IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.318 of 2006

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1. Bibi Furzana Wife of Ajamal Resident of Makhana, P.S. Jagdishpur, District- Bhagalpur.
2. Mosomat Robaida Khatoon M/o late Ajamal Resident of Village- Makhana, Police Station- Jagdishpur, District- Bhagalpur.

.... Appellants

Versus

1. Md.Ajaj Son of Md. Nagar Driver of Tata Maxi No. BR 40/5586. Resident of Makhana, P.S. Jagdishpur, District Bhagalpur.
2. Md. Giyasuddin Son of Md. Zalil , Owner of Tata Maxi No. BR 40/5586. Resident of Village- Balthar, Police Station- Mohanpur, District- Deoghar (Jharkhand).
3. Insurance Co. Ltd. Namely United India Insurance co. ltd. Address Near Mahadeo Takiz , P.S. Kotwali, District Bhagalpur.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Najmul Hoda, Advocate

For the Respondent no.3 : Mr. Ashok Priyadarshi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 19-06-2018

Re.: I.A. No. 823 of 2009

Heard learned counsel for the appellants and learned counsel for respondent no.3 on the aforesaid interlocutory application.

Aforesaid interlocutory application has been filed for condonation of delay of 6 months in preferring this appeal with the case that the appellant no.1 used to look after the pairvee of the case and due to poverty and scarcity of money, she did not go to the court to take pairvee in the case since long. On 18.07.2006, when she went to Bhagalpur, she learnt about award passed in the aforesaid case at a very meager amount. Then she immediately applied for certified copy of the impugned judgment and award and on procuring the same and arranging money, she got the aforesaid appeal preferred. Thus, there is no deliberate and intentional latches on the part of the appellants in preferring this appeal within the stipulated period of limitation.

Respondent no.3 did not file any rejoinder against the aforesaid limitation petition.

Considering the facts and circumstances of the case and the settled principle of law that justice should be done after hearing the parties and injustice should not be done merely on technicality and shutting down the opportunity of hearing to the parties, aforesaid delay in preferring this appeal is hereby condoned.

Accordingly, aforesaid interlocutory application is allowed.

Re.: M.A. 318 of 2006

On the submission of the learned counsel for the appellants and respondent no.3 to make hearing of the case even today, heard both the parties on the aforesaid appeal.

2. Aforesaid miscellaneous appeal has been preferred against the judgment dated 16.11.2005 and award dated 27.01.2006 passed by 1st Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Bhagalpur in Claim Case No. 116 of 2001 whereby the learned Tribunal allowing the claim case directed the opposite party no.3-United India Insurance Company Limited to pay final amount of compensation to the tune of Rs. 1,79,000/- along with the interest at the rate of 6% per annum from the date of award to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case No. 116 of 2001 under Section 166 of the M.V. Act for awarding compensation on account of death of one Ajamal who happens to be husband and son respectively of the claimants-appellants with the case in succinct that Ajamal was working as a khalasi on Tata Maxi bearing registration no. BR 40 5586. On 01.09.2001, while the aforesaid vehicle was proceeding from Deoghar to Bhagalpur and as soon as it arrived near village Madhai, it turned turtle as the driver lost control over the vehicle due to rash and negligent driving of the same by him. Ajamal and other commuters of the vehicle were smashed by the said vehicle and the said Ajamal succumbed to his injury on the spot. The deceased was aged about 25 years at the time of accident and used to earn Rs. 2000/- per month as remuneration out of the aforesaid vocation.

4. Opposite party nos. 1 and 2 though appeared in the case but did not file any written statement, while opposite party no.3 – United India Insurance Company Limited filed its written statement and contested the case. Claimants adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the quantum of compensation awarded by the learned Tribunal, the claimants have preferred the present miscellaneous appeal.

7. It is submitted by learned counsel for the claimants-appellants that the deceased used to get remuneration of Rs. 2000/- per month from the vocation of khalasi and the claimants have adduced evidence in this regard, but learned Tribunal wrongly and illegally denying the aforesaid case and evidence of the claimants-appellants has worked out the compensation treating the income of the deceased as Rs. 1250/- per month instead of Rs. 2000/- per month. It is further submitted that learned Tribunal has awarded the interest at the rate of 6% per annum from the date of award instead of awarding the same from the date of filing claim case.

8. On the other hand, learned counsel for the respondent no.3-United India Insurance Company Limited has submitted that though the claimants have claimed the earning of the deceased as Rs. 2000/- per month, but they have not adduced any cogent and convincing evidence regarding aforesaid income of the deceased, hence the learned Tribunal considering the income of the deceased as Rs. 1250/- per month worked out the aforesaid amount of compensation which is proper, reasonable and adequate.

9. From perusal of the record, it appears that it is admitted case of the parties that the deceased was khalasi of the offending vehicle. As per the case of the claimants, the deceased used to get Rs. 2000/- per month as remuneration out of the aforesaid vocation. The appellant-claimant no.1 Bibi Furjana in her examination before the learned Tribunal has also deposed about the earning of Rs. 2000/- per month by the deceased out of the aforesaid vocation. But from perusal of the record, it appears that she was not cross-examined by the respondent-Insurance Company on the aforesaid aspect of the case. Thus, the aforesaid case of the appellants-claimants stood admitted to the respondent.

10. Considering the aforesaid facts and circumstances of the case, I find and hold that the deceased used to get Rs. 2000/- per month i.e. Rs. 24,000/- per annum as remuneration out of the aforesaid vocation. As the deceased has died leaving behind him his two legal representatives and dependents, hence $1/3^{rd}$ of the aforesaid income i.e. Rs. 8000/- 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. 16000/- per annum. As the deceased was aged about 25 years at the time of accident, hence 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/-. Besides the aforesaid amount of compensation, I also think it proper and appropriate to award Rs. 2,000/- towards funeral expense, Rs. 5000/- towards loss of consortium and Rs. 2500/- towards loss of estate. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 2,81,500/-. Besides the aforesaid amount of compensation, I also think it proper and appropriate to award interest at the rate of 6% per annum on the aforesaid amount of compensation from the date of filing claim case till its realisation.

11. Hence, respondent no.3-United India Insurance company is directed to pay the aforesaid amount of compensation and interest thereon to the claimants-appellants after deducting the amount if any paid by it within two months from the date of this judgment.

12. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and award.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.06.2018
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