Bimlesh Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 06-07-2017

This is a Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation awarded.

Deceased Dinesh Mahto died in vehicle accident on 17.07.2008. The legal heirs of the deceased, namely, the appellants herein, made a claim of Rs.2,64,500/- on the ground that late Dinesh Mahto was 30 years of age. He was working as a labourer used to get Rs.3,000/- per month and by claiming loss of dependency at Rs.2,50,000/-, loss of estate at Rs.5,000/- and loss of loves and affection at Rs.5000/-, loss of consortium at Rs.5,000/- and expenses on funeral at Rs.2000/-. The total claim comes at Rs.2,64,500/- along with interest at the rate of 10% per annum.

However, the learned Tribunal on the basis of evidence and materials that came on record assessed earning of deceased at notional income as contemplated under Schedule II of the Motor Vehicles Act, 1988 and after deducting 1/3rd towards personal expense awarded a compensation of Rs.1,70,000/- after assessing loss of estate at Rs.2500/-, loss for loss and affection at Rs.5000/-, loss of consortium at Rs.5,000/- and Rs.2000/- for funeral expenses. Accordingly, total compensation was awarded at Rs.1,84,500/-.

Having heard learned counsel for the parties and on going through the materials that came on record, I am of the considered view that in the matter of assessing the earning of the deceased, the learned Tribunal has committed an error. The deceased was working as a labourer and looking to the wages for the period fixed under the Minimum Wages Act, 2008, the monthly income should have been assessed at Rs.3,000/- per month. That apart, considering the fact that the claimants were dependent upon the earning of the deceased and they consisted of three members, namely his widow, one minor daughter and one minor son, the dependency should have been assessed by deducting 1/3rd towards self expense and that apart, the petitioner would be entitled to a sum of Rs.1,00,000/- towards loss of love and affection and consortium etc. Accordingly, after applying the multiplier of 17 to the income, the total compensation would come to Rs.4,08,000 + Rs.1,00,000/- = Rs.5,08,000/-.

Accordingly, this appeal is allowed and a compensation is enhanced from Rs.1,84,500/- to Rs.5,08,000/- with interest at the rate of Rs.6% per annum on the enhanced amount with effect from the date as directed by the Tribunal. The enhanced amount of compensation after deducting Rs.50,000/- as interim compensation already paid to the applicant, shall be deposited by the Insurance Company within 60 days from the date of receipt of the records. The records shall be transmitted to the trial Court for necessary disposal.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2017
Transmission Date	