IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.677 of 2013

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1. Rajiya Devi Wife Of Late Ramashish Mistri Resident Of Village - Mithapur, P.S. - Konch, District - Gaya.
2. Satish Kumar Son Of Late Ramashish Mistri Resident Of Village - Mithapur, P.S. - Konch, District - Gaya.
3. Ajit Kumar Son Of Late Ramashish Mistri Resident Of Village - Mithapur, P.S. - Konch, District - Gaya.
4. Amerjeet Kumar Son Of Late Ramashish Mistri Resident Of Village - Mithapur, P.S. - Konch, District - Gaya.
5. Tetari Kumari D/O- Late Ramashish Mistri Resident Of Village - Mithapur, P.S. - Konch, District - Gaya.

.... Appellant/s

Versus

1. The Oriental Insurance Company Ltd. Through Divisional Manager, Near Rai Kashi Nath More, Gaya, District - Gaya.
2. Mundrika Yadav Son Of Late Basudeo Yadav Village - Ghohi, Math, Kobar, P.S. - Aati, District - Gaya (Owner Of The Tata 407 Registration No. Jh 02a 1709).

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Ravindra Kumar Sinha, Advocate
For the Respondent/s : Mr. Sanjay Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 13-07-2017

Having heard learned counsel for the parties, and on consideration of the facts and circumstances of the case, it is seen that the appellants are the legal heirs of the deceased Ramashish

Mistri who was said to be working as a Raj Mistri (mason) and died in the accident that took place on 30th of January, 2010.

The fact of the accident and death of the person concerned is not in dispute. The only dispute is with regard to calculation of his earning, the dependency and grant of benefit based on assessment of loss of consortium, funeral expenses and other expenses.

The learned Tribunal has considered the notional income of the appellant to assess the compensation mainly on the ground that no documentary evidence with regard to his earning has been produced. However, while doing so, the learned Tribunal lost sight of the fact that all the witnesses who were examined by the claimant consistently gave a statement to say that he was working as a Raj Mistri (a Mason) and earning Rs.150/- daily. When there is no rebuttal to this evidence, merely because there was no documentary evidence, in the absence of circumstances to show that the statement of the witnesses, oral in nature, cannot be believed, the same has to be accepted and, therefore, the wage of the deceased has to be assessed at Rs.150/- per day which comes to Rs.4,500 per month. To that extent, there has to be enhancement of the compensation. That apart, the deceased has five legal heirs who are claimants herein.

Claimant No.1 is the wife, claimant No.2 is the son who is 20 years of age and claimant Nos.3, 4 and 5 are the minor children. If the claimant No.2, who is a minor, is left out, the remaining legal heirs would be four in number i.e. wife and three children and applying the law laid down in the case of Smt. Sarla Verma And Others vs. D.T.C. And Another, AIR 2009 SC 1304, by deducting 1/4th of the amount for personal expenses of the deceased. To that extent also in calculation of the dependency of the 1/3rd, the Tribunal has committed an error. Finally, the Tribunal has only awarded a sum of Rs.5,000/- towards consortium, 5,000/- towards funeral expenses and Rs.5000/- for shock for untimely death, which should be Rs.1,00,000/- in view of the judgment in Rajesh And Ors. Vs. Rajbir Singh And Ors., (2013) 9 SCC 54.

Accordingly, the Tribunal is directed to re-calculate the compensation by assessing the income of the deceased at Rs.4,500/- per month and after deducting 1/4th of the amount towards self expenses and thereafter adding a sum of Rs.1,00,000/- together for the loss of consortium, shock due to premature death and expense in funeral after deducting the paid amount along with interest as awarded by the Tribunal.

The records be sent back to the Tribunal. Within sixty days all the calculation be made and notified to the Insurance Company by the Tribunal.

Office to return the statutory amount.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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