IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.605 of 2013

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Bineshwari Das, S/o Narayan Das, Vill. + P.O. Kushmaha, P.S. Baunsi, Dist. Banka, at present residing at Vill. – Gonarchak, P.O.- Khagara, P.S. Sahuparabatta (previously Naugachia), Dist.- Bhagalpur

.... Appellant/s

Versus

The New India Assurance Co. Ltd. & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Sarita Bajaj, Advocate

For the Respondent/s : Mr. M.P. Jaiswal, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 01-07-2017

Learned counsel for the petitioner submits that respondent No.10 is the owner of the vehicle and as the liability under the award has been fastened on the Insurance Company and the Insurance Company has not challenged the award, service on the respondent No.10 is dispensed with.

This is an appeal by the claimant under Section 173 of the Motor Vehicles Act seeking enhancement of the award granted by the 5th Additional District Judge-cum-M.A.C.T., Naugachia, Bhagalpur in ClaimCase No.141 of 2009 on 4th of August, 2012.

In the accident in question, which took place on 31.12.2008, deceased Kaushalya Devi, mother of the applicant, died due to the rash and negligent driving of a vehicle bearing Regn. No.OR 05D 6727 owned by respondent No.10 and driven by respondent No.7. Claiming a compensation of Rs.7,24,500/-, the claim in question was filed. The learned Motor Accident Claims Tribunal, after evaluating the material that came on record, found that the deceased was 43 years of age and it was said that she was earning a sum of Rs.5000/- per month by selling vegetables. However, on account of want of evidence with regard to the income of the deceased, the learned Tribunal applied the principle of granting her wages in accordance to the notification issued by the Labour Department at the relevant time and assessed her income at Rs.130/- per day and after calculating it at the rate of Rs. 3900/- per month and applying the multiplier of 12%, her annual income was assessed at Rs.46,800/- per year and after considering the totality of the facts and circumstances and the age of the deceased, after applying the multiplier of 15, the income was assessed at Rs.7,02,000/- and after deducting 1/3rd towards self expenses, a compensation of Rs.4,98,000/- was awarded to which a sum of Rs.2500/- as funeral expenses was also added.

Contending that the compensation has been assessed on the lower side, the income of the deceased has not been properly assessed and consortium has also not been granted, this appeal has been filed.

Having heard learned counsel for the parties and on perusal of the record, it is clear that the claimant is the son of the deceased and the husband of the deceased is alive and it is he alone who can claim consortium. Based on the evidence on record, the amount of compensation, the earning of the deceased has also been calculated properly and we see no ground to enhance the compensation.

That being so, no case for making any indulgence in the matter is made out.

The appeal is therefore, dismissed.

(Rajendra Menon, CJ)

K.C.jha/-

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