IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.950 of 2010

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1. Sita Devi, W/o Ramdut Ram (Deceased)
2. Rubi Devi, D/o Ramdut Ram.
3. Sanjay Dutt, D/o Ramdut Ram.
4. Mitranjan Kumar, S/o Ramdut Ram.
5. Chauriya Devi, W/o Permeshwar Ram, mother of the deceased.
6. Permeshwar Ram, S/o Jugeshwar Ram (Father of Deceased)
   All are residents of Village – Dayanatpur, P.S.-Bibhutipur, District-Samastipur.

.... Appellants

Versus

1. Kanaiya Prasad Singh, Resident of M.9, Old Housing Colony, Adityapur, T.S.R. at present residing at Vill + PO +PS-Singhiya, District-Samstipur.
2. Jawahar Lal, resident of Moh.-Kadamkuan, District-Patna
3. Branch Manager, National Insruance Company Limited, Hindustan Building, Jamshedpur, P.O.-Bistpur.

.... Respondent/s

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Appearance:
For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate.
For the Respondent No.3 : Mr. Ashok Priyadarshi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 13-10-2017

Heard learned counsel for the appellants and learned counsel for the respondent no. 3 on this appeal and perused the record.

2. This miscellaneous appeal has been filed against the judgment dated 10.06.2009 and award dated 04.07.2009 passed by the 1st Additional District Judge-cum-Motor Accident Claim Tribunal, Samastipur in Claim Case No. 02 of 2002 / 02 of 2008, whereby the learned Tribunal allowing the claim case directed the opposite party no.3-National Insurance Company Limited to pay the amount of compensation to the tune of Rs. 10,44,868/- after deducting Rs. 50,000/- already paid to the claimants along with the interest at the rate of 5% per annum from January 2005.

3. Factual Matrix of the case is that the claimants filed claim case no. 02 of 2002 /02 of 2008 under Section 166 of the Motor Vehicles Act for awarding compensation to the tune of Rs. 20,00,000/- on account of death of the deceased Ramdut Ram who happens to be husband of claimant no.1 and father of claimant nos. 2 to 6 in the motor vehicle accident with the case in succinct that on 11.11.2001 at about 09:50 AM, Ramdut Ram was travelling by a motorcycle bearing Registration No. BR 33A 0920 as a pillion rider. When the said motorcycle arrived near Chokha Pokhar Panchpur in front of Ara Machine, a Tata Mini bus bearing Registration No. BR 7P 5039 being rashly and negligently driven by its driver coming from opposite direction dashed the aforesaid motorcycle inflicting injuries to the riders of the motorcycle including Ramdut Ram and Ramdut Ram succumbed to his injury during the course of treatment. Regarding the said accident, Rosera P.S. Case No. 145 of 2001 was registered under Sections 279, 337 and 304A of the Indian Penal Code. The deceased was a government teacher and used to draw salary of Rs. 10,000/- per month. He was aged about 30 years at the time of his death.

4. Owner of the offending vehicle and the insurer put their appearance in the case and contested the case by filing written statement. The claimants also adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the impugned judgment and award, the claimants have filed the present miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the learned Tribunal has wrongly assessed the income of the deceased as Rs. 7613/- instead of Rs. 7926/- as evident from the salary certificate filed by the claimants marked as Exhibit-4 and also wrongly deducted 1/3rd of the income of the deceased as personal expense of the deceased which should be 1/4th of the income of the deceased as the deceased had died leaving behind him six legal representatives and dependents. Though the deceased was a permanent government employee, but the Tribunal has not awarded any future prospect which should be 50% of the income. Besides this, the amount of compensation awarded by the Tribunal under the traditional head is also quite inadequate and meager. Hence, the Judgment and award passed by the learned Tribunal is liable to be set aside.

8. On the other hand, it is submitted by learned counsel for respondent no.3 that the income of the deceased calculated by the learned Tribunal basing upon the salary certificate is correct. After the death of the deceased, the income is assessed only on the basic salary and dearness allowance and rest allowances like house rent allowance and medical allowance are not considered for the said purpose.

9. From perusal of the salary certificate filed by the claimants marked as Exhibit-4, it appears that the deceased was a permanent government employee and used to get basic salary of Rs. 5250/- and dearness allowance Rs. 2363/- and besides the aforesaid heads, he also used to get house rent allowance Rs.263/- and medical Allowance Rs. 50/-. But in my considered opinion, after demise of the employee, only basic salary and dearness allowance is to be considered for calculation of the income of the deceased and not the other allowances. On addition of the basic salary and dearness allowance, the income of the deceased comes to Rs. 7,613/- per month i.e. Rs. 91,356/- per annum. As the deceased was a permanent government employee, hence as per the case law laid down by Hon'ble Apex Court in Rajesh and Others V. Rajbir and Others reported in 2013 ACJ 1403, 50% of the aforesaid income i.e. Rs. 45678/- is awarded as future prospect. On addition of the aforesaid future prospect, the amount of compensation comes to the tune of Rs. 1,37,034/-. As the deceased had died leaving behind him his six legal representatives and dependents, hence 1/4th of the aforesaid income is deducted as personal expense of the deceased 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. 1,02,775/- per annum. As the deceased was aged about 30 years at the time of death, hence considering the price inflation and prevailing economic era and in view of the 2nd Schedule of Motor Vehicles Act, multiplier of 17 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 17,47,175/-. Besides the aforesaid amount of compensation, I think it proper and adequate to award Rs. 25000/- towards funeral expenses, Rs. 25000/- towards loss of estate and Rs. 25000/- towards loss of consortium and as the deceased has died leaving behind him five children, Rs. 50,000/- is awarded for depriving the children from love and affection of their father. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 18,72,175/-. Besides the aforesaid amount of compensation, I think it proper and adequate to award interest at the rate of 6% on the enhanced amount of compensation from January 2005 till its realization.

10. in the above facts and circumstances, respondent no. 3-National Insurance Company Limited is directed to pay the aforesaid amount of compensation and interest thereon to the appellants within two months from the date of receipt or production of a copy of this order. Accordingly, the impugned judgment and award passed by the learned Tribunal stands modified and this appeal stands allowed.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.10.2017
Transmission Date	