IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.180 of 2014

Sunaina Devi W/O Late Hari Kishore Rai R/O Village Hanuman Nagar, P.S. Gaighat, District Muzaffarpur.

.... Appellant/s

Versus

1. Smt. Asha Devi W/O Ashok Poddar
2. Bajaj Allainz General Insurance Co. Ltd. GE Plaza, Airport Road, Yarvada Pune.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Dhannjay Kumar No 2, Adv.
For the Respondent/s : Mr. Durgesh Kumar Singh, Adv.
Mr. Rajesh Chandra Narayan, Adv.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 03-11-2017

Heard learned counsel for the appellant and learned counsel for the respondent no. 2.

2. This appeal has been filed against the judgment dated 28.09.2013 and award dated 30.10.2013 passed by the learned Adhoc Additional District Judge V-cum-Motor Accident Claim Tribunal, Muzaffarpur in Claim Case No. 185/2008, whereby learned Tribunal allowing the claim petition of the appellant directed the respondent no. 2 Bajaj Allianz General Insurance Company Ltd. to pay compensation to the tune of Rs. 3,63,500 along with interest of 9% per annum to the claimant.

3. Factual matrix of the case is that appellant Sunaina Devi filed Claim Case No. 185/2008 along with her minor children under Section 166 of the Motor Vehicle Act on account of death of her

husband namely, Hari Kishore Rai @ Kishore Rai in a motor vehicle accident with the case in succinct that on 28.04.2008 her husband was coming from Chapra by Bolero vehicle bearing registration no. BR7P/2113. When the said Bolero arrived at Kanhara village at N.H.-57 at around 5.00 p.m., driver of the said vehicle dashed it with static truck parked on the road side. Three commuters of the said vehicle including her husband succumbed to their injuries on the spot. Regarding the said accident Bochaha P.S. Case No. 60/08 was instituted under Section 279, 304A of the Indian Penal Code. The deceased was running Clothes shop and was earning Rs. 3,000/- per month from the said business.

The owner and insurer of the aforesaid vehicle put their appearance in the court and filed their written statement.

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

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

6. It is submitted by learned counsel for the appellant that the deceased was a young person aged about 39 years and was a businessman and only earning member of his family. He was having bright career and future, but Learned Tribunal has not awarded any

amount on future prospect.

7. On the other hand, learned counsel for the respondent no. 2 submitted that amount of compensation as awarded by the Tribunal is quite adequate and proper and more than the amount claimed by the appellant. Hence, the aforesaid judgment and award does not suffer from any illegality and impropriety and is liable to the sustained.

8. From perusal of the record, it appears that the deceased was aged about 39 years at the time of accident and was running a Clothes business in the village and was earning Rs. 3,000/- per month as also assessed by the learned Tribunal. Hence, in view of the Constitution Bench judgment of the Hon’ble Apex Court in S.L.P(C) No. 25590/14 (National Insurance Company Ltd. vs. Pranay Sethi and Ors.) in which Hon’ble Apex Court has been pleased to award future prospect to the self employed person, 40% of the aforesaid income i.e. Rs. 1,200/- per month is awarded as future prospect. Thus, the income of the deceased come to the tune of Rs. 4,200/- per month i.e., Rs. 50,400/- per annum. As the deceased has died leaving behind his wife and nine children. $1/5^{th}$ of the aforesaid income is deducted as personal expenses of the deceased which the deceased would have made had he been alive. On deduction of aforesaid personal expenses, the loss of dependency comes to the tune of Rs. 40,320/- per annum. As the deceased was aged about 39 years at the time of death hence the multiplier of 15, is adopted, as per Schedule II of the Motor

Vehicles Act and as per prevailing economic era to work out the amount of compensation. By applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 6,04,800/-. Besides the aforesaid compensation, the claimants are also entitled to get Rs. 29,500/- towards other traditional heads, as awarded by the learned Tribunal and not assailed by the respondents. Hence on addition of aforesaid heads the total amount of compensation comes to the tune of Rs. 6,34,300/-.

9. Besides, the aforesaid amount of compensation the respondent no. 2 shall also be liable to pay interest @ 6% per annum on the differential amount of compensation from the date of this order till its payment. As there are nine minor children of the deceased the appellant is directed to deposit the share of said minors in amount of compensation in some nationalized Bank of India having its branch office in local areas in some fixed deposit scheme renewable after every five years till attainment of majority by them. Accordingly, this miscellaneous appeal is allowed and the impugned judgment and award passed by the learned Tribunal is modified.

(Prakash Chandra Jaiswal, J)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.11.2017
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