IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.816 of 2011

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1. Kanhaiya Lal Late Aasdeo Singh @ Ashutosh Singh Lakhanpura, P.S. Bakhtiarpur, Distt. Patna
2. Ram Raj Kumar Late Aasdeo Singh @ Ashutosh Singh Lakhanpura, P.S. Bakhtiarpur, Distt. Patna
3. Pooja Kumari D/O Late Aasdeo Singh @ Ashutosh Singh Lakhanpura, P.S. Bakhtiarpur, Distt. Patna
4. Rupam Kumari D/O Late Aasdeo Singh @ Ashutosh Singh Lakhanpura, P.S. Bakhtiarpur, Distt. Patna

.... Appellant/s

Versus

1. Rajesh Singh Sri Nagendra Bahadur Singh House No. 931, Awas Vikas Colony, Mahadev Jharkhandi Road, Gorakhpur (U.P.)
2. Firoz Ahmad Jamil Ahmad
3. Regional Manager, R.O The Oriental Insurance Company Ltd. Pirmohani, Kadamkuan, Patna
4. The Branch Manager, The Oriental Insurance Company Ltd. Fahran Apartment, S.V. Road, Jageshwari (W) Mumbai

.... Respondent/s

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Appearance:
For the Appellant/s : Mr. Sudhir Kumar Bijpuria, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 29-08-2017

Heard learned counsel for the appellants and learned counsel for the respondent nos. 3 and 4 in this appeal. No one turned up before the court on behalf of respondent nos. 1 and 2 despite service of notice.

2. This appeal has been filed against the judgment dated 22.01.2011 and award dated 28.07.2011 passed by the learned Additional District Judge-VI-cum-Motor Accident Claim Tribunal, Patna in Claim Case No. 117 of 2007, whereby awarding the final amount of compensation to the tune of Rs. 2,18,500/- along with interest at the rate of 6% per annum from the date of filing of the claim case till its realization, opposite party no.3-Oriental Insurance Company Limited was directed to pay the aforesaid amount of compensation and interest thereon with liberty to recover the same from the owner of the offending vehicle.

3. Factual Matrix of the case is that the claimants who happen to be the sons and daughters respectively of one Sona Devi have filed Claim Case No. 117 of 2007 under Section 166 of the Motor Vehicles Act for awarding compensation to the tune of Rs. 4,00,000/- with the case in succinct that on 10.10.2006, Sona Devi was proceeding to her village Lakhanpura and as soon as she arrived near the petrol pump, in the meantime, a bus bearing registration no. UP 53T 8544 driven by its driver rashly and negligently dashed her resultantly she died on the spot. Regarding the said accident, Bakhtiyarpur P.S. Case No. 255 of 2006 was lodged under Sections 279, 304A and 201 of the Indian Penal Code. The deceased was running dairy business and she used to vend milk and earn Rs. 4,000/- per month from the said vocation. Opposite party nos. 1 and 2 of the case did not put their appearance in the case despite service of notice and hence, the case proceeded against them *ex parte*, while the opposite party nos.3 and 4 (Oriental Insurance Company Ltd.) contested the case by filing written statement.

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

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

6. It is submitted by learned counsel for the appellants that the learned lower court has assessed the age of the deceased as 50 years, but it wrongly adopted the multiplier of 11 to work out the amount of compensation instead of 13. As per the Sarla Verma v. DTC Case, 2009 (6) SCC 121 and Schedule II of the Motor Vehicles Act, multiplier in the case as per the age of the deceased should be 13. It is further submitted by the learned counsel for the appellants that the deceased was a milk vendor and was running a dairy business and used to earn Rs. 4,000/- per month from the said vocation, but the learned lower court has assessed the income of the deceased as Rs. 3000/- per month and assessed the compensation on the basis thereof. It is further submitted that the amount of compensation awarded by the learned lower court towards loss of estate and funeral expenses is not adequate.

