

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.711 of 2014

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1. Sunita Devi W/o Late Subhash Rai
 2. Sangita Kumari D/o Late Subhash Rai, minor daughter represented through Appellant No. 1 her mother and natural guardian Both are permanent residents of Vill. & P.O. - Angaru, P.S. - Baunsi, Dist.- Banka, Presently residing at Vill. - Gonarchak, P.O. - Khagara, P.S. - Sahuparbatta, District - Bhagalpur
- Appellants.

Versus

1. The Branch Manager, The Oriental Insurance Co. Ltd., Jage Shanti Market Complex, Netaji Subhash Road, Deoghat (Jharkhand) – 814112.
2. The Divisional Manager, The Oriental Insurance Co. Ltd., Kachahari Road, Bhagalpur – 812001.
3. Siya Devi W/o Mannu Rai Resident of Village & P.O. - Angaru, P.S. - Baunsi, Dist. – Banka.
4. Bhola Choudhary S/o Late Sadhu Choudhary Resident of Village & P.O. - Angaru, P.S. - Baunsi, Dist. – Banka.

.... Respondents.

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Appearance :

For the Appellant/s : Mrs. Sarita Bajaj, Adv.

For the Respondent/s : Mr. Bimlesh Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 18-12-2017

Heard learned counsel for the appellants and learned counsel
for the respondents on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 11.07.2014 and award dated 23.08.2014 passed by the Additional District Judge-I-cum-Motor Accident Claim Tribunal-I, Naugachia, Bhagalpur (hereinafter in short referred to as the ‘Tribunal’) in Clam Case No.144 of 2009, whereby the learned Tribunal allowing the claim petition directed the opposite party nos.1 and 2-Oriental Insurance Company Limited (hereinafter in short referred to as the ‘Insurance Company’) to pay compensation to the



tune of Rs.2,73,500/- along with interest at the rate of 7% per annum from the date of filing of the claim case till its realization.

3. Factual matrix of the case is that claimants filed Claim Case No.144 of 2009 under Section 163 (A) of the M.V. Act for awarding compensation to the tune of Rs.5,39,500/- on account of death of their husband and father respectively, namely, Subhash Rai in a motor accident with the case in succinct that on 17.09.2008 a tractor bearing registration no.JH-15 D-1252 with trailer was transporting the stone chips and cement. On the trailer (Dala) of the said tractor the deceased Subhash Rai who was working as Khalasi-cum-Labourer on the said tractor was sitting for unloading the aforesaid articles at the destination. The driver of the said tractor was driving it very rashly and negligently. When the said tractor arrived near at about 7 kilometer south of Marchun Jungle, P.S. Bausi, District Banka on Bausi-Hansidha main road the deceased fell down from the said trailer and crushed by its wheel and succumbed to his injury on the spot. Regarding the said accident Bausi P.S. Case No.118 of 2008 was instituted under Section 279 and 304-A of the Indian Penal Code. The deceased was aged about 27 years at the time of accident and was working as labourer on the said tractor and used to earn Rs.3500/- per month from the said vocation.

4. The opposite parties who happen to be the owner,



Insurance Company and mother of the deceased put their appearance and filed their respective written statement. The mother of the deceased by filing written statement has not made any claim in the compensation to be awarded in favour of the claimants. The claimants adduced their ocular as well as documentary evidence. The Insurance Company also examined its Investigator and one document being investigation report, marked as Ext.A, in buttress of its case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants preferred this appeal.

7. It is submitted by learned counsel for the appellants that the deceased was aged about 27 years. Though the appellants have not filed any documentary evidence in substantiation of their aforesaid case but all the witnesses examined by them have divulged the age of the deceased as 27 years at the time of accident but the learned Tribunal ignoring the aforesaid evidence of the appellants and relying on the postmortem report of the deceased has wrongly considered the age of the deceased as 32 years. It is also submitted that as per the second schedule of the M.V. Act the multiplier of 18 should be applied but the learned Tribunal has wrongly applied multiplier of 11



without any basis. The amount of compensation given towards other conventional heads is also quite inadequate and meager.

8. On the other hand, it is submitted on behalf of respondent nos.1 & 2 that as the appellants failed to adduce documentary evidence regarding the age of the deceased, the learned Tribunal relied on the postmortem report filed by the appellants themselves and has rightly assessed the age of the deceased as 32 years as given in the said postmortem report. It is further submitted that as the deceased was aged about 32 years at the time of accident, hence as per the recent judgment of the Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others [Special Leave Petition (Civil) No.25590 of 2014] multiplier of 16 would be applied to work out the compensation.

9. From perusal of the record, it appears that admittedly the deceased died in the motor vehicle accident. As per the case of the appellants the deceased was aged about 27 years at the time of accident, while as per the case of respondents he was aged about 31 years at the relevant time. From perusal of the impugned judgment, it appears that the witnesses examined by the appellants have given different age of the deceased as C.W.1 has disclosed the age of the deceased as 28 years and C.W.2 as 27 years. In view of the aforesaid discrepancy, the learned Tribunal appears to have relied upon the



postmortem report filed by the appellants to consider the age of the deceased. In the said postmortem report the doctor conducting the autopsy of the cadaver of the deceased has assessed the age of the deceased as 32 years at the time of accident. The said assessment of the age made by the doctor appears to be more genuine and authentic. Moreover, the said document has been filed by the appellants themselves and it is their own evidence. Hence, in the facts and circumstances of the case, I find that the deceased was aged about 32 years at the time of accident.

10. It is the case of the appellants that the deceased was working as Khalasi-cum-labourer and was sitting on the trailer (Dala) to unload the cement and stone chips on the destination and used to earn Rs.3500/- per month from the said vocation. Appellants have failed to substantiate that the deceased was Khalasi of the said tractor and the income of the deceased by adducing convincing evidence. Hence, the notional income of the deceased has rightly been considered by the learned Tribunal at Rs.3000/- per month i.e. Rs.36,000/- per annum. As the deceased has died leaving behind appellants and her mother as dependents, hence $\frac{1}{3}^{\text{rd}}$ of the aforesaid income of the deceased i.e. Rs.12,000 per annum is deducted as personal expenses of the deceased which he would have made had he been alive. After deducting the same the loss of dependency comes to



Rs.24,000/- per annum. In view of the verdict of the Hon'ble Supreme Court in the case of Pranay Sethi (supra) the multiplier of 16 is adopted to work out the compensation and applying the said multiplier, the amount of compensation comes to Rs.3,84,000/-. Besides the aforesaid compensation, I also think it appropriate to award Rs.70,000/- towards other conventional heads. On addition of the aforesaid head of compensation the total amount of compensation comes to Rs.4,54,000/-. The appellants are also entitled to get interest at the rate of 7% per annum on the aforesaid amount from the date of filing of the claim petition till its realization as awarded by the learned Tribunal and not assailed by the respondents. The respondent-Insurance Company is directed to pay the aforesaid amount of compensation along with interest after deducting the amount already paid under Section 140 of the M.V. Act within two months from the date of receipt/production of a copy of this order. As the appellant no.2 happens to be minor daughter of the deceased, hence appellant no.1, who happens to be the mother of said minor, is directed to deposit her share in the aforesaid amount of compensation and interest thereon in the name of the aforesaid minor in some Nationalized Bank of India having branch in the local area of the residence of the appellants in some fix deposit scheme renewable after every five years till attaining majority by the said minor.



11. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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