

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.387 of 2014

=====

1. Sarita Rai W/o Late Mithilesh Kumar Rai
2. Garima Rai D/o Late Mithilesh Kumar Rai
3. Isha Rai D/o Late Mithilesh Kumar Rai
4. Balaji (Minor) S/o Late Mithilesh Kumar Rai
All residents of Mohalla - A3, Sachiwalaya Colony near Kendriya Vidyalaya, P.S.
P.Nagar, Kankarbagh, District - Patna.

.... Appellant/s

Versus

1. Ramayan Singh S/o Late Baldhar Singh resident of Mohalla - Preet Nagar,
Chopan, District - Sonebhadra (UP).
2. Rama Shankar Patel S/o Ram Swarath Patel Resident of Village - Ratma, P.S. -
Rampur, District - Sonebhadra.
3. Oriental Insurance Company Ltd. through its Regional Manager, Regional
Office, Pirmuhani, P.S. Kadam Kuan, District - Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi
Mr. A. Sinha
For the Respondent/s : Mr. A. Priyadarshi

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 04-12-2017

Ref: I.A. no. 6222 of 2016

1. The appellant has filed the aforesaid interlocutory application for condonation of delay of four months five days in filing this appeal with the case that after obtaining certified copy of the judgment and award on 27.11.2013, the appellant no. 1 seriously fell ill, so she could not get the memo of appeal prepared and filed in the case contacting her learned advocate within time. There has been no



deliberate delay and laches on the part of the appellants in filing the appeal.

2. In the facts and circumstances of the case and in the interest of justice, the aforesaid interlocutory application is allowed and delay made in filing the appeal is condoned.

3. The aforesaid interlocutory application is, accordingly, allowed.

4. Heard learned counsel for the appellants and learned counsel for the respondent no. 3 on this miscellaneous appeal.

5. This miscellaneous appeal has been filed against the judgment dated 18.11.2013 and award dated 21.11.2013 passed by learned Additional District Judge-XI-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case no. 51 of 2010 whereby the learned Tribunal allowing the claim petition filed by the appellants, directed the respondent no. 3 (Oriental Insurance Company Ltd.) to pay final amount of compensation to the tune of Rs. 66,65,473/- along with interest @ 8% per annum from the date of filing of the case till the date of its realization to the claimants-appellants.

6. Factual matrix of the case is that the Claim Case no. 51 of 2010 was filed by the claimants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 1,50,00,000/- along with interest @ 12% per annum on account of death of their



husband and father respectively, namely, Mithilesh Kumar Rai in the motor vehicle accident with the case in succinct that the said Mithilesh Kumar Rai had gone to Chhapra by Ambassador Car bearing registration no. BR-06M-3435 of Punjab National Bank in inspection duty. On 17.12.2009, while he was regressing to Chhapra from Siwan by the said car and arrived at Banbar Dhala of Chhapra-Siwan main railway-crossing, the road was blocked as Hajipur Fubaria 375U train was to pass, so the driver of the car halted the same beyond the Railway barrier on Siwan side and waited for the train to pass. In the meantime, at about 08:00 PM, the train arrived and simultaneously the driver of the truck bearing registration no. UP-64H-2637 driving it very rashly and negligently dashed the said car from rear side with such a huge momentum that it was badly crushed and pushed ahead breaking the Railway barrier and dashing the moving train, as a result of which, the damaged car along with three occupants were dragged by the said train for some distance and thrown by the side of Railway track. Immediately, local congregated there and rushed the occupants of the ill fated car to Chhapra Sadar, Hospital where the said Mithilesh Kumar Rai was declared brought dead as he succumbed to his injuries on the way to hospital. The said Mithilesh Kumar Rai was aged about 48 years and he was Assistant General Manager and Circle Head in Punjab National Bank



and was posted at Muzaffarpur at the time of accident and he used to earn Rs. 74,500/- from the said vocation.

7. The Opposite Party nos. 1 and 2 did not put their appearance in the case despite service of notice. So the case proceeded *ex parte* against them while the Opposite Party no. 3 filed its written statement. The claimants adduced ocular and documentary evidence in buttress of their case.

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

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

10. It is submitted by the learned counsel for the appellants that the income of the deceased ought to have been computed on the basis of his gross income including the P.F, HR, FRR, car allowance and other allowance as detailed in the salary certificate kept at Annexure-1 filed by him in the court below. But, learned lower court has wrongly computed the income only on the basis of pay+ D.A. and fixed personal pay and also granted medical aid. He has relied upon the verdict of Hon'ble Apex Court given in *Shyamwati Sharma and Ors. Vs. Karam Singh and Ors. reported in (2010) 12 SCC 378, Manasvi Jain Vs. Delhi Transport*



Corporation reported in (2014) 13 SCC 22 in buttress of his case. It is further submitted that the deceased has died leaving behind him four legal representatives and dependants who are the claimants, hence $1/4^{\text{th}}$ of the income of the deceased ought to have been deducted as personal expense of the deceased, but, the learned Tribunal has wrongly deducted $1/3^{\text{rd}}$ income of the deceased under the said head. It is also submitted that compensation granted by the learned Tribunal in other traditional head is also quite inadequate.

