

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.699 of 2010

- =====
1. Parmeshwar Yadav, Son of Ishwar Yadav.
 2. Shiv Kumari Devi, W/o Sri Parmeshwar Yadav
Both resident of village – Karmine tola Beldar Bigha, P.S.-Amas, District-Gaya.
- Appellants

Versus

1. The United India Insurance Company Limited through its Divisional Manager, Divisional Office, A.P. Colony, near Asha Singh More, Gaya at & P.O.-Gaya, District-Gaya.
 2. Mr. Anuj Kumar, Son of Sri Ganesh Prasad Singh, resident of Mohalla-Ashok Nagar, Bhatbigha, P.S.-Rampur, District-Gaya.
- Respondents
- =====

Appearance :

For the Appellant/s : Mr. Arun Kumar Sinha, Advocate
For the Respondent/s : Mr. Rana Randhir Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 18-09-2017

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

2. From perusal of the record, it appears that the appeal against respondent no.2 stood dismissed for non-compliance of the peremptory order. Respondent no.2 happens to be the owner of the offending vehicle and respondent no.1 is the insurer of the said vehicle and by the impugned order the insurer-United India Insurance Company Limited has been directed to pay the amount of compensation to the claimants. Hence, dismissal of the appeal against respondent no.2 has no impact on this appeal against respondent no.1 and the appeal is maintainable.



3. This appeal has been filed against the judgment dated 22.02.2010 and award dated 21.04.2010 passed by the Additional District Judge-IV-cum-Motor Vehicle Accident Claim Tribunal, Gaya in Motor Accident Claim Case No. 114 of 2008 / 5 of 2010, whereby the learned Tribunal awarded the final compensation to the tune of Rs. 3,02,560/- along with interest at the rate of 8% per annum from the date of filing application till its realisation and directed the opposite party no.1- United India Insurance Company Limited to pay the aforesaid amount of compensation along with the interest to the claimants. Later on opposite party no.1 made payment of the same.

4. Factual Matrix of the case is that the claimants Parmeshwar Yadav and Shiv Kumari Devi who happen to be the parents of the deceased Satish Yadav have filed Motor Accident Claim Case No. 114 of 2008 / 05 of 2010 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 6,00,000/- along with interest @ 9% per annum with the case in succinct that his son Satish Yadav aged about 21 years was a Khalasi of a Truck bearing Registration No. BR-2A-4101 and used to earn Rs. 2500/- per month as salary and Rs. 20/- per day as meal allowance from the said vocation. On 12.05.2007, the said Satish Yadav along with the informant Kedar Yadav had gone to his Sarhu at village Arsi Khurda,



P.S.-Gurua and after taking meal, they went to Bhurha temple to attend the marriage ceremony. Kedar Yadav was standing near the temple while Satish Yadav went at Bhurha River Bridge Road and standing there and watching the people taking bath in the river. In the meantime, a Dumper bearing Registration No. JH 2B 8229 being driven rashly and negligently by its driver arrived from southern side and dashed Satish Yadav resulting into his death at the spot. The informant rushed at the place of occurrence and found the dead body of the deceased lying in the pool of blood. The driver of the dumper left the scene leaving the dumper at Mirchak Chowk. Regarding the said accident, Gurua P.S. Case No. 37 of 2007 was lodged under Sections 279 and 304A of the Indian Penal Code.

5. Both the Insurance company and the owner of the offending vehicle put their appearance in the said case and filed their respective written statements.

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

7. Being aggrieved and dissatisfied with the impugned judgment and award, the claimants have preferred this appeal.

8. It is submitted by learned counsel for the appellants that the deceased was a Khalasi of a truck bearing Registration No.



BR 2A 4101 hailing to Rambali Yadav and the said owner of the truck examined by the claimants as AW-4 has substantiated the factum of working of the deceased on his truck as a Khalasi and giving of Rs. 3100/- per month as salary to him. He has also proved the salary certificate issued by him in favour of the deceased marked as Exhibit-1. But the learned lower court turned down the aforesaid evidence of the claimants and assessed the income of the deceased as Rs. 2500/- per month merely on the ground that the said income of the deceased has been claimed by the claimants in their claim petition. The said finding of the learned Tribunal is not appreciable and correct. As by adducing evidence, the claimants succeeded to establish the income of the deceased more than that claimed by them. So the Tribunal ought to have granted the compensation considering the evidence adduced by the claimants.

9. On the other hand, learned counsel for the respondent no.1 submitted that as the appellants have themselves claimed income of the deceased as Rs. 2500/- per month in the claim petition, so they are entitled to get compensation on the basis of the said income and not on Rs. 3100/- per month and the learned Tribunal has rightly awarded the compensation considering the income of the deceased as claimed in the claim petition.

10. From perusal of the record, it appears that the



appellants in their claim petition have claimed the income of the deceased as Rs. 2500/- per month and Rs. 20/- per day as meal allowance. By examining the owner of the truck on which the deceased was working as Khalasi and filing the salary certificate marked as Exhibit-1, they have succeeded to establish the income of the deceased as Rs. 3100/- per month. As the owner of the said vehicle examined in this case as AW-4 has himself deposed before the Court that he used to give Rs. 3100/- per month as salary to the deceased.

11. As the Motor Vehicle Act is the beneficial legislation and the appellants have succeeded to establish the income of the deceased as Rs. 3100/- per month i.e. more than the claimed amount of Rs. 2500/- per month as salary, in my considered opinion, there is no bar in assessing the compensation on the income more than claimed by the appellants in the claim petition.

12. Considering the aforesaid income of the deceased as Rs. 3100/- per month, the annual income comes to Rs. 37,200/- per annum. As the deceased has died leaving behind his two legal representatives who happen to be the appellants in this case, hence, 1/3rd of the aforesaid income would be deducted as his personal expense which he would have made had he been alive. After deduction of the aforesaid personal expense of the deceased, the loss



of dependency comes to the tune of Rs. 24,800/-. As the appellants were aged about 44 and 43 years respectively, hence, as per the 2nd Schedule of the M.V. Act, the multiplier of 15 is adopted to work out the amount of compensation. By applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 3,72,000/-. As from the record, it appears that the appellants have already received Rs. 50,000/- by way of ad-interim compensation, hence, on deduction of the aforesaid amount already received by the appellants, final amount of compensation comes to the tune of Rs. 3,22,000/- . As the offending vehicle is insured by respondent no.1-United India Insurance Company Limited, hence, respondent no.1 is directed to pay the aforesaid amount of compensation along with the interest @ 8% per annum from the date of filing of the application till its realisation to the appellants.

13. Accordingly, the impugned judgment and award passed by the learned Tribunal is modified and this appeal is disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	23.09.2017
Transmission Date	23.09.2017

