

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.106 of 2014

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1. Pramod Singh @ Pramod Chand Singh @ Shravan Kumar S/O Shri Chandrika Singh
 2. Rahul Kumar S/o Pramod Singh
 3. Jyoti Kumari D/o Pramod Singh
 4. Priti Kumari D/o Pramod Singh
 5. Golu Kumar S/o Pramod Singh Appellants No 2 To 5 Are Minor Under Guardianship of Father Pramod Singh All Resident Of Village Sonkhar, P.O. Aliganj, P.S. Chandradeep, District Jamui.

.... Appellant/s

Versus

1. Rajeev Kumar Singh S/o Late Ramjanam Singh Resident of Village Bijbanpar, P.O. Mahanandpur, P.S. Deepnagar, District Nalanda Owner Cum Driver of Vehicle Tempo Bearing No. B.R. 21 C-5775.
2. The Branch Manager, Oriental Insurance Co. Ltd. Murarpur, Patna Ranchi Road, Bihar Sharif, District Nalanda Insurer of The Vehicle Tempo Bearing No. B.R. 21 C 5775.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Prasad, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 03-11-2017

Heard learned counsel for the appellants and learned counsel for respondent no.2 on this appeal and perused the record.

2. This appeal has been filed against the judgment dated 29.06.2013 and award dated 17.07.2013 passed by Adhoc Additional District and Sessions Judge-I,—cum- Motor Accident Claim Tribunal, Nalanda Bihar Sharif in MACT Case No. 123 of 2010 whereby the learned Tribunal directed the opposite party no.2- Oriental India Insurance Company Limited to pay compensation to



the tune of Rs. 2,63,000/- along with the interest of 6% from the date of filing claim petition till its realization to the claimants.

3. Factual matrix of the case is that the claimants have filed MACT Case No. 123 of 2010 under Section 166(1) of the Motor Vehicles Act for awarding compensation to the tune of Rs. 3,00,000/- on account of death of the deceased Mamta Dev, who happens to be their wife and mother respectively in motor vehicle accident with the case in succinct that on 06.05.2010, the deceased Mamta Devi was proceeding to her relative at village Bijbanpur, P.S- Deepnagar by tempo bearing Registration No. BR 21C 5775. The driver of the tempo was driving the same rashly and negligently. As soon as the tempo reached near the power grid at village Bijbanpur at around 09:30 PM, the driver dashed the tempo with the static truck resultantly Mamta Devi was injured. She was rushed to Sadar Hospital, Nalanda and from there PMCH, Patna, but she succumbed to her injury on the way to Hospital. Regarding the aforesaid accident, Deepnagar P.S. Case No. 90 of 2010 was instituted under Sections 279, 337, 338 and 304A of the Indian Penal Code against the driver of the tempo. The deceased was aged about 29 years at the time of accident and used to earn Rs. 2000 per month from the dairy business.

4. Both the owner and insurer of the offending vehicle



put their appearance in the case, but only insurance company filed written statement. Claimants adduced ocular and documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the quantum of compensation as awarded by the Tribunal, claimants have filed this miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the deceased was aged about 29 years at the time of accident. Claimant no. 1 and one more witness examined by the claimants have supported the said aspect of the case, hence the multiplier of 18 ought to have been adopted by the Tribunal in working out the amount of compensation, but the learned Tribunal ignoring the aforesaid evidence of the claimants had assessed the age of the deceased as 35 years merely on the ground that the eldest son of the deceased was 10 years at the time of accident of the deceased which is quite hypothetical, perverse and wrong and also wrongly adopted multiplier of 16. It is further submitted by learned counsel for the appellants that the deceased has died leaving behind her five legal representatives and dependents, hence income of the deceased ought



to have been deducted by $1/5^{\text{th}}$ as personal expense of the deceased, but the Tribunal has wrongly deducted the same by $1/3^{\text{rd}}$. It is also submitted by learned counsel for the appellants that the rate of interest awarded by the Tribunal also appears to be inadequate. Instead of 6%, the rate of interest should be awarded as 9%.

8. On the other hand, it is submitted by learned counsel for respondent no.2 that the amount of compensation as awarded by the Tribunal is quite proper and adequate. The Tribunal has passed the aforesaid judgment and award considering all the materials available on record and facts and circumstances of the case which is liable to be sustained. The rate of interest awarded by the Tribunal also appears to be proper and adequate in view of prevailing view of Hon'ble Apex Court.

9. From perusal of the record, it appears that the appellants have assailed the aforesaid judgment and award mainly on the ground of quantum of compensation. The record indicates that the appellants have claimed the age of the deceased as 29 years. Appellant No.1 examined in this case as AW-1 and witness Manish Kuamr Singh as AW-2 have unanimously deposed that the deceased was aged about 29 years at the time of accident. The respondent no.2 has not filed any evidence in rebuttal of the aforesaid evidence of the appellants. But learned lower court rejected the aforesaid claim of the



appellant merely on the ground that the eldest son of the deceased was aged about 10 years at the time of her accident. Hence, she must be aged about 35 years at that time. The aforesaid finding of the learned Tribunal appears to be hypothetical, wrong and perverse. As even a lady aged about 19 years can perceive and give birth to a child and it is not required that she must be aged about 25 years for the said cause. Hence, aforesaid finding of the learned Tribunal is not sustainable.

10. In the facts and circumstances of the case, I find that the deceased Mamta Devi was aged about 29 years at the time of her death. As the deceased was 29 years at the time of her death, hence multiplier of 17 is adopted to work out the amount of compensation. As the deceased has died leaving behind her five legal representatives and dependents, so from the income of the deceased which is Rs. 2000/- per month as claimed by the appellants and assessed by the learned Tribunal, 1/5th is deducted as personal expense of the deceased which the deceased would have made had she been alive. After deduction of the aforesaid personal expense of the deceased, the loss of dependency comes to the tune of Rs. 1600 per month i.e. Rs. 19200/- per annum. On applying multiplier of 17, the amount of compensation comes to the tune of Rs. 3,26,400/-. Besides the aforesaid amount of compensation, the appellants are



entitled to get Rs. 2000/- towards funeral expense and Rs. 5000/- towards loss of consortium as awarded by the learned Tribunal and not assailed by the appellants. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 3,33,400/. I find it proper and adequate to award interest at the rate of 6% per month on the aforesaid amount of compensation from the date of filing of claim petition till its realization. Accordingly, respondent no.2-Oriental India Insurance Company Limited is directed to pay the aforesaid amount of compensation to the tune of Rs. 3,33,400/- along with interest @ 6% per annum to the appellants within two months from the date of receipt or production of a copy of this order. Accordingly, the impugned judgment and award stands modified and this appeal is disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	08.11.2017
Transmission Date	

