

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.535 of 2015

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1. Hirdya Nand Singh
2. Janardan Singh
3. Sahendra singh@Sahendra Kumar
4. Jitendra Singh@ Jitendra Kumar
5. Pintu Kumar (minor) under the guardianship of his eldest brother Hirdya Nand Singh
All S/o Late Dhan Bihari Singh, R/o Village-Nawada, P.O-Belwain, P.S. Karakat (Gorari) district-Rohtas.
At present residing at Village-Madanpur, Tote-Shiv Nath Bigha, P.O and P.S.-Madanpur, District-Aurangabad (Bihar).

.... Appellant/s

Versus

1. The National Insurance Company Ltd. through its Branch Manager, Branch Office Gaya Police Station Gaya District Gaya.
2. Sri Chhotelal Shankar son of Chunilal Shankar resident of village- Jamuhar, Police Station Dehri-on-Sone, District Rohtas.
3. Sri Manoj kumar son of Dular Bind resident of Village -Dhawdar, Police Station Sasaram, District Rohtas.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Singh
For the Respondent/s : Mr. Ashok Priyadarshi

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 22-11-2017

1. Learned counsel for the appellants prays for exemption from filing substitution petition for respondent no. 2 who happens to be owner of the offending vehicle and from taking step for issuance of notice upon respondent no. 3 who happens to be driver of the vehicle submitting that though aforesaid respondents had put their appearance before the learned lower court and filed their written statement, but subsequently, they disappeared and did not take part in



the proceeding and moreover, the award has been passed only against the respondent no. 1, National Insurance Company Ltd, hence, there is no need to take aforesaid steps as directed by the court vide order dated 03.11.2017.

2. In the facts and circumstances of the case, the appellants are exempted from taking aforesaid steps.

3. Heard learned counsel for the appellants and learned counsel for the respondent no. 1.

4. This appeal has been filed against the judgment dated 26.06.2015 and award dated 03.12.2015 passed by learned Adhoc Additional District Judge-IV-cum-Motor Vehicle Accident Claim Tribunal, Aurangabad in Claim Case no. 44 of 2006/ 15 of 2013 whereby the learned Tribunal allowing the claim petition filed by the appellants, directed the respondent no. 1 (National Insurance Company Ltd.) to pay final amount of compensation to the tune of Rs. 16,27,320/- to the claimants in their joint account along with simple interest @ 9% per annum from the date of *Admission* of the case i.e. on 02.11.2006 till the date of its realization.

5. Factual matrix of the case is that the Claim Case no. 44 of 2006/15 of 2013 was filed by the claimants under Section 166 of the M.V. Act on account of death of their father namely, Dhan Bihari Singh in the motor vehicle accident with the case in succinct



that on 30.08.2006 at about 07:30 P.M. the deceased Dhan Bihari Singh was proceeding to Madanpur for purchasing vegetable with his son Janardan Singh from his house. When he arrived near Khiriyawan More, driver of the Pick Up Van bearing registration no. BR-24-G-0398 driving it very rashly and negligently crushed the deceased by the said vehicle, who died on the way to hospital. Regarding the said accident, Madanpur P.S. Case no. 98 of 2006 was instituted under Sections 279 and 304A of the Indian Penal Code. The deceased was Accounts Clerk in Irrigation Department, Aurangabad and used to get Rs. 13,566/- per month as salary. He was aged about 51 years at the time of accident. He died leaving behind the claimants as his legal representatives and dependents.

6. The Opposite Parties put their appearance in the case and filed their written statement, but only opposite party no. 1 (National Insurance Company Ltd.) contested the case and rest two disappeared. The claimants adduced ocular and documentary evidence in buttress of their case.

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

8. Being aggrieved and dissatisfied with the aforesaid judgment and award, the appellants have preferred the present appeal



only assailing the quantum of compensation awarded by the learned Tribunal.

9. It is submitted by the learned counsel for the appellants that as the deceased was 51 years old at the time of accident and he was government employee, hence, 15% of the future prospect must be awarded and as he died leaving behind five sons as his legal representatives and dependents, the 1/5th of the income ought to have been deducted as his personal expenses instead of 1/3rd as deducted by learned Tribunal. It is further submitted that the compensation awarded in the conventional head is also not adequate.

10. On the other hand, learned counsel for the respondent no. 1 conceded the aforesaid demand of future prospect and deduction as personal expenses of the deceased in the light of verdict given by the Hon'ble Apex Court in *SLP (Civil) No. 25590 of 2014 National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*

11. On perusal of record, it appears that the learned lower court has assessed the income of the deceased as Rs. 18,890/- per month and his age 51 years at the time of accident. As the deceased was aged about 51 years at the time of accident and was government employee, hence, 15% of the aforesaid income i.e. Rs. 2833/- is awarded as future prospect. On addition of the aforesaid



head of income, total amount comes to the tune of Rs. 21723/- per month i.e. 2,60,676/- per annum. As the deceased died leaving behind five sons as his legal representatives and dependents, hence, 1/5th of the aforesaid income i.e. Rs. 52,135/- per annum 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 tune of Rs. 2,08,541/- per annum. As the deceased was aged about 51 years, hence, multiplier of 11 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 22,93,951/-. Besides the aforesaid amount of compensation, Rs. 15,000/- is awarded towards funeral expense and Rs. 15,000/- towards loss of estate in view of the judgment of Hon'ble Apex Court passed in *SLP (Civil) No. 25590 of 2014 National Insurance Company Ltd (supra)*. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 23,23,951/-. As the claimants have already received Rs. 50,000/- by way of ad-interim compensation, hence now they would be entitled to get the rest amount of compensation to the tune of Rs. 22,73,951/- along with interest at the rate of 6% per annum from the date of *Admission* of the claim case i.e. on 02.11.2006 till the date of its realization. Accordingly, the respondent no. 1 is directed to pay the aforesaid



amount of compensation to the tune of Rs. 22,73,951/- along with interest at the rate of 6% per annum from the date of *Admission* of the claim case i.e. on 02.11.2006 to the claimants after deducting the amount, if any paid, within two months from the date of receipt/production of a copy of this order.

12. As the claimant no. 5 happens to be minor son of the deceased, hence, the claimant nos. 2 to 4 are directed to deposit 1/5th share of the aforesaid amount in some Nationalized Bank of India having branch in the local area of the resident of the claimants in some fix deposit scheme renewable after every five years till attaining majority by the said minor. Accordingly, the impugned judgment and award passed by the learned lower court is modified and this appeal is disposed of.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24.11.2017
Transmission Date	N.A.

