IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.219 of 2015

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1. Sakina Khatoon @ Sakina W/o Md. Islam
2. Mustafa S/o Md. Islam
3. Murtuza S/o Md. Islam
4. Mumtaz D/o Md. Islam
5. Mustaq S/o Md. Islam
6. Heena D/o Md. Islam
7. Mukhtar S/o Md. Islam
8. Ravina D/o Md. Islam
9. Mister S/o Md. Islam
10. Saida D/o Md. Islam Appellant No. 3 to 10 are minor under the guardianship of their mother, Appellant No.-1, All Resident of village Etwarpur Sisaula, P.S. Lalganj, District Vaishali. .... Appellant/s

Versus

1. Sudhish Ray S/O Sahdeo Ray, Resident of Village- Dhamaun P.S.- Patory, District Samastipur
2. United India Insurance Company Ltd. through Branch Manager, United India Insurance Company Limited, Ramashish Chowk, Hajipur. ... . Respondent/s

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Appearance :
For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Adv.
For the Respondent/s : Mr. Kaushal Kishore, Adv.
Mr. Ashok Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 23-08-2017

Both the learned counsel for the appellants and learned counsel for the respondents are present before the Court.

Both the learned counsel, requested for hearing this appeal on merit along with the limitation matter. Hence, on the consensus of the parties, heard both the parties on the merit as well as on the limitation petition and perused the records.

There is delay of seven days in filing this appeal. To condone the aforesaid delay, the appellants have taken the stand that as the appellant no. 1 was ill so there was some delay in sending the records to the learned advocate of the High Court for preparing the memo of appeal and after preparation of the memo of appeal, the said appeal has been filed. There is no deliberate laches made by the appellants. Considering the facts and circumstances of the case and in the interest of justice the aforesaid delay is hereby condoned and the appeal is admitted.

This appeal has been filed assailing the judgment dated 24.11.2014 and award dated 02.01.2015 passed by learned Additional District Judge-VI-cum-M.A.C.T., Hajipur in claim case no. 114 of 2009 whereby the learned tribunal allowing the aforesaid claim case directed Opposite Party No. 2 United India Insurance Company Ltd. to pay compensation to the tune of Rs. 5,62,300/- to the claimants within two months and in case of non-payment of compensation within the stipulated period it will be liable to pay interest @ 8% P.A. thereon.

The factual matrix of facts is that the claimants have filed the Claim Case No. 114 of 2009 u/s 166 M.V. Act for awarding compensation to the tune of Rs. 600000/- with the case in succinct that on 18.09.2009 at about 7 A.M. Md. Islam was crossing the road to open his tailoring shop, suddenly a passenger vehicle bearing Registration No. BR31C-8297 being driven rashly and negligently by its driver ran over him resulting into his death. The deceased was a tailor and was running a tailoring shop and his income was Rs. 8000/- per month from the said vocation. He died leaving behind claimants who are the wife, sons and daughters respectively as his heirs and legal representatives. For the said accident, Bidupur P.S. Case No. 308 of 2009 was instituted under Section 279, 304A of the Indian Penal Code against the driver and the charge-sheet was also submitted. The opposite parties of the said case filed their written statement. The claimants adduced oral and documentary evidence in support of their case while no evidence was adduced by the opposite parties.

After hearing the parties and perusing the record, the learned Tribunal passed the impugned judgment dated 24.11.2014 and allowed the aforesaid claim case awarding compensation in favour of the claimants and against opposite party no. 2 as detailed in earlier paragraph.

Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have filed this Misc. Appeal only for enhancement of quantum of compensation.

From the perusal of the impugned judgment, it appears that the learned Tribunal has assessed the income of the deceased as 150/- per day i.e. Rs. 4500/- per month. In my considered opinion, as the deceased was a tailor and skilled labourer, the said income must be Rs. 60,000/- per annum. Admittedly, there are 10 dependents of the deceased. Learned counsel for the appellants submitted that the learned court below has deducted the aforesaid income of the deceased by 1/5th as personal expenses of the deceased. As there were 10 dependents of the deceased so no amount should have been deducted as personal expenses of the deceased because the earning of the deceased was too little to cater the need of such a huge family.

On the other hand, learned counsel for the respondent citing judgment in the case of **Sarla Verma Vs. Delhi Transport Corporation reported in (2009) 6 SCC 121** has submitted that the deduction towards personal and living expenses of the deceased, should be 1/5th where the number of dependent family members exceeds six.

Considering the facts and circumstances of the case in my considered opinion as there are 10 dependents of the deceasd 1/5th of the income of deceased be deducted as personal income of the deceased which the deceased would have spent had he been alive. Deducting the aforesaid personal income of the deceased, the loss of dependency comes to Rs. 48,000/- per annum. The deceased was aged about 45 years old at the time of death, so I think it appropriate and proper to adopt the multiplier of 14 as per second schedule of the M.V. Act to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to Rs. 6,72,000/-.

From the perusal of the impugned judgment, it appears that the learned court below has awarded Rs. 2500/- in the head of funeral expenses and Rs. 5000/- in the head of loss of estate. Considering the prevailing economic era and price inflation at the relevant time, in my considered opinion, the consolidated amount towards the aforesaid heads and loss of consortium etc. must be Rs. 2,00,000/-. On addition of the aforesaid heads, the amount of compensation comes to Rs. 8,72,0000/-. Out of the aforesaid amount, the respondent no. 2 has paid Rs. 6,12,000/- to the claimants. Hence, now the claimants are entitled to get rest amount Rs. 260000/-. Claimants are also entitled to get interest @ 6% per annum on the aforesaid total amount of compensation from the date of the award till its realization.

As the appellant nos. 2 to 10 happens to be the minor sons and daughters of the appellant no. 1, hence the aforesaid amount shall be paid to the appellant no. 1, who shall deposit the same in the name of the appellant-claimant nos. 2 to 10 in some fixed deposit scheme in nationalized Bank of India to be renewed till they attained the majority and furnish the original TDR before the learned Tribunal.

With the aforesaid modifications, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2017
Transmission Date	