

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.329 of 2014

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Parvati Devi wife of Late Rahul Prasad Resident of village - Nijhara, P.S. - Singori, District - Patna.

.... Appellant

Versus

1. Mahashankar Prasad son of Late Babu Lal Prasad Resident of Ramgadh Bajar, P.S. - Ramgadh, District - Motihari (owner of Scorpio Jeep No. BR-01-AP-5171)
2. National Insurance Company Limited, through its Divisional Manager, Division Office No. 1, Arunachal Bhawan, Exhibition Road, Patna (Insurer of Scorpio Jeep No. BR-01-AP-5171). Regd. Office-3 Middleton Street, P.O. Box No. 9229 Kolkata 70007
3. Prince Kumar
4. Khusi Kumari
5. Saloni Kumari, all three son and daughters of Late Rahul Prasad, resident of village Nijhara, P.S. Singori, District Patna.
6. Rajeshwar Prasad, Son of Late Ramanand Ram
7. Sakuntala Devi, wife of Rajeshwar Prasad, Both resident of village Nijhara, P.S. Singori, District Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mrs. Sarita Bajaj, Adv.
For Respondent No. 2 : Mr. Ashok Kumar, Adv. (AOR No. 01688)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

5 20-07-2017 I.A. No. 4053 of 2014 has been filed under Section 5 of Limitation Act for condoning the delay in filing this appeal.

Heard learned counsel for the appellant as well as learned counsel appearing for the respondent no. 2 and in my view, this appeal may be disposed of on admission stage itself.

The present miscellaneous appeal has been preferred against the judgment and award dated 29.01.2013 (award signed on 26.07.2013) passed by learned Additional District Judge, 7th



Patna in Claim Case No. 211 of 2007 by which the learned Tribunal took the notional monthly income of the deceased as Rs. 3000/- and on that basis calculated the quantum of compensation and fixed the compensation amount as Rs. 4,41,500/-

The grievance of the appellant is that the Tribunal committed error in calculating the compensation amount because admittedly, the deceased was a driver and the owner of the offended vehicle was examined before the Tribunal as witness and stated that he was paying salary to the deceased as Rs. 4500/- per month but the Tribunal rejected the aforesaid statement of owner of the vehicle without any valid reason. Learned counsel for the appellant further submitted that at least the compensation amount should be fixed taking uncontroverted evidence of owner of the vehicle but I am not in agreement with the aforesaid submission because before the Tribunal the counsel of appellant accepted that the income of the deceased be calculated on daily wages/ notional income and on the basis of aforesaid admission of learned counsel of the claimant, the Tribunal calculated the compensation amount and passed the award. However, it is informed that appellant has already received the compensation amount and after receiving the compensation amount she filed the present appeal beyond the period of limitation.



Therefore, on the basis of aforesaid discussions, I do not find any ground to entertain this appeal and accordingly, the present miscellaneous appeal as well as I.A. No. 4053 of 2014, which has been filed for condoning the delay, stand dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

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