

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1016 of 2010

1. Shyam Nath Sah, Son of Late Ganga Sah.
2. Pramod Kumar Sah, Son of Late Ganga Sah.
3. Rakesh Sah, Son of Late Ganga Sah.

All are R/o Vill-Viswanathpur, P.O. and P.S.-Dumra, Distt-Sitamarhi, at present C/o Sri Ram Prasad Gupta, Balughat, Bandh Road, P.S. Town, Distt-Muzaffarpur (Claimants no. 1 to 3)

... .. Appellant/s

Versus

1. Sri Shankar Kumar Gupta, Son of Bhullar Sah, R/o village-Parsauni Malpur, P.O. + P.S. Parsauni, Distt-Sitamarhi (O.P. no. 1)
2. Manager, Reliance General Insurance Company Ltd. 570, Rectifier House, Naigaum Cross Raod, Wadala West, Mumbai-400031 (O.P. no. 2)
3. Manager, Reliance General Insurance Company Ltd. Oswal Chambers, 2nd floor, 2 Church Lane, Kolkata-700001 (O.P. no. 3)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Prasad Singh
For the Respondent/s	:	Mr. Durgesh Kumar Singh

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 21-08-2018

Heard learned counsel for the appellants and learned counsel for the respondent nos. 2 and 3 on this Miscellaneous Appeal. No one turned up on behalf of respondent no. 1 despite service of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 31.08.2010 and award dated 13.09.2010 passed by learned 7th Additional District



Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case no. 05 of 2009 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 2 Reliance General Insurance Company Limited to pay compensation to the tune of Rs. 84,500/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants.

3. Factual matrix of the case is that Claim Case no. 05 of 2009 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 2,79,500/- on account of death of their father, namely, Ganga Sah in motor vehicle accident with the case in succinct that on 07.10.2008 claimant Pramod Kumar Sah and deceased Ganga Sah were proceeding to their house through Dumra Kachahari road and as soon as the deceased arrived near Bishwanathpur chowk, a truck bearing registration no. B.R.-06G/2963 being driven rashly and negligently by its driver coming from Muzaffarpur side dashed Ganga Sah on the kachchi flank of the road resulting into his death instantly. Regarding the aforesaid accident, Dumara P.S. Case no. 244 of 2008 was instituted. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver



at the relevant time of accident. The deceased was aged about 55 years at the time of accident and he was fruit vendor and used to vend the fruit in the premises of civil court, Sitamarhi and earn Rs. 3000/- per month from the said vocation.

4. O.P. no. 1, who happens to be owner of the offending vehicle put his appearance in the case and filed his written statement, but the O.P. nos. 2 and 3 Reliance General Insurance Company Ltd. despite putting appearance in the case did not file any written statement in the case. Claimants adduced ocular as well as 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. It is submitted by learned counsel for the appellants that the deceased was fruit vendor and used to vend the fruit in the premises of civil court, Sitamarhi and earn Rs. 3000/- per month from the said vocation. They have also adduced evidence in this regard, but learned Tribunal has



wrongly ignoring the evidence of the appellants considered the notional income of the deceased as Rs. 15,000/- per annum. It is further submitted that the deceased was aged about 55 years at the time of his death which is also vindicated by the postmortem report Ext-1 filed by the appellants. Respondents did not adduce any evidence in rebuttal of the same. But learned Tribunal arbitrarily, illegally & without any basis considered the age of deceased between 55-56 years and adopted the multiplier of 8 to work out the amount of compensation instead of 11 as the deceased aged about 55 years at the same of accident. It is further submitted that the amount of compensation awarded towards the traditional heads such as loss of estate and funeral expenses by the learned Tribunal is also very paltry, it ought to have awarded Rs. 30,000/- in the said head as per decision of Hon'ble Apex Court rendered in *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR*. Learned counsel for the appellants relied upon the judgment rendered by Hon'ble Apex Court in *Montford Brothers of ST. Gabriel & Anr. Vs. United India Insurance & Anr. reported in (2014) 3 Supreme Court Cases 394*, *Dr. Gangaraju Sowmini Vs. Alavala Sudhakar Reddy & Anr. reported in*



AIR 2016 Hyderabad 162 Full Bench, Megjibhai Khimji Vira Vs. Chaturbhai Taljabhai reported in, 1977 0 ACJ 253 and Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramnabhai Prabhatbhai & Anr. reported in (1987) 3 Supreme Court Cases 234 in buttress of their case.

8. On the other hand, learned counsel for the respondent nos. 2 and 3 submitted that the appellants happen to be major sons of the deceased so they do not happen to be dependent of the deceased rather mere legal representatives. They have not asserted themselves to be dependent of the deceased in the claim petition and have also not adduced any evidence in this regard. Hence, appellants are not entitled to get compensation under Section 166 of M.V. Act. Utmost they may get compensation under Section 140 of M.V. Act to the tune of Rs. 50,000/-. As under Section 166 of M.V. Act, the amount of compensation is computed on the basis of loss of dependency, but as the appellants have not claimed themselves to be dependent of the deceased so no question of loss of dependency ever arises and hence, no compensation under Section 166 of M.V. Act can be awarded to the appellants. Learned counsel for the respondent nos. 2 and 3 have relied upon the judgment rendered by *Hon'ble Apex Court in Mrs.*



Hafizun Begum Vs. Md. Ikram Heque reported in 2007(5) Supreme 498, New Indian Assurance Co. Ltd. Vs. S. Krishnasamy reported in (2014) 0 Supreme (Mad) 4347, Manjuri Bera Vs. Oriental Insurance Company Ltd. & Anr. reported in (2007) 2 RLW (SC) 1384 and Bulak Sao Vs. Ram Nath Prasad & Anr. reported in 1995 ACJ 1222 in buttress of their case.

