

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.343 of 2011**

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1. Bibi Anjuman Ara, W/o late M.A. Sattar  
2. Md. Firoz Khan, son of late M.A. Sattar  
3. Subnam, daughter of late M.A. Sattar  
All residents of Mohalla-Chamelichak, P.S. Habibpur, District-Bhagalpur.  
.... .... Claimants-Appellant/s

Versus

1. Thiru E Kumar, son of Ekambaram, no.72, Seniamman Koil Street, Tondianpet, Chennai-81 ( owner of the vehicle).  
2. S. Natarajan, son of Sampadam, R/o 23 Bharathi Nagar, 4<sup>th</sup> Street Chennai 57 (driver of the Vehicle).  
3. The Divisional Manager, the New India Assurance Co. Ltd. Unit 71023 Development Officer 251 Thirvatteyur, High Road, Toniviarpat, Chennai 21.  
4. The Divisional Manager the New India Assurance Co. Ltd. Red Cross Building, North of Gandhi Maidan, Patna.

.... .... Opposite Parties/Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Madan Mohan, Advocate  
Ms. Pallavi Pandey, Advocate  
For the Respondent Nos.3 & 4 : Mr. Mukteshwar Pd. Singh, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**ORAL JUDGMENT**

**Date: 13-07-2017**

I.A. No.8279 of 2012 has been filed by the appellants seeking condonation of one year, four months and twenty one days in filing of this appeal under Section 173 of the Motor Vehicles Act. Keeping in view the reasons indicated in the application and the fact that the applicants had filed an application under Section 152 of the Code of Civil Procedure for correction of the award and this was finally done on 20<sup>th</sup> of January, 2011 and immediately thereafter within the period of 60 days, the appeal in question was filed, the delay in filing of this appeal is condoned.

Interlocutory application stands allowed and disposed of.



The appellants herein are legal heirs of the deceased Md. Sattar, who died in an accident that took place on 23.03.2001 when Md. Sattar, a Head Constable in the Central Industrial Security Force was returning in his scooter from Export Shed Container Road inside the Port Premises when the accident in question took place. Claiming that he was a Head Constable earning a salary of Rs.7680/- per month and was expecting to get promotion as ASI under the time bound promotion scheme after two years from the date of his death and he had been so promoted, his salary would have been about Rs.9,920/- and Rs.10,910/- and further claiming a compensation of Rs.8,75,420/- on various heads, the claim was filed.

The learned Tribunal assessed the evidence and material that came on record and based on the last pay certificate issued by the employer determined the salary at Rs.7,420/-, looking to the age of the deceased 48 years applied the multiplier of 11 and after deducting 1/3<sup>rd</sup> toward personal expense awarded a sum of Rs.2, 000/- towards funeral expense, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate and awarded a compensation of Rs.7,13,500/- along with interest at the rate of 8% per annum to be paid without specifying the date from which the interest is to be calculated. Challenging the award, this appeal has been filed and the relief is claimed for under the following heads.

It is stated that future promotion prospect of the petitioner



has not been considered and, therefore, considering the same the compensation should be enhanced. It is further stated that for the age of 48, the multiplier of 11 is on the lower side, the multiplier should be 13. It was further argued that on the head of funeral expense, loss of consortium and loss of estate, statutory amount of Rs.9,500/- is only granted, whereas it should have been on a higher side. Finally, it was argued that the interest is not directed to be paid from the date of filing of the application nor any period for payment of interest has been specified and, therefore, the same should be specified by granting interest from the date of filing of the application before the Tribunal.

Learned counsel for the New India Assurance Company refuted the contentions and argued that the amount has been rightly calculated, no case for enhancement is made out, claimants had not produced any evidence to show what was the future prospect, how and in what manner the provisions of the time bound promotion scheme are applicable in the Department and how based on the time bound promotion scheme future prospect was claimed.

As far as the interest is concerned, it is the applicants who caused the delay in approaching this Court and also keeping the matter pending before the trial court for a period of more than two and half years after the award was passed on 08.09.2009 by unnecessary filing an application under Section 152 of the Code when it was not maintainable. Accordingly, he argued that no further enhancement is



called for.

Having heard learned counsel for the parties and on going through the records, I am of the considered view that under the provisions of Schedule II to the Motor Vehicles Act in the age group 45 to 50, multiplier applicable is 13 and, therefore, multiplier of 11 applied, an error has been committed by the Tribunal, multiplier of 13 has to be granted and to that effect there is an error in the award.

As far as grant of future prospect is concerned, except for contending that the deceased was a Head Constable and under the time bound promotion scheme, he would have got promotion after two years from the date of his death, no evidence or material in this regard even the scheme for time bound promotion and entitlement of the deceased under the same was not adduced as an evidence. That being so, on this count, if enhancement of compensation was not granted, I see no error in the same.

As far as award of loss of estate, loss of consortium and funeral expense is concerned, the same is on the lower side which has to be enhanced to Rs.1,00,00/- in all.

That apart, as far as payment of interest is concerned, delay has been occasioned partly on account of the Court and partly on account of the delay caused by the applicants themselves in filing the application under Section 152 of the Code and keeping it pending for more than two and half years before the court below. That being so,



interest of justice would be met in case the award of interest is directed to be paid with effect from 08.09.2009, i.e. the date on which the award was passed till final settlement of the claim and its payment by the New India Assurance Company.

Keeping in view the aforesaid, this appeal is allowed, the compensation is enhanced in the following terms:

The multiplier of 11 be increased to 13, the amount towards funeral expense, loss of consortium, loss of estate be enhanced to Rs.1,00,000/- and interest of the amount awarded be paid at the rate of 8% per annum from the date of the award, i.e. 08.09.2009 till its settlement. The matter be sent to the tribunal for calculating the compensation in accordance to the aforesaid enhancement and ensure payment of the same after deducting the amount already paid by the New India Assurance Company within a period of 60 days from today.

With the aforesaid, the appeal is allowed and disposed of accordingly.

**(Rajendra Menon, CJ)**

Sunil/-

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