11. On the other hand, learned counsel for the respondent no. 3 relying upon the verdict of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi and Ors reported in 2017 (4) PLJR 261 (SC)* submitted that it is the actual salary drawn by the deceased at the time of his death minus tax to be deducted from the said salary should be the basis of computation of the income of the deceased and not the gross income.

12. On perusal of record, it appears that it is admitted case of the parties that the deceased was Assistant General Manager and Circle Head in Punjab National Bank and was posted at Muzaffarpur at the time of accident and was aged about 48 years at the relevant time. From perusal of the salary certificate of the deceased of relevant period filed by the appellants in the court below which is Annexure-1 of this appeal, it appears that the deceased used



to get basic pay Rs. 39,300/- per month+ D.A. Rs. 12,556.35 per month and fixed personal pay Rs. 1185/- besides that he used to get medical aid Rs. 6,320/- per annum besides other allowances and perquisites. Though, Hon'ble Apex Court in *Shyamwati Sharma and Ors (supra)* and in *Manasvi Jain (supra)* has been pleased to held that while ascertaining the income of the deceased, any deductions shown in salary certificate as deduction towards GPF, LIC premium, repayment of loan etc. should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased. But Bench of five judges of Hon'ble Apex Court in *National Insurance Company Ltd (supra)* 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. Hon'ble Apex Court in *Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal reported 1979 (2) SCC 354* has been pleased to held that definition of salary under Rule 2(h) of the Income Tax Act includes dearness allowance, if the terms of the employment so provide, but excludes all other allowances and perquisites. In view of the aforesaid verdict of Bench of five judges of Hon'ble Apex Court and the verdict of Hon'ble Apex Court given in *Gestetner Duplicators Pvt. Ltd. (supra)*, the income of the salaried



person should be considered as the actual salary of the said person which includes basic pay, D.A., fixed personal pay. In the case under hand, the claimants were not found entitled to get the other perquisites like news paper, SFF, car allowance, FRR and HR allowance by the learned Tribunal. In my considered opinion also the claimants are not entitled to get the aforesaid perquisites. As news paper allowance is given to the deceased employee towards reimbursement of the news paper purchased by him, SFF Rs. 1.5 lacs and one cooler was given to the deceased employee for furnishing office and residential office, HR allowance is given to him to compensate the rent paid by him while living in the house during the course of service, the FRR Rs. 90.50 per month used to be deducted towards furniture allowance given to the deceased employee and car allowance Rs. 150.00 per month used to be deducted towards maintaining the car by him in visiting the office. After demise of the employee, the claimants are not entitled to lease hold house rent also as the said facility was provided to the deceased while he was in service. Hence, taking into consideration, the basic pay Rs. 39,300/- +D.A. Rs. 12556.35 and fixed personal pay Rs. 1185/- per month, the actual salary comes to the tune of Rs. 53041/-. As the deceased was aged about 48 years old at the time of accident, hence, 30% of the aforesaid income i.e. Rs. 15912/- is awarded as future prospect.



On addition of the aforesaid head of income, total amount of income comes to the tune of Rs. 68953/- i.e. Rs. 8,27441/- per annum. Besides the aforesaid amount, medical aid Rs. 6320/- per annum is also provided to the claimants to take care of their medical requirement. On addition of the aforesaid head of income, the claimants are entitled to get Rs. 8,33,761/- per annum. From the said income, Rs. 19,000/- is deducted as tax payable on the said income. On deduction of the income tax, total amount comes to the tune of Rs. 8,14,761/-. As the deceased has died leaving behind him four legal representatives, hence, $\frac{1}{4}^{\text{th}}$ of the aforesaid income i.e. Rs. 2,03,690/- 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 Rs. 6,11,071/- per annum. As the deceased was aged about 48 years at the time of accident multiplier of 13 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 79,43,932/-. From perusal of record, it appears that learned Tribunal has awarded Rs. 2,000/- towards funeral expense, Rs. 5,000/- towards loss of consortium and Rs. 2500/- towards loss of estate which in my considered opinion, happens to be quite inadequate, hence besides the aforesaid amount of compensation Rs. 70000/- is awarded to the claimants towards aforesaid traditional



head. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 80,13,932/-.

13. As the appellant no. 4 happens to be minor son of the deceased, hence, the appellant no. 1 is directed to deposit 1/4th 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.

14. On the aforesaid amount of compensation, the learned Tribunal has awarded interest @ 8% per annum, but as the Insurance Company has not assailed the aforesaid rate of interest awarded by the learned Tribunal by filing any appeal, hence the aforesaid rate of interest awarded by the learned Tribunal is kept intact.

15. Accordingly, the appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned lower Tribunal.

(Prakash Chandra Jaiswal, J)

rohit/-

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