7. On the other hand, learned counsel for respondents nos. 3 and 4 advocating the correctness and validity of the impugned judgment and award has submitted that the learned lower court has rightly assessed the age of the deceased as 50 years and income of the deceased as Rs. 3000/- per month. A co-ordinate Bench of this Court in Miscellaneous Appeal No. 914 of 2011 filed by the respondents against the impugned judgment and award challenging the age of the deceased and its liability to pay compensation has also found the age of the deceased as 50 years. It is further submitted by learned counsel for the aforesaid respondents that the deceased was aged about 50 years which means that she had completed 50 years of age. So multiplier of 11 should be applied and the learned lower court has rightly applied the aforesaid multiplier. It is further submitted that the compensation awarded in the conventional head by the learned lower court is also proper and adequate.

8. From perusal of the record, it appears that after considering the ocular and documentary evidence adduced by the appellants, the learned lower court has assessed the age of the deceased as 50 years at the time of her death. A co-ordinate Bench of this Court in Miscellaneous Appeal No. 914 of 2011 has also held the age of the deceased as 50 years. Moreover, CW-1, namely, Ram Raj Kumar who happens to be the son of the deceased has also stated in Para-14 of his cross-examination that his mother was aged about 50 years at the time of accident and CW-4, namely, Kanhaiya Lal who also happens be the son of the deceased in his examination-in-chief has stated that his mother was aged about 49 years at the time of accident. In view of the aforesaid facts and circumstances, I find and hold that the deceased was aged about 50 years at the time of her death. As per Schedule II of the Motor Vehicles Act and prevailing economic era and price inflation at the relevant time, in my considered opinion, it is proper to adopt multiplier of 13 to work out the amount of compensation.

9. From perusal of the record, it appears that the claimants have failed to substantiate their case that the deceased was a milk vendor and used to earn Rs. 4000/- per month from the said vocation by adducing cogent and reliable ocular and documentary evidence. As the claimants have failed to adduce cogent and convincing ocular and documentary evidence regarding income of the deceased as claimed by them, learned lower court has rightly assessed the income of the deceased as Rs. 3000/- per month. I also find it proper and appropriate to consider the income of the deceased as Rs. 3000/- per month and Rs. 36,000/- per annum in consonance with the finding of the learned lower court. As the deceased has died leaving behind her four legal representatives who happen to be the appellants in this case, hence, 1/3rd of the aforesaid income is to be deducted towards personal expenses of the deceased which the deceased would have made had she been alive. After deduction of the aforesaid personal expenses of the deceased, the amount of loss of dependency comes to the tune of Rs. 24,000/- and by applying multiplier of 13, the amount of compensation comes to the tune of

Rs. 3,12,000/-. The learned lower court has awarded the compensation of Rs. 2500/- towards loss of estate and Rs. 2000/- towards funeral expenses which, in my considered opinion, is not adequate and proper. Considering the expenses meted out by the claimants in the funeral ceremonies of the deceased and price inflation, in my considered opinion, Rs. 25000/- towards funeral expenses and Rs. 25000/- towards loss of estate would be proper and adequate. Besides aforesaid amount of compensation, I also think it proper to award Rs. 25,000/- towards love and affection of which the appellants have been deprived due to sudden sad demise of their mother in the accident. On addition of the aforesaid heads of the compensation, total amount of compensation comes to the tune of Rs. 3,87,000/-. As the appellants have already received Rs. 50,000/- as ad-interim compensation, therefore, after deducting the aforesaid amount, the appellants are now entitled to get Rs. 3,37,000/-.

10. As there was violation of terms and conditions of policy as the owner was not having valid permit and the driver of the offending vehicle was not possessing valid license, agreeing with the findings of the learned lower court, I also find that the Insurance Company is not liable to pay the aforesaid amount of compensation. However, as the said finding has not been assailed by the Insurance Company and as the Motor Vehicle Act happens to be beneficial legislation and the claimants happen to be the beneficiary and the third party to the contract of insurance policy entered into by the Insurance Company and owner of the offending vehicle, to subserve the ends of justice, the Insurance Company is directed to pay the aforesaid amount of compensation and the interest thereon at the rate of 6% per annum from the date of filing of the claim case till its realization to the claimants/appellants within two months. However, the Insurance Company would be at liberty to recover the said amount of compensation and interest thereon from the owner of the offending vehicle.

11. The impugned judgment and award passed by the learned lower court is accordingly modified and this appeal is disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	04.09.2017
Transmission Date	