IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.365 of 2015

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1.Jubaida Khatun, W/o Late Md. Kaushar @ Kaushar Sah
2. Md. Sagar, (minor) S/o Late Md. Kaushar @ Kaushar Sah
3. Asgari Khatoon, W/o Md Yunus Sah
4. Yunus Sah, S/o Late Rasid Sah Serial No.2 is minor son of Late Md. Kaushar @ Kaushar Sah under the guardianship of their mother- appellant No.1 All are resident of village and P.O.- Jakhim, P.S.- Rafiganj, District- Aurangabad.

.... Appellant/s

Versus

1. The National Insurance Company Ltd. through its Divisional Manager, Divisional Office, Shanti Market, North of Gandhi Maidan, Gaya, At & P.O.- Gaya, District- Gaya. (Insurer of Bus No.-2 K/7855)
2. Mr. Surendra Singh, S/o Late Gaya Singh resident of Mohalla- Babuganj Rafiganj, District- Aurangabad. (Owner of Bus No. BR-2K/7855)

.... Respondent/s

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Appearance :
For the Appellant/s :
For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 06-07-2017

Having heard learned counsel for the parties, it is seen that in the matter of assessment of compensation with regard to death of the deceased who was a Tailor, the learned Tribunal has treated him to be an unskilled labourer and assessed his salary at Rs. 114/- per day. However, from the evidence that has come on record, particularly, the statement of A.W. 4 wife of the deceased, A.W.-5 owner of the building where the deceased was carrying out the establishment of a Tailoring Shop and the statement of A.W. 6 a worker employed in his Tailoring House, it is clear that the deceased was a Tailor and had also produced the receipt-book which goes to show that he was carrying out the aforesaid activities and Exhibit-1 the receipt-book containing receipt from Page No. 501 to 600 even though produced and proved has been disbelieved by the learned Tribunal.

In my considered view, the learned Tribunal has not relied upon the statement of these witnesses and in doing so, a patent error and perversity has crept into the Award in question. The evidence adduced by the claimant did show that the deceased was working as a Tailor and, therefore, it should have been held that he is a skilled employee and as per the minimum wages applicable for the relief period when the accident took place, the earnings of the deceased should have been assessed at Rs. 300/- per day and, accordingly, the earnings of the deceased which come to Rs. 9,000/- per month and after deducting 1/3rd towards self expense and after adding all the benefits granted by the Tribunal, as is evident from Paragraph 13, the amount of compensation would come to Rs. 12,48200/-. This enhanced amount of compensation towards loss, a consortium of Rs. 1,00,000/- and funeral expenses of Rs. 25,000/- be paid by the Insurance Company along with interest at the rate of 6 per cent per annum, as awarded by the Tribunal after deducting the amount already paid. The amount be deposited with the Tribunal within 60 days.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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