IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.441 of 2015

==

1. Uma Devi W/o Shivnath Rai.

2. Shivnath Rai S/o Ramun Rai.

Both R/o Village and P.O. Bairiya P.S. Gopalpur, District-Patna.

... ... Appellant/s

Versus

1. Raju Kumar Rai, S/o Rambrich Ray, R/o M.G. nue, Imphal, Manipur, Paltan Bazar, G. Sen Road, Baisali, Guwahati, Assam.

2.Pinki Devi, W/o Gorakhnath Singh, Adarsh Nagar, Hehal Sukhdeo Nagar, Ranchi-834 001.

3. The New India Insurance Company Ltd. through the Regional Manager, Regional Office, 6 and 7 floor, B.S.F.C. Building, Fraser Road, Patna-800 001.

... ... Respondent/s

==

Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi
Ms. Archana Sinha

For the Respondent no. 3 : Mr. Arun Kumar

==

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 02-07-2018

Heard learned counsel for the appellants and learned counsel for the respondent no. 3 on this Miscellaneous Appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 30.06.2015 and award dated 18.08.2015 passed by learned Additional District Judge-XIV-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim

Case no. 251 of 2012/ 1839 of 2014 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 3 of the said case i.e. The New India Insurance Company Ltd. to pay compensation to the tune of Rs. 3,04,000/- along with interest @ 9% per annum from the date of filing of the claim case till its realization to the claimants with liberty to O.P. no. 3 to recover the aforesaid compensation amount from O.P. no. 2 if in any subsequent proceeding it is proved that the O.P. no. 1 was driving the said vehicle without valid licence or valid permit, after its payment.

3. Factual matrix of the case is that the Claim Case no. 251 of 2012/ 1839 of 2014 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 3,50,000/- along with interest @ 12% per annum on account of death of Sudhir Kumar in motor vehicle accident with the case in succinct that the said Sudhir Kumar who happened to be son of the claimants was proceeding to his house from Raj Dairy Dhanki, Kumhrar on 22.06.2012 at 5:00 AM by his bicycle and when he reached near village Bairia Bazar Main Road under P.S. Gopalpur, Patna, suddenly a truck bearing registration no. JH-01AN-2039, coming from the opposite direction, being driven rashly and negligently by its driver hit the bicycle of Sudhir Kumar inflicting injuries on his head and other parts of his person. He was admitted in P.M.C.H. for treatment, but he succumbed to his injuries. Regarding the aforesaid incident, Gopalpur P.S. Case no. 40 of 2012 was instituted against the driver of the offending truck. The deceased was aged about 21 years at the time of his death and was doing the business of milk and used to earn Rs. 3000/- per month from the said vocation.

4. O.P. nos. 1 and 2 did not put their appearance in the case despite service of notice, hence, the case proceeded *exparte* against them while the Opposite Party no. 3 i.e. The New India Insurance Company Ltd. put its appearance in the case and filed its written statement. The claimants adduced ocular and documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred the present appeal.

7. The claimants-appellants have preferred this appeal on solitary ground that the deceased was doing dairy business and was self employed person and was aged about 21 years at the time of accident, hence, 40% of the income of the deceased ought to have been allowed as future prospect, but learned Tribunal has wrongly and illegally ignored the same.

8. On the other hand, learned counsel for the respondent no. 3 submitted that there is no documentary evidence of carrying any business of dairy by the deceased, hence, the future prospect cannot be allowed to the appellants.

9. On perusal of record, it appears that the case of the appellants is that the deceased was running dairy business and used to earn Rs. 3,000/- per month from the said vocation. From perusal of the impugned judgment, it appears that the appellants have adduced ocular evidence in substantiation of their aforesaid case. Moreover, in the FIR itself, the appellants have taken the case from very beginning that the deceased used to run the dairy business and considering the aforesaid evidence and FIR on record, learned Tribunal has assessed the income of the deceased as Rs. 3,000/- per month finding him running the business of dairy. As the deceased was running the business of dairy, hence, he happened to be self employed person. Hence, as per the recent decision of Hon'ble Apex

Court rendered in ***National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR,*** 40% of the aforesaid income of the deceased i.e. Rs. 1200/- is awarded towards future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs. 4200/- per month i.e. Rs. 50,400/- per annum. As the deceased was aged about 21 years at the time of his accident and was a bachelor, hence, ½ of the aforesaid income i.e. Rs. 25,200/- is deducted as the personal expenses of the deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to the Rs. 25,200/- per annum. As the deceased was 21 years old at the time of accident, hence, multiplier of 18 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 4,53,600/-. Besides, the aforesaid amount of compensation, Rs. 30,000/- is awarded towards other traditional heads such as funeral expenses and loss of estate. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 4,83,600/-. Besides, the aforesaid compensation, I also think it proper to award interest @ 9% per annum on the aforesaid amount of compensation, as awarded by the learned Tribunal and not assailed by the respondent, from the date of filing of claim case till its realization.

10. The respondent no. 3 The New India Insurance Company Ltd. is directed to make payment of aforesaid amount of compensation and interest thereon to the appellants after deducting the amount, if any paid by it within two months from the date of this judgment with the liberty as given by learned Tribunal.

11. Accordingly, this miscellaneous appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	12-07-2018
Transmission Date	N.A.