

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.155 of 2015

- =====
1. Jhunna Mishra. S/o Bidyachal Mishra.
 2. Sanjna Kumari. D/o Jhunna Mishra.
 3. Sejal Kumari. D/o Jhunna Mishra.
 4. Aman Kumar. S/o Jhunna Mishra, Claimant no. 2 to 4 are minor under the guardianship of their Father, Appellant no.- 1. All Resident of Mohalla - Gyan Joti School, Gola Road, P.S.- Rupaspur, District - Patna.

.... Appellant/s

Versus

1. Yuvraj Singh. S/o Lal Babu Singh. Resident of Mohalla - Gola Road, Sainik Colony, P.S.- Rupaspur, District - Patna.
2. Munendra Singh. S/o Devi Dayal Singh. Resident of Mohalla - Gola Road, Sainik Colony, P.S.- Rupaspur, District - Patna.
3. The National Insurance Co. Ltd., Through Divisional Manager, Division Office - II, Arunachal Building, Exhibition Road Chauraha, District - Patna.

.... Respondent/s

=====

Appearance:

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

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

3 03-08-2017 Both the learned counsel for the appellants and learned counsel for the respondent no. 3 the National Insurance Company Limited are present before the Court.

Both the learned counsel, requested for hearing this appeal on merit besides on limitation matter. Hence on the consensus of the parties, heard both the parties on the merit as well as on the limitation petition and perused the record.

There is delay of four months in filing this appeal. To



condone the aforesaid delay the appellants have taken the stand that as the wife of appellant no. 1 has died in road accident hence due to financial problem the appellants could not deposit the award amount and file the appeal earlier and after managing the same he obtained the award and after getting memo of appeal drafted they filed the appeal. There has been no deliberate laches on the part of the appellants. Considering the facts and circumstances of the case, the aforesaid delay is hereby condoned and the appeal is admitted.

This appeal has been filed assailing the judgment and award dated 23.06.2014 and 04.7.2014 respectively passed by Additional District Judge-VII-cum-MACT, Patna only for enhancement of the compensation amount.

From perusal of the record, it appears that the learned Tribunal has awarded Rs. 2,000/- in the head of funeral expenses, Rs. 2500/- in the head of loss of estate and Rs. 5000/- towards loss of consortium, total amounting to Rs. 9500/- under the aforesaid heads.

Considering the prevailing economic era and price inflation, in my considered opinion, the aforesaid consolidated amount must be Rs. 2,00,000/-. The deceased happened to be tailor i.e. skilled labourer, hence her income is considered Rs.



5,000/- per month i.e. 60,000/- (sixty thousand) per annum. As the deceased had died leaving behind her three children as her legal heirs and representative, hence $\frac{1}{3}^{\text{rd}}$ of the aforesaid income will be deducted as the personal expenses of the deceased which she would have made had she been alive. Deducting the aforesaid personal income of the deceased, the loss of dependency comes to Rs. 40,000/- per annum. The deceased was aged about 27 years old at the time of death, so I think it appropriate and proper to adopt the multiplier of 18 as per second schedule of the M.V. Act. On applying the aforesaid multiplier the amount of compensation comes to Rs. 7,20,000/-. Beside the aforesaid compensation, Rs. 2,00,000/- is awarded towards other heads i.e. funeral expenses, loss of estate etc. on addition of aforesaid heads, the amount of compensation comes to Rs. 9,20,000/-. Out of the aforesaid amount, the respondent no. 3 has paid Rs. 4,41,500/- to the claimants. Hence, now the claimants are entitled to get rest amount of Rs. 4,78,500/-. The claimants are also entitled to get interest @ 7 % per annum on the aforesaid amount of compensation from the date of the award till its realization.

As the appellant no. 1 happens to be the husband of the deceased, thus he neither happens to be the dependant of the deceased nor comes under the category of the first class heir of



the deceased and her legal representative, hence he is not entitled to get the share in the aforesaid amount of compensation but as the appellant nos. 2 to 4 happen to be the minor daughters and son of the appellant no. 1, hence the aforesaid amount shall be paid to the appellant no. 1 who shall deposit the same in the name of the appellant-claimant nos. 2 to 4 in some fixed deposit scheme in nationalized bank of India to be renewed till they attain the majority and furnish the original TDR before the learned Tribunal.

With the aforesaid modifications, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J)

S.Sb/-

U			
---	--	--	--

