IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.790 of 2014

1. Kranti Devi W/o Late Bodhan Manjhi @ Satish Manjhi
2. Chandan Kumar S/o Late Bodhan Manjhi @ Satish Manjhi
3. Guriya Kumari D/o Late Bodhan Manjhi @ Satish Manjhi
4. Chandani Kumari D/o Late Bodhan Manjhi @ Satish Manjhi
5. Shiv Nandan Kumar S/o Late Bodhan Manjhi @ Satish Manjhi
6. Most. Panma Devi W/o Late Mungeshwar Manjhi, appellant No. 2 to 5 are monir sons and daughters of Late Bodhan Manjhi @ Satish Manjhi under the guardianship of their mother, All are resident of village Kothwara, P.S. Dobhi, P.O. Hardawan, Duistrict- Gaua. (Claimant No. 1 to 6).

.... 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 Dumpher / Hywa No. BR - 26 E 5904)
2. Mrs. Sanju Devi W/o Arun Kumar Singh resident of Village - Nagar, P.O. and P.S.- Hunterganj, District- Chatra. (Owner of Dumpher / Hywa No. BR- 26 E 5904)

.... Respondent/s

Appearance :
For the Appellant/s : Mr. Mukesh Prasad Singh, Adv
For the Respondent/s : Mr. Raj Kumar Singh Vikram, Adv

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 06-07-2017

<u>Re.:-Interlocutory Application No. 7046 of 2015</u>

Heard learned counsel for the parties and keeping in view the reasons indicated in the interlocutory application, the delay in filing of the appeal being reasonably explained is condoned.

<u>Re.:-MA. No. 790 of 2014</u>

This is a Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation awarded.

This is the claimants appeal for enhancement of compensation awarded by the Additional Motor Accident Claim Tribunal, Adhoc-III, Gaya in Claim No. 2 of 2013. The claimants are the wife, minor children and widowed mother of the deceased Bodhan Manjhi @ Satish Manjhi who died in the road accident in question on 26.09.2012 claiming that the deceased was working as a Raj Mistri (mason) with the A.W. 3 was aged 30 years and looking to the size of the family dependent upon him, the claim in question was filed claiming compensation of rupees 20 lacs along with the interest. Based on the oral evidence came on record and after holding that neither the employer A.W. 3 nor his wife A.W. 2 have produced any documentary evidence to show that the claimant was a Raj Mistry(mason) earning Rs. 300/- per day, learned Court below held that the claimant is an unskilled labour and based on the Minimum Wages Act notified under the Minimum Wages Act assessed his earning at Rs. 151 per day and thereafter applying the multiplier of 17 looking to the age of the claimant at 30 after deducting 1/3 of his personal expenses, assessed the compensation at Rs. 4,91,936./- to be paid along with simple interest of 8 per cent per annum from the date of compensation assessed. Various other amounts granted towards funeral expenses of Rs. 5000/- and loss of estate RS. 2000/- and a sum of Rs. 50,000/- paid by way of an interim award, has been deducted.

Having heard learned counsel for the parties, this Court finds that the learned Court below has committed an error in assessing the earning of the deceased and calculating the dependency. The witnesses examined by the claimant, A.W.-3, the employer of the deceased has clearly testified that deceased was working as a Raj Mistry (mason) under him and he was paying him Rs. 300/- per day. However, statement of this witness has been disbelieved only on account of the fact that he has not produced any document in support thereof. Similar statement has been recorded by the wife of the deceased AW- 1 whose statement had also been disbelieved on similar consideration.

In my considered view, once there was oral evidence by the wife and the employer and there was no rebuttal or challenge to the same, learned Court below should have accepted the same. Accordingly, it is held that in assessing the income of the deceased at Rs. 151 per by holding him an unskilled labour, illegality has been committed by the learned Court below. That apart, the deceased left behind the wife, two minor sons, two minor daughters and one widowed mother dependable upon him who was 70 years of age. That being the size of the family, the dependency should have been calculated by deducting ¼ towards self expenses.

In view of the above, the appeal is allowed in part. The monthly income of the deceased is assessed as Rs. 300/- per day and Rs. 9000/- per month and the actual dependency comes to Rs. 108,000/-. After deducting ¼ from the aforesaid dependency, the compensation comes to Rs. 81,000/- per year and after applying the multiplier of 17, the compensation comes to Rs. 13,77,000/-. After adding the amount towards funeral expense of Rs. 5000/- and loss of estate of Rs. 2000/- the amount comes to Rs. 13,77,000 + 7000 =13,84,000/-. The claimants are further held entitled to a sum of Rs. 1,00,000/- towards loss of estate and loss of consortium taken together and after adding the same, the compensation comes to Rs. 13,84,000 + 1,00,000 = 14,84,000/-. However, as the tribunal has already awarded Rs. 50,000/- as interim compensation, hence after deduction, the compensation comes to Rs. 14,84,000-50,000 = 14,34,000/-.

Accordingly, this appeal is allowed and a compensation is enhanced from Rs. 4,91,936/- to Rs.14,34,000/- with interest at the rate of Rs. 8% per annum on the enhanced amount with effect from the date as directed by the Tribunal. The enhanced amount of compensation after deducting Rs.50,000/- as interim compensation already paid to the applicant, shall be deposited by the Insurance Company within 60 days from the date of receipt of the records. The records shall be transmitted to the trial Court for necessary disposal.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13/07/2017
Transmission Date	NA