IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.749 of 2012

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1. Md. Abrar Bhatt S/O Late Khodadin Bhatt
2. Md. Abulaish Bhatt S/O Late Khodadin
3. Sadre Alam Bhatt (Minor) Aged About 12 Years S/O Late Khodadin Bhatt
4. Md. Gulam (Minor) Aged About 10 Years S/O Late Khodadin Bhatt
5. Md. Haidar Bhatt Aged About 5 Years S/O Late Khodadin Bhatt
   Resident Of Village Mohari, P.O. Kamrouli, P.S. Tariyani, District Sheohar.

.... Appellant/s

Versus

1. Raj Deo Paswan S/O Late Kushun Paswan Resident Of Village Rusulpur Salem, P.O. Bhikanpur, P.S. Ahiyapur, District Muzaffarpur.
2. The Divisional Manager Oriental Insurance Co. Ltd. Daya Complex, Kalam Bagh Road, Aghoriya Bazar, Muzaffarpur.

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Sunil Kumar Pandey, Advocate
For the Respondent/s : Mr. Bimlesh Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date: 06-07-2017

Delay in the filing of the appeal is condoned.

Interlocutory Application No.380 of 2016 stands allowed and disposed of.

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

Deceased Khodadin Bhat died in vehcile accident on 17.07.2008. The legal heirs of the deceased, namely, the appellants herein, made a claim of Rs.2,59,500/- on the ground that late Khodadai Bhat was 55 years of age. He was working as a labourer used to get Rs.3,000/- per month and by claiming loss of dependency at

Rs.2,50,000/-, loss of estate at Rs.2,500/- and loss of loves and affection at Rs.5000/-, and expenses on funeral at Rs.2000/-. The total claim comes at Rs.2,59,500/- along with interest at the rate of 10% per annum.

However, the learned Tribunal on the basis of evidence and materials that came on record assessed earning of deceased at notional income as contemplated under Schedule II of the Motor Vehicles Act, 1988 and after deducting 1/3rd towards personal expense awarded a compensation of Rs.80,000/- after assessing loss of estate at Rs.2500/-, loss for loss and affection at Rs.5000/-, and Rs.2000/- for funeral expenses. Accordingly, total compensation was awarded at Rs.89,000/-.

Having heard learned counsel for the parties and on going through the materials that came on record, I am of the considered view that in the matter of assessing the earning of the deceased, the learned Tribunal has committed an error. The deceased was working as a labourer and looking to the wages for the period fixed under the Minimum Wages Act, 2008, the monthly income should have been assessed at Rs.3,000/- per month. That apart, considering the fact that the out of five claimants, three are only minor and dependent upon the earning of the deceased, namely three minor sons, the dependency should have been assessed by deducting 1/4th towards self expense. Accordingly, by applying the multiplier of 13 to the income, the total compensation would come to Rs.3,51,000.

Accordingly, this appeal is allowed and a compensation is enhanced from Rs.89,000/- to Rs.3,51,000/- with interest at the rate of Rs.6% 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)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2017
Transmission Date	