

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Miscellaneous Appeal No.7 of 2011

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Ram Sajjan Devi, w/o-Ramekbal Singh, resident of village and P.O.-Morsand, P.S.-Runnisaidpur, District-Sitamarhi, at presently residing Mhalla-Zeromile, P.S.-Ahiyapur, District-Muzaffarpur.

.... .... Appellant/s

Versus

1. Sri Randhir Kumar, s/o-Ramchandra Prasad, Resident of house No.32, Ward No.21, Nechhari Anchal, P.S.-Dumra, District-Sitamarhi,
2. The Divisional Manager, The Oriental Insurance Company Ltd., Kalambagh Road, Aghoria Bazar, P.S.-Kazi Mohammedpur, District-Muzaffarpur.

.... .... Respondent/s

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#### Appearance :

For the Appellant/s : Mr. MUKESH PRASAD SINGH, Advocate

For the Respondent No.2: Mr. Ashok Priyadarshi, Advocate

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

**ORAL JUDGMENT**

**Date: 11-12-2017**

1. Heard the learned counsel for the appellant and the learned counsel for the respondent No.2. None turn up for respondent No.1 despite of service of notice.

2. This Misc. Appeal has been preferred against the judgment dated 18.09.2010 and Award dated 30.09.2010 passed by VIIth Addl. District Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No.26 of 2008 whereby the learned Tribunal directed the opposite party No.2, Oriental Insurance Company Ltd, to pay compensation to the tune of Rs.1,69,500/-along with interest @ 6 per cent per annum from the date of filing of claim case till its realization to the claimant.



3. The factual matrix of the case is that the claimant filed Claim Case No.26 of 2008 under Section 166 Motor Vehicle Act for awarding compensation on account of death of her son, namely, Santosh Kumar Singh in the motor vehicle accident with the case in succinct that on 1.1.2008, the deceased was proceeding to Runnisaidpur market on motor cycle as pillion rider and as soon as motor cycle arrived near Katra more, a truck bearing Registration No.BR.06G/2853 being driven rashly and negligently by its driver dashed the said motorcycle and due to the said dash, Santosh Kumar and another person became badly injured. Santosh Kumar Singh was rushed to PHC where seeing his condition precarious the doctor referred him to S.K.M.C.H. Muzaffarpur for specialized treatment and the doctor of S.K.M.C.H. forwarded him to PMCH, Patna where during the course of treatment, Santosh Kumar Singh succumbed to his injuries on 2.1.2008. Regarding said incident, Runnisaidpur P.S. Case No.02 of 2008 was instituted. The deceased was aged about 16 years at the time of accident and used to do private work and earn Rs.2000/- per month from said vocation.

4. The opposite party No.1, owner of the offending vehicle did not appear in the case, hence the case proceeded ex.-parte against him while the opposite party No.2, insurance company filed its written statement. Claimant adduced ocular as well as documentary



evidences in support of her case. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid Judgment and Award.

5. Being aggrieved and dissatisfied with the aforesaid judgment and Award, the claimant has filed this Misc. Appeal.

6. It is submitted by learned counsel for the appellant that deceased was working as labourer in the sweet meat shop and was earning was Rs.2000/- per month from the said vocation but the learned Court ignoring the aforesaid case of the appellant and her evidence regarding the same has assessed the notional income of the deceased as Rs.15,000/- per annum. It is further submitted that multiplier adopted by the learned Tribunal for working out the amount of compensations is also less as instead of 16, it should be 18. It is further submitted that the compensation awarded in other traditional head, i.e., loss of estate, funeral expenses is also inadequate.

7. On the other hand, it is submitted by learned counsel for the respondent-insurance company that the amount of compensation awarded by the learned Tribunal is quite adequate and proper. It is also submitted that the claimant is not entitled to get any compensation in the head of love and affection. It is also submitted that instead of  $\frac{1}{3}^{\text{rd}}$  as deducted by learned Tribunal half of the



income of the deceased should have been deducted as personal expenses of the deceased.

**8.** From perusal of the record, it appears that A.W.1 and A.w.2 adduced by the appellant have unanimously stated that the deceased was working as labourer in sweet meat shop and used to earn Rs.2000/- per month from the said avocation. The respondent has not adduced any evidence in its rebutel. Hence the earning of the deceased is considered as Rs.2000/- per month, i.e., Rs.24,000/- per annum. Out of the aforesaid income  $1/3^{\text{rd}}$  i.e., Rs.8000/- is deducted as personal expenses of the deceased which he would have made had he been alive as the deceased has died leaving behind claimant as his sole legal representative and dependent. On the aforesaid deduction the loss of dependency comes to Rs.16000/- P.A. As the deceased was aged about 16 years at the time of accident, multiplier of 18 is adopted to work out compensation and on applying aforesaid multiplier the amount of compensation comes to Rs.2,88,000/-. Besides the aforesaid amount, I think it proper and adequate to award is Rs.15000/- towards funeral expenses and Rs.15,000/- towards loss of estate. On addition of the aforesaid heads of compensation, the total amounts of compensation comes to Rs.3,18,000/-. Besides the aforesaid amount of compensation, the claimant is also entitled to get interest @ 6 per cent per annum on the aforesaid amount of



compensation from the date of filing of claim case till its realization.

9. As the claimant happens to be mother of the deceased, there is no need of depositing any part of the aforesaid compensation in fixed deposit scheme, instead entire amount of compensation and interest should be paid to her to cater her all sorts of needs.

10. Accordingly, this Miscellaneous Appeal is disposed of with the aforesaid modification in judgment and Award of the learned Tribunal.

**(Prakash Chandra Jaiswal, J)**

Sanjeev/-

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