IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.261 of 2011

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1. Anjali Devi W/o Late Kaushal Kishore Singh.

2. Ajay Kumar Singh, S/o Late Kaushal Kishore Singh.

3. Amarjeet Kumar, S/o Late Kaushal Kishore Singh.

4. Archana Kumari, D/o Late Kaushal Kishore Singh.

Under gaurdianship of her mother Anjali Devi.

All are R/o Vill-Bihat Jogir Tola, P.S. Barauni, Distt-Begusarai at present resident of Khebra, P.S. Sadar, Distt-Muzaffarpur.

... ... Appellant/s

Versus

1. Manpreet Singh, S/o Ajaib Singh Bodlani, Distt-Sangrur.

2. Oriental Insurance Co. Ltd. Ankaleshwar through Local Divisional Manager Division Office Aghoria Bazar Chowk, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhannjay Kumar

For the Respondent no. 1 : Shakil Ayaz

For the Respondent no. 2 : Mr. Sanjay Kumar no. 1

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 27-07-2018

Heard learned counsel for the appellants and learned counsel for the respondents on this Miscellaneous Appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 20.01.2011 and award dated 3.02.2011 passed by learned 7th Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case no. 88 of 2008 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 2 Oriental Insurance Company Limited to pay compensation to the tune of Rs. 69,500/- 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. 88 of 2008 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 3,40,000/- on account of death of Kaushal Kishore Singh in motor vehicle accident with the case in succinct that on 24.12.2007 at 9:00 AM, said Kaushal Kishore Singh was proceeding to Samastipur on his motorcycle, as soon as he reached 50 yards west of Teghra over-bridge, P.S. Teghra, Distt-Begusarai, he halted his motorcycle on left flank of the road sensing proceeding of a truck bearing registration no. PB11W/2195 being driven rashly and negligently by its driver towards him. But the said truck dashed him arriving on the left flank of the road, resultantly, he died on the spot. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Regarding the aforesaid accident, Teghra P.S. Case no. 225 of 2007 was instituted under Sections 279, 337, 338 and 304A of I.P.C. against the driver of the offending vehicle. Said Kaushal Kumar Singh was aged about 50 years at the time of his death. He was registered and licensed contractor and was carrying business under name and style of M/s Singh General Works and used to earn Rs. 60,000/- per annum from the said vocation. The aforesaid vehicle was insured by the O.P. no. 2 at the relevant time of accident.

4. Both the opposite parties put their appearance in the case and filed their written statement. Claimants adduced their 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 claimants-appellants that the deceased was registered and licensed contractor and was carrying business under the name and style of M/s Singh General Works and was earning Rs. 60,000/- per annum from the said vocation. They have also adduced oral evidence in this regard. But, learned Tribunal has wrongly and illegally turned down the aforesaid case of the claimants and moreover, learned Tribunal has not mentioned any income of the deceased in the impugned judgment and flatly calculated the loss of dependency to the tune of Rs. 1,10,000/- after deducting 1/3rd of personal expenses of the deceased. It is also submitted that 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,*** Rs. 70,000/- ought to have been awarded to the claimants-appellants towards other traditional heads, but learned Tribunal has awarded only Rs. 9,500/- in the said heads.

8. On the other hand, learned counsel for the respondents submitted that the claimants-appellants have utterly and miserably failed to substantiate theirs aforesaid case to the effect that the deceased was registered and licensed contractor and was carrying business under the name and style of M/s Singh General Works and was earning Rs. 60,000/- per annum from the said vocation by adducing any cogent and convincing evidence. Hence, quantum of compensation awarded by learned Tribunal is proper, adequate and correct.

9. On perusal of record, it appears that as per case of the claimants-appellants, the deceased was registered and licensed contractor and was carrying business under the name and style of M/s Singh General Works and was earning Rs. 60,000/- per annum from the said vocation. But, the claimants-appellants did not adduce evidence in this regard. As the deceased was allegedly registered and licensed contractor, he would have had licence and registration certificate in this regard, and would have also entered into some transaction with the Bank and would have had bank pass-book, but the appellants have not adduced any such documents before the learned Tribunal. Thus, the appellants have utterly and miserably failed to substantiate the aforesaid vocation and income of the deceased. From perusal of the impugned judgment, it appears that AW-1 & AW-2, who happen to be son and wife respectively of the deceased, have deposed before the learned Tribunal that the deceased was aged about 50 years at the time of accident and