IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.477 of 2011

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1. Rita Devi, W/o Late Bhola Ram
2. Amita Priya, D/o Late Bhola Ram
3. Adarsh Priya, D/o. Late Bhola Ram

   Appellants are resident of Rita Kutir 79/A, Gandhi Path, North Sri Krishna Puri, P.O.- Nehru Nagar, P.S.- Sri Krishna Puri, District- Patna.

.... Appellants.

Versus

1. Ramesh Das, S/o Late Jogendra Das,
   Resident of Mohalla- Ganga Nagar, Siliguri, Dist- Darjeeling, at present 67/25, Strand Road, Kolkata-6. (Owner of Tata Sumo WB. 74K.6228).
2. Naresh Kumar Kapoor, S/o P. Kapoor, R/o Mohalla- Shanti Nagar, Bow Bazar, Ward No. 36, Ghogumali, Siliguri, District- Darjeeling, (West Bengal). (Driver of Tata Sumo WB. 47K.6228).
3. Bajaj Allianz General Insurance Co. Ltd. Through its Branch Manager, 6^{th} Floor, Anand Bihar (Above Ginni Motors), West Boring Canal Road, Patna, District- Patna. (Insurer of WB.74K.6228).

.... Respondents.

WITH

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Miscellaneous Appeal No. 992 of 2011

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Bajaj Allianz General Insurance Co. Ltd., Through Its Manager, 504, Mahavir Tower, Opposite Church Complex, Main Road, Ranchi.

.... Appellant.

Versus

1. Rita Devi W/O Late Bhola Ram Resident Of Rita Kutir 79/A, Gandhi Path, North Sri Krishnapuri, P.S- Srikrishna Puri, Dist- Patna.
2. Amita Priya D/O Late Bhola Ram Resident Of Rita Kutir 79/A, Gandhi Path, North Sri Krishnapuri, P.S- Srikrishna Puri, Dist- Patna.
3. Adarsh Priya D/O Late Bhola Ram Resident Of Rita Kutir 79/A, Gandhi Path, North Sri Krishnapuri, P.S- Srikrishna Puri, Dist- Patna.
4. Ramesh Das S/O Late Jogendra Das Resident Of Mohalla- 67/25, Ganga Nagar, Siliguri, Dist- Darjeeling, Kolkatta-6
5. Naresh Kumar Kapoor S/O P.Kapoor Resident Of Mohalla- Shanti Nagar, Bow Bazar, Ward No. 36, Ghogumali, Siliguri, Dist- Darjeeling, West Bengal.

.... Respondents.

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Appearance :

(In MA No.477 of 2011)

For the Appellants : Mr. Rajesh Kumar, Advocate.

For the Respondent No.3 : Mr.Alok Kumar @ Alok Kumar Shahi, Advocate.

(In MA No.992 of 2011)

For the Appellant : Mr.Alok Kumar @ Alok Kumar Shahi, Advocate.
For the Respondents : Mr. Rajesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 25-09-2018

Re. : I.A. No.2615 of 2013 In M.A. No.992 of 2011

Heard learned counsel for the appellant and the respondents on this interlocutory application.

This interlocutory application has been preferred for condoning the delay of six months in preferring the aforesaid appeal with the case that in Claim Case No.200 of 2009 the judgment was passed on 09.02.2011 and the certified copy of the judgment was ready on 25.02.2011 but the award was not prepared by the learned Tribunal. Lastly on 20.10.2011 learned counsel for the appellant was informed about preparation of the award. Then he applied for the certified copy of the same, which was furnished to him on 09.11.2011. Thereafter, it was communicated to the office of the appellant at Ranchi and after taking instructions from the office, the appeal was got drafted and filed on 21.12.2011. Hence, there is no intentional or deliberate laches in filing the appeal beyond time.

The respondents have not filed any rejoinder to the aforesaid I.A.

In the facts and circumstances of the case and in the interest of justice, finding sufficient reason, assigned by the appellant for the aforesaid delay in preferring the appeal, the delay in preferring the aforesaid appeal is condoned and the said I.A. is allowed.

M.A. No.477 of 2011 and M.A. No.992 of 2011

Heard learned counsels for the appellants and the respondents.

As the aforesaid two appeals have cropped up from the common judgment and award hence with consent of both the parties, both these appeals are disposed of by this common judgment.

