IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.949 of 2010

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1. Prabha Devi Sah, wife of Late Awadh Bihari Sah.
2. Bishal Kumar Sah, Son of Late Awadh Bihari Sah.
   Both resident of Mohalla – Teli Basti, P.O. + P.S.+ District-Kisanganj.

.... Appellants

Versus

1. Raj Kishore Singh, Son of Bhoma Singh, resident of village + P.O.-Nawanagar, District-Ara at present village Saguna Manpura, P.O.-Danapur Cant, District-Patna.
2. Dinanath Tiwary, Son of Late Rachha Tiwary, Resident of Village – Gusejlakha, P.S.-Dinara, District-Rohtas.
3. Branch Manager, New India Assurance Company Limited through chairman cum Managing Director, Head Office, New India Assurance Company Limited, 87, Mahatma Gandhi Road Fort, Bombay-400023.
4. New India Assurance Company Limited thorugh D.M. Jawaharlal Nehru Road, Cross Bhawan, North of Gandhi Maidan, Patna.
5. Most. Chilhani, W/o Late Tinkauri Sah
6. Ram Mohan Sah, S/o Late Tinkauri Sah
7. Kaushalya Devi, W/o Late Tinkauri Sah, resident of Mohalla – Teli Basti, PO + PS –Kishanganj.

.... Respondent/s

Appearance:

For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate.

For the Respondent No.3 : Mr. Shailendra Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 13-10-2017

Heard learned counsel for the appellants and learned counsel for the respondent nos. 3 and 4 on this miscellaneous appeal and perused the record.

2. This miscellaneous appeal has been filed against the judgment dated 09.03.2009 and award dated 28.03.2009 passed by 1st Additional District Judge-cum-Motor Accident Claim Tribunal, Samastipur in Claim Case No. 08 of 1989, whereby the learned Tribunal directed the New India Assurance Company Limited to make payment of compensation to the tune of Rs. 1,79,500/- along with simple interest at the rate of 6% per annum from the date of filing of the application to the claimants with liberty to recover the aforesaid amount of compensation from the owner of the offending vehicle after its payment.

3. Factual Matrix of the case is that the claimants filed Claim Case No. 08 of 1989 under Section 166 of the Motor Vehicles Act for awarding compensation to the tune of Rs. 5,00,000/- on account of death of Awadh Bihari Singh who happens to be the husband and father respectively of the claimants with the case in succinct that on 07.02.1989 at 7 AM, Awadh Bihari Singh proceeded from Kishanganj by bus bearing registration no. BEQ 8139 for Patna. The driver of the aforesaid vehicle was driving the vehicle very rashly and negligently and on 08.02.1989 at 03:45 AM, the said vehicle turned turtle as the driver took napping and lost control over it resulting into inflicting injuries to several passengers and death of Awadh Bihari Singh on the spot. Regarding the said accident, Mushrigharari P.S. Case No. 08 of 1989 was lodged under Sections

279, 337 and 304(A) of the Indian Penal Code. The deceased was aged about 35 years at the time of death. He was a trained teacher and was also running a grocery shop and used to earn Rs. 2000/- per month from the said business.

4. Opposite party no.1 who happens to be the owner of the offending vehicle and Opposite party nos. 3 and 4-New India Assurance Company Limited put their appearance in the case and contested the case by filing written statements.

5. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as mentioned in the earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award, the claimants have filed this miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the deceased was a trained teacher and was also running a grocery shop and used to earn Rs. 2000/- per month from the said business. The appellants have substantiated the aforesaid case by adducing consistent ocular evidence, but learned Tribunal turned down the aforesaid case of the appellants merely on the ground that the documents regarding running of the said business by the deceased and his earning have not been filed by the claimants and assuming the notional income of the deceased as Rs. 15000/- per annum awarded the amount of compensation which is quite inadequate. Besides it learned Tribunal has also granted inadequate compensation towards other traditional heads. Hence, the impugned judgment and award is liable to be set aside.

8. On the other hand, the learned counsel for respondent nos. 3 and 4 submitted that as the appellants have failed to file any document such as license of the shop, bill and voucher for purchasing articles for the shop, etc., the learned Tribunal has rightly passed the impugned judgment and award which is liable to be upheld.

9. From perusal of the record, it appears that the appellants have assailed the impugned judgment and award merely on the ground of quantum of compensation. As per the case of the appellants, the deceased Awadh Bihari Singh was a trained teacher and used to run grocery shop in the village and earn Rs. 2000/- per month from the said business. In substantiation of their aforesaid case, in ocular evidence they have examined four witnesses. From perusal of the deposition of the witnesses, it appears that the appellant no.1 Prabha Devi examined in this case as AW-1 has stated in her examination-in-chief that her husband used to run a shop and earn Rs. 2000/- per month from the said shop. The said witness has not been cross-examined by the respondents on the aforesaid aspect of the case. Likewise from perusal of the testimony of Lalu Pandey (AW-3), it appears that in his examination-in-chief he has stated that the deceased used to run grocery shop and earn Rs. 2000/- per month. The said witness has also not been cross-examined on the factum of running of grocery shop by the deceased rather only on the income of the deceased. Though the appellants have not filed any documentary evidence in substantiation of their aforesaid case, but as AW-1 has not been cross-examined on her statement regarding running of shop and earning Rs. 2000/- per month from the said business and AW-3 has not also been cross-examined on his statement of running of grocery shop by the deceased, hence the aforesaid statement of AW-1 and AW-3 stands admitted to the respondents. In the aforesaid facts and circumstances, I find and hold that the deceased was running a grocery shop and was earning Rs. 2,000/- per month i.e. Rs. 24,000/- per annum from the said business.

10. As the deceased has died leaving behind him two legal representatives and dependents, hence 1/3rd of the aforesaid income is deducted as personal expense of the deceased which he would have made had he been alive. On deduction of the aforesaid personal expense of the deceased, the loss of dependency comes to the tune of Rs. 16,000/- per annum. As the deceased was aged about

35 years at the time of death, hence as per 2nd Schedule of the Motor Vehicles Act, multiplier of 17 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 2,72,000/-.

11. From perusal of the record, it appears that the learned Tribunal has awarded Rs. 2000/- towards funeral expenses, Rs. 5000/- towards loss of consortium and Rs. 2500/- towards loss of estate. But considering the price inflation and prevailing economic era, the aforesaid amount of compensation awarded under the aforesaid heads appears to be quite meager and inadequate. I think it proper and adequate to award Rs. 25000/- towards funeral expenses, Rs. 25000/- towards loss of consortium and Rs. 25000/- towards loss of estate. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 3,47,000/-. Besides the aforesaid amount of compensation, I think it proper and appropriate to award interest at the rate of 6% on the aforesaid amount of compensation from the date of filing of the case till its realization.

12. In the facts and circumstances of the case, respondent nos. 3 and 4- New India Assurance Company Limited is directed to pay the aforesaid amount of compensation and interest thereon to the claimants within two months from the date of receipt or production of a copy of this order with liberty to recover the aforesaid amount of compensation and interest from the owner of the offending vehicle after its payments to the claimants. Accordingly, the impugned judgment and award passed by the learned Tribunal stands modified and this appeal stands allowed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.10.2017
Transmission Date	