

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.807 of 2013**

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1. Lal Babu Prasad @ Lal Bahadur Prasad S/O Sri Shiv Das Rai.
  2. Sanju Devi W/O Lal Babu Prasad @ Lal Bahadur Prasad Both.  
Both are Resident Of Village- Nayay Nagar, Judge Colony, Jamaluddin Chak,  
Police Station- Khagaul, District- Patna. .... Appellants.

Versus

1. Jai Prakash, S/o Sri Satyawan Prasad, resident of Village- Naya Gawn,  
Gulzarbagh, Patna City, Police Station- Alamganj, Di Strict- Patna.
2. Ramesh Kumar @ Ramesh Vishwakarma S/O Late Ram Lakhan Vishwakarma  
Resident of Village- Bihri, Police Station- Pipra, District- Patna.
3. The United India Insurance Company Limited through its Divisional Manager,  
Divisional Office-I, Laxmi Apartment, Times of India Building, Fraser Road,  
District Patna.

.... Respondents.

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**Appearance :**

For the Appellants : Mr. Rajesh Kumar, Adv.

For the Respondent No.3 : Mr. Ashok Priyadarshi, Adv.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**  
**ORAL JUDGMENT**

**Date: 30-10-2017**

**Re. : I.A. No.8266 of 2015**

The instant interlocutory application has been filed for condoning the delay of 21 days in filing the present appeal on the ground that the draft of the awarded amount was received by the appellants on 06.12.2013 and after encashing the same the appellants consulted their Lawyer and on his advice the present appeal was filed and due to financial crisis, they could not file the present appeal in time.

In view of the facts and circumstances of the case and in the interest of justice, I.A. No.8266 of 2015 is allowed and the delay of 21 days in filing this appeal is condoned.



Heard learned counsel for the appellants and learned counsel for the respondent no.3-the United India Insurance Company Limited.

This miscellaneous appeal has been filed against the judgment dated 22.06.2013 and award dated 02.09.2013 passed by the learned Ad hoc Additional District Judge-I-cum-Motor Vehicle Claim Tribunal, Patna in Claim Case No.75 of 2012, whereby the learned Tribunal directed the opposite party no.3-United India Insurance Company Limited to make payment of compensation of Rs.1,79,500.00 along with interest at the rate of 8% per annum from the date of filing the claim petition till its realization to the claimants with liberty to recover the aforesaid amount from the owner of the offending vehicle, if there is any breach of policy condition by the owner of the vehicle concerned.

The factual matrix of the case is that Claim Case No.75 of 2012 was filed by the appellants on account of death of their son, namely, Vivek Kumar in a motor vehicle accident with the case in succinct that on 16.01.2012 at 10 AM their son, namely, Vivek Kumar was proceeding to his school on bicycle. When he reached at village Jamaluddin Chak main road a truck bearing Registration No.BR-21A-9125, being driven rashly and negligently, coming from eastern side dashed his bicycle inflicting



severe multiple injuries to him. He was rushed to hospital by the villagers and relatives but succumbed to his injuries during the course of treatment. Regarding the said accident, Khagaul P.S. Case No.15/12 was registered under Sections 279, 304 A and 427 of the Indian Penal Code. The deceased Vivek Kumar was aged about 16 years at the time of accident and was a brilliant student.

The owner and the insurer of the offending vehicle put their appearance in the case and filed their written statements. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in earlier paragraph.

Being aggrieved and dissatisfied with the aforesaid judgment and award, the appellants have preferred this miscellaneous appeal.

It is submitted by learned counsel for the appellants that the amount of compensation awarded by the Tribunal is not adequate. The learned Tribunal has wrongly assessed the notional income of the deceased at Rs.15000.00 per annum and has also wrongly deducted 1/3<sup>rd</sup> of the income of the deceased as his personal expenses. It is further submitted that the amount of compensation awarded towards other traditional head is also inadequate.



On the other hand, learned counsel for the respondent no.3 has submitted that the Insurance Company has already deposited the awarded amount along with the interest in the learned lower Court and there is no violation of terms and conditions of policy by the owner of the vehicle.

From perusal of postmortem report, Ext.5, it appears that the deceased was of about 12 years at the time of accident and there is no other cogent evidence regarding the age of the deceased as claimed by the appellants but the learned lower Court has assessed the age of the deceased as 14 or 15 years instead of 12 years without any basis. Hence, under the aforesaid circumstances, in my considered opinion, the age of deceased was 12 years at the time of accident. As the deceased was minor at the time of accident i.e. on 16.01.2012, the notional income of the deceased is considered as Rs.15,000 per annum and in view of the decision of the Hon'ble Apex Court in the case of **Reshma Kumari and others Vs. Madan Mohan and Anr.** reported in **(2013) 9 Supreme Court Cases 65** multiplier of 20 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs.3,00,000.00. Besides the aforesaid amount of compensation I think it proper and appropriate to award Rs.50,000.00 towards



other traditional heads such as funeral expenses and loss of love and affection. On addition, the total amount of compensation comes to Rs.3,50,000.00. As the appellants have already received Rs.1,79,500.00, they are entitled to get rest amount of Rs.1,70,500 along with interest at the rate of 8% per annum from the date of filing the claim case till its realisation. As there has been no violation of terms and conditions of policy by the owner of the offending vehicle its insurer, United India Insurance Company Limited is directed to pay the aforesaid amount of compensation and interest thereon to the appellants within two months from the date of receipt or production of copy of this order.

Accordingly, this appeal is allowed with the aforesaid modification in the award.

**(Prakash Chandra Jaiswal, J.)**

Trivedi/-

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| CAV DATE          | NA         |
| Uploading Date    | 01.11.2017 |
| Transmission Date | 01.11.2017 |

