

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.86 of 2014

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1. Mintu Devi W/O Late Uma Shankar Rai
2. Ravindra Kumar (Minor) S/O Late Uma Shankar Rai
3. Vikki Kumar (Minor) S/O Late Uma Shankar Rai
4. Suman Kumari (Minor) D/O Late Uma Shankar Rai
5. Kiran Kumari (Minor) D/O Late Uma Shankar Rai (Appellant No. 2 To 5 Are Minors Under The Guardianship Of Their Mother, Appellant No. 1) All Resident Of Village + Post Office Terasiya, P.S. Gangabridge, District Vaishali.

.... Appellant/s

Versus

1. 1 (A) Minakshi Planners And Constructions Pvt. Ltd., 37, Raghunath Apartment, Bailey Road, Patna.
2. (B) Minakshi Singh W/O Anuj Yadav Village Mizinagar, P.S. Mahua, District Vaishali, Director, Minakshi Planners And Constructions Pvt. Ltd.
3. Nawal Yadav S/O Umesh Yadav Resident Of Village Raghunathpur, P.S. Bhgwanpur, District Vaishali.
4. 3 Oriental Insurance Company Ltd. Through (A) Divisional Manager, Oriental Insurance Company Ltd., Divisional Office, Gandhi Chowk, Konhara Ghat Road, Hajipur.
5. (B) Branch Manager, Oriental Insurance Company Ltd., City Branch Office, 1/1, South Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ARCHANA SINHA @ ARCHANA Shahi

For the Respondent/s : Mr. BIMLESH KUMAR JHA

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 05-12-2017

Heard the learned counsel for the appellants and the learned counsel for the respondent no.3. No one turned up on behalf of respondents no.1 and 2 despite putting appearance in the case.

2. This appeal has been filed against the Judgment dated 02.07.2013 and award dated 20.07.2013 passed by Ad hoc Additional District Judge-II-cum-M.A.C.T., Hajipur, Vaishali, in Claim Case No.78 of 2008 whereby learned Tribunal allowing the claim petition in part directed the O.P.No.3 Oriental



Insurance Company Ltd. to pay compensation to the tune of Rs.4,10,510/- along with simple interest of 8% per annum from the date of filing claim petition till realization deducting the amount of compensation already paid under Section 140 of the Motor Vehicles Act to the claimants.

3. Factual matrix of the case is that the appellants claimants filed Claim Case No.78 of 2008 under Section 166 of the Motor Vehicles Act for awarding compensation on account of death of their husband and father respectively, namely, Uma Shankar Rai with the case in succinct that on 22.09.2008 at 9:15 A.M. said Uma Shankar Rai was passing near Pillar No.1 of Gandhi Setu, in the meantime, a truck bearing Registration No. BR-1GA-0018 being driven negligently and rashly coming from rear side dashed him inflicting serious injury to him. He was rushed to Sadar Hospital, Hajipur but he succumbed to his injury during course of treatment. Regarding said accident Hajipur P.S. Case No. 328 of 2008 was instituted under Sections 279/338/304(A) of the I.P.C. The deceased was aged about 30 years at the time of accident and was doing business of dairy and agriculture and used to earn Rs.8000/- per month from the aforesaid vocation.

4. Opposite parties put their appearance in the case and filed their respective written statements. The claimants adduced ocular and documentary evidence in buttress of their case.

4(a). After hearing the parties and perusing the records, learned Tribunal passed the impugned Judgment and Award as detailed in the earlier paragraph.

5. Being aggrieved and dissatisfied with the aforesaid Judgment and Award, the claimants have preferred the present appeal.

6. It is submitted by the learned counsel for the appellants that the



deceased was agriculturist and he was also doing business of dairy and he used to earn Rs.8000/- per month. The appellants have filed documents regarding possessing of 12 acres of land by the deceased. By filing supplementary affidavit the appellants have further submitted that the deceased used to do farming of banana on the said land. But the learned Tribunal wrongly observed the deceased to be earner of Rs.89/- per month as unskilled labour. It is further submitted that as the deceased happened to be self employed person the appellants would also be entitled to future prospect of the aforesaid income which has not been provided by the learned Tribunal. Funeral expense awarded by the Tribunal is also very meager.

7. On the other hand, it is submitted by the learned counsel for the respondent no.3 that claimants/ appellants were directed to file documents regarding land possessed by the deceased but they did not file the same and have failed to substantiate that the deceased was doing farming of banana and used to earn Rs.8000/- per month out of the said farming and filed affidavit in this appeal regarding nature of the aforesaid farming by way of additional evidence which is not sufficient to substantiate the same. It is further submitted that as the claimants failed to substantiate the income of the deceased, the learned Tribunal rightly considered his income at Rs.89/- per month and, accordingly, awarded the compensation which is quite adequate and proper.

8. From perusal of the record it appears that that appellants have taken the case that the deceased was possessing around 12 acres of land and was doing farming of banana on the said land. He has filed an affidavit in the appeal regarding the aforesaid farming. They have filed documents regarding possessing of the aforesaid land by the deceased in the court below. But mere an affidavit to



the effect of nature of the farming carried out by the deceased in my considered opinion is not sufficient to establish the aforesaid case of the claimants as they have not filed other documents like pass book of bank account and document regarding vending of banana etc. But as the deceased was having around 12 acres of agricultural land and was a farmer, he must have been getting some earning from the said land by cultivating the same. The claimants have failed to substantiate running of the dairy business by the deceased.

9. In view of the aforesaid facts and circumstances of the case, and prevalent economic era at the relevant time of the accident in the year 2008 and price inflation, I consider the income of the deceased to the tune of Rs.4000/- per month, i.e., Rs.48,000/- per annum. Besides it as the deceased happened to be the self employed person and was aged about 30 years at the time of death 40%, i.e., Rs.19,200/- of said income is awarded as future prospect. On addition of future prospect, the total income comes to Rs.67, 200/- P.A. As the deceased died leaving behind his five legal representatives and dependants, hence, 1/4th of the aforesaid income i.e. Rs. 16,800/- is deducted as personal expenses of the deceased which he would have made had he been alive. On aforesaid deduction loss of dependency comes to Rs.50,400/- P.A. As the deceased was aged 30 years at the time of accident, multiplier of 17 is adopted to work out the compensation. On applying the aforesaid multiplier the amount of compensation comes to Rs.8,56,800/- Besides the aforesaid compensation, I think it proper and adequate to award Rs. 70,000/- towards other conventional head. On addition of the aforesaid heads of compensations the total amount of compensation comes to Rs.9,26,800/- As the learned Tribunal has awarded interest at the rate of 8% per annum and the said interest has not been assailed by the Oriental Insurance Company Ltd by filing an appeal, hence, the claimants are entitled to get interest



at the rate of 8% per annum on the aforesaid compensation from the date of filing of claim petition till its realization.

10. As the claimants No.2 to 5 happens to be minor sons and daughters of the deceased, hence, claimant no.1 is directed to deposit share of the aforesaid minors in the aforesaid amount in some nationalized bank of India having its branch office in the area of the residence of claimants in some fixed deposit scheme renewal after five years till attaining the majority by the said minors. Accordingly, this appeal is disposed of with the aforesaid modification in the judgment and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

AnilKrSinha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.12.2017
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