9. On perusal of record, it appears that the appellants happen to be major sons of the deceased and have filed the aforesaid petition under Section 166 of M.V. Act as major sons of the deceased Ganga Sah. They have not asserted themselves to be dependent of the deceased in the claim petition.

10. From perusal of deposition of AW-1 Shyam Nath Sah, who happens to be appellant no. 1 it appears that in his examination in-chief he has specifically and candidly stated that he has been supplying fruit in Sitamarhi by purchasing from Muzaffarpur Bazar Samiti for last four years and AW-2 Pramod Kumar Sah, who happens to be appellant no. 2 has deposed in his examination in chief that he resides in the house of Ram Prasad Gupta at Muzaffarpur and vends fruit on Jherwara Ghat bridge for four years. Though AW 1 & AW 2



have stated that the deceased used to spend his income in domestic expenses, but in their deposition, they have not specifically stated as they were dependents on the deceased and were living with the deceased and deceased used to spend money upon them as well. Moreover, from perusal of claim petition and evidence of the appellants, it appears that the appellants were not residing with the deceased as the deceased was resident of Sitamarhi at the time of accident while the appellants are resident of District-Muzaffarpur. As in the claim petition, in the local address they have given their address as Balughat Bandh Road, P.S. & District-Muzaffarpur while permanent address as Village-Vishwanathpur, P.O. and P.S. Dumra, District-Sitamarhi and AW-1 and AW-2 have candidly deposed that they are residing in Muzaffarpur and engaged in business of vending fruit there. Moreover, in their respective deposition they have claimed themselves to be residents of Balughat P.S. and District-Muzaffarpur. The aforesaid evidence of appellants and aforesaid aspect of the case candidly indicates that the appellants are resident of district-Muzaffarpur and not of Sitamarhi and at the time of death of deceased, they were not residing with the deceased rather separately in other district and they were earning money by



vending fruit and they were not dependent on the deceased. So, no question of loss of dependency to the appellants on account of death of the deceased arises.

11. As per Section 166 of the M.V. Act, person, who happens to be legal representative may file petition under the said Section of the Act. Though, the word legal representative has not been defined in the said Act, but in my considered opinion, it means, the person who represents the estate of the deceased even without title either as executors or administrators in possession of the estate of the deceased. Dependents may be the legal representative of the deceased, but legal representative may not necessarily be dependents. In case of claim case filed under Section 166 of M.V. Act, the amount of compensation is worked out on the basis of loss of dependency, but as the claimants-appellants do not happen to be dependent of the deceased. So, no question of loss of dependency arises and in my considered view, the claimants-appellants are not entitled to get compensation under Section 166 of M.V. Act. However, in view of judgment of Hon'ble Apex Court rendered in *Manjuri Bera Vs. Oriental Insurance Company Ltd. & Anr. reported in (2007) 0 Supreme (Raj) 496*, they may get compensation as provided under no fault



liability to the tune of Rs. 50,000/- being legal representative of the deceased.

12. The case laws cited by the learned counsel for the appellants as detailed hereinabove, in my considered opinion, is not applicable under the case under hand as in the aforesaid cases, the compensation was awarded to the claimants treating them to the legal representatives of the deceased and the question of loss of dependency was not discussed in the aforesaid cases while in the case law cited by the respondent nos. 2 and 3 as ***U.P. State Road Trans. Corporation & Anr. Vs. Tara Devi & Ors. reported in 1995 ACJ 1220***, the High Court of Allahabad has held that the major sons are not entitled to compensation as there was no loss of dependency. ***In Manjuri Bera Vs. Oriental Insurance Company Ltd & Anr. reported in (2007) 0 Supreme (Raj) 496***, Hon'ble Apex Court has held that a married daughter could maintain a claim petition under Section 166 of the M.V. Act as legal representative, but as she was not dependent upon her deceased father she is not entitled to get any compensation under the said Section. Where a legal representative who is not dependent files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the



Act. *In New Indian Assurance Co. Ltd. Vs. S. Krishnasamy reported in (2014) 0 Supreme (Mad) 4347*, High Court of Madras has held that the claimant no. 2 being major son and the Government employee, the claimants 4 and 5 being major daughters, who are married, not being the dependents on the deceased, they are not entitled for compensation and the claimant no. 1, widow and claimant no. 3, minor daughter are only entitled for compensation being dependents on account of the death of the deceased. *In Damyanti Dhawan Vs. New India Assurance Company reported in (1996) 0 Supreme (HP) 18*, the High Court of Himachal Pradesh has held that there is sufficient evidence to hold that step daughter was not at all dependent upon deceased as she was residing with and was being looked after and brought by her mother. Mother-in-law is only entitled to claim compensation on account of love and affection compensation of Rs. 50,000/- and in all inclusive of what has already been awarded by the MACT would be reasonable, just and fair.

13. In the facts and circumstances of the case and discussion made by me hereinabove, I find and hold that the appellants are entitled to get only Rs. 50,000/- as compensation from the Insurance Company and hence, respondent nos. 2 and



3, Reliance General Insurance Company Ltd. is directed to pay compensation to the tune of Rs. 50,000/- to the appellants along with interest @6% per annum from the date of filing of the claim case till its realization to the claimants within two months from this judgment.

14. As per submission of learned counsel for the respondent nos. 2 and 3, they have already paid the awarded amount of compensation along with interest to the claimants-appellants, hence, they are not liable to pay any further compensation and amount already paid by it will not be recovered from the claimants-appellants.

15. 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	29-08-2018
Transmission Date	N.A.