The aforesaid two appeals have been preferred against the judgment dated 09.02.2011 and award dated 28.05.2011 passed by the 6th Additional District Judge-cum-Motor Vehicles Accident Claim Tribunal, Patna (hereinafter in short referred to as the 'Tribunal') in Claim Case No.200 of 2009, whereby the learned Tribunal allowing the claim petition directed the opposite party no.3-Bajaj Allianz General Insurance Company Limited to pay compensation to the tune of Rs.24,16,014/- along with interest at the rate of 6% per annum from the date of filing the claim case till its realization to the claimants, with the right of recovery from the owner of the vehicle after its payment.

The factual matrix of the case is that claimants have filed Claim Case No.200 of 2009 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs.50,00,000/- along with interest at the rate of 12% per annum from the date of filing of the claim case till its realization on account of death of Bhola Ram, the Executive Engineer in a motor vehicle accident with the case in succinct that on 24.02.2009 at 7:30 AM while the said Bhola Ram was regressing to his house after morning walk and arrived at A.D.B. Chowk, Arariya a Tata Sumo Vehicle bearing registration no.WE 74 K 6288, being rashly and negligently driven by its driver in high speed, arrived there and dashed the deceased inflicting grievous injury to him resulting into his death on the spot. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver. The deceased was Executive Engineer in the Public Works Department and used to get salary of Rs.39,067/- per month. He was aged about 54 years at the time of accident.

Opposite party nos.1 & 2, though put their appearance in the case but, did not file written statement in the case, while opposite party no.3 filed its written statement. Claimants adduced ocular as well as documentary evidence in buttress of their case.

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 judgment and award claimants and Bajaj Allianz Insurance Company Limited filed separate appeals.

It is submitted by claimants of M.A. No.477 of 2011 and respondents of M.A. No.992 of 2011 that the deceased was a permanent employee and aged about 54 years at the time of accident. Hence, 15% of the income of the deceased ought to have been awarded as future prospect but the learned Tribunal has wrongly ignored the same. It is further submitted that in view of the judgment of the Hon'ble Apex Court rendered in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (4) PLJR 261** Rs.70,000/- should have been awarded towards other traditional heads such as funeral expenses, loss of consortium and loss of estate but the learned Tribunal has awarded a very meager amount of Rs.9,500/- under the aforesaid heads.

On the other hand, it is submitted by learned counsel for the respondent of M.A. No.477 of 2011 and appellant of M.A. No.992 of 2011 that as per the documents filed by the claimants such as acquaintance roll of the financial year 2008-09, marked as Ext.3 and Form-16 marked as Ext.4, the gross income of the deceased is Rs.3,46,263.00 from which Rs.20,565.00 has been deducted as income tax payable, hence the net annual income of the deceased comes to Rs.3,25,698.00 but the learned Tribunal ignoring the aforesaid documents of the claimants has wrongly considered the monthly income of the deceased as Rs.39,067/- and gross annual income of the deceased as Rs.4,68,804/-.

As per the case of the claimants the deceased used to get Rs.39,067 per month, but from perusal of the acquaintance roll marked as Ext.3 and Form 16 marked as Ext.4 hailing to the deceased of the year 2008-09 filed by the claimants, it appears that the gross salary of the deceased was Rs.3,46,263/- from which Rs.20,565/- was deducted as income tax. Hence, after the aforesaid deduction, his net annual salary comes to Rs.3,25,698/- which is to be considered for computing the loss of dependency. As the deceased was aged about 54 years at the time of accident and was a permanent employee hence in view of Pranay Sethi's case (supra) 15% of the aforesaid income i.e. Rs. 48,854/- is awarded towards future prospect. On addition of the aforesaid heads loss of income comes to Rs.3,74,552/- per annum. As the deceased has died leaving behind his widow and two daughters as legal representatives and dependents, hence 1/3rd of the aforesaid income of the deceased i.e. Rs.1,24,850/- is deducted towards personal expenses of the deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to Rs.2,49,702/- per annum. As the deceased was aged about 54 years at the time of his death, hence multiplier of 11 is adopted to work out the amount of compensation. On applying the aforesaid multiplier the amount of compensation comes to Rs.27,46,722/-. In view of the verdict of the Hon'ble Apex Court in the case of Pranay Sethi (supra) Rs.70,000/- is awarded towards other traditional heads such as funeral expenses, loss of consortium and loss of estate. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs.28,16,722/-. Besides the aforesaid amount of compensation, interest at the rate of 6% per annum on the aforesaid amount of compensation is also awarded from the date of filing of the claim case till its realization.

In the facts and circumstances of the case, the Bajaj Allianz General Insurance Company Limited is directed to make the aforesaid amount of compensation along with interest within two months from the date of this judgment with liberty as given in the impugned judgment.

Accordingly, with the aforesaid modification in the judgment and award, both these appeals are disposed of.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.09.2018
Transmission Date	28.09.2018