

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.617 of 2014

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1. Sunaina Devi W/o Late Awadhesh Kumar Jha
 2. Madananand Jha S/o Late Chandrashekhar Jha
 3. Banarasi Jha W/o Madananand Jha
 4. Brindavan Jha S/o late Awadhesh Kumar Jha under guardianship of his mother
appellant no. 1 Sunaina Devi W/o late Awadhesh Jha R/o vill Kaithwar
(Dyodhi), P.S. Shakatpur Dist Darbhanga at present C/o Surydeo Rai, Club
Road, Mithanpura, Muzaffarpur

.... Appellant/s

Versus

1. Sujit Kumar, S/o Ram Lakhan Sahu (Owner), P.O. Ounsi, P.S. Biafi, Dist
Madhubani.
2. National Insurance Co. Ltd. Division Office, Motijheel, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhannjay Kumar No 2, Advocate

For the Respondent/s : Mr. Ashok Priyadarshi, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 08-12-2017

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

2. This miscellaneous appeal has been filed against the
judgment dated 01.08.2014 and award dated 12.08.2014 passed by the



6th Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 47 of 2008 whereby the learned Tribunal allowing the claim petition filed by the claimants directed the opposite party no.2-National Insurance Company Limited to pay residue amount of compensation to the tune of Rs. 7, 27, 500/- along with the interest at the rate of 6% per annum from the date of institution of the case.

3. Factual matrix of the case is that the appellants who happen to be the widow, parents and son of the deceased have filed claim case no. 47 of 2008 under Section 166 of the M.V. Act for awarding compensation on account of death of the deceased in the motor vehicle accident with the case in succinct that the deceased Awadhesh Kumar Jha was a teacher in Sarvodaya Uchcha Vidyalaya, Vengara, Madhubani. On 03.01.2008 at around 08:30 AM while he was proceeding to his school on bicycle through Benipatti-Rahika Main Road and when he arrived near the village Satarakha, a tractor bearing Registration No.BR-7E-7868 being driven rashly and negligently by its driver dashed him resultantly he died on the spot. Regarding the said accident, Rahika P.S. Case No. 01 of 2008 was registered under Sections 279, 304A and 427 of the Indian Penal Code. Awadhesh Kumar Jha was aged about 31 years at the time of accident and he used to draw Rs. 6000/- per month as salary from the



said vocation and earn Rs. 1000/- per month by private tuition.

4. The opposite parties put their appearance in the case and filed written statement. The claimants adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred this appeal.

7. It is submitted by learned counsel for the appellants that as the deceased was a teacher in Sarvodaya Uchcha Vidyalaya, Vengara, Madhubani, hence in view of the decision of the Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors** reported in **2017 (4) PLJR 261 (SC)**, future prospect ought to have been given on the income of the deceased.

8. On the other hand, it is submitted by learned counsel for the respondent no.2 that the deceased was not in permanent job rather he was a teacher on contract basis and his appointment was provisional and he was aged about 31 years at the time of accident, hence, in view of the aforesaid Judgment of the Hon'ble Apex Court, claimants are entitled to only 40% of the aforesaid income of the deceased as future prospect.



9. From perusal of the record, it appears that the deceased was a teacher in Sarvodaya Uchcha Vidyalaya, Vengara, Madhubani on contract basis and his appointment was provisional and he used to draw salary of Rs. 6000/- per month. The appellants have failed to substantiate any earning of the deceased by tuition. It is also evident from the record that the deceased was aged about 31 years at the time of accident. Hence, in view of the aforesaid verdict of the Hon'ble Apex Court given in National Insurance Company Ltd. (supra), 40% of the aforesaid income i.e. Rs. 2400/- per month is awarded as future prospect. On addition of the aforesaid future prospect, total income of the deceased comes to the tune of Rs. 8400/- per month i.e. Rs.1,00,800/- per annum.

10. From perusal of the record, it appears that the deceased has died leaving behind him his widow, mother and son who happen to be appellant nos. 1, 3 and 4 respectively as legal representatives and dependents. The appellant no.2, namely, Madananand Jha who happens to be the father of the deceased does not come under the category of the dependent of the deceased and he is not entitled to get any compensation.

11. As the deceased has died leaving behind him three legal representatives and dependents, hence $\frac{1}{3}^{\text{rd}}$ of the aforesaid income i.e. Rs. 33,600/- is deducted as his personal expense which he



would have made had he been alive. On deduction of the aforesaid personal expense of the deceased, the loss of dependency comes to the tune of Rs. 67,200/- per annum. As the deceased was aged about 31 years at the time of accident, multiplier of 16 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 10,75,200/- per annum. Besides the aforesaid amount of compensation, I think it proper and adequate to award Rs. 70,000/- towards conventional head in light of the judgment of Hon'ble Apex Court in National Insurance Company Ltd. (supra). On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 11,45,200/-. Claimants are also entitled to get interest at the rate of 6% per annum on the aforesaid amount of compensation from the date of filing claim petition till its realization. Accordingly, respondent no.2 - National Insurance Company Limited is directed to pay the aforesaid amount of compensation and interest thereon deducting the amount of compensation already paid by it under Section 140 M.V. Act to the appellants no.1, 3 and 4 within two months from the date of receipt/production of a copy of this order.

12. As the appellant no.4 happens to be minor son of the deceased, hence, appellant no. 1 who happens to be mother of the



said minor is directed to deposit the share of the aforesaid minor in the aforesaid amount of compensation and interest in some Nationalized Bank of India having its branch office 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. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and Award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.12.2017
Transmission Date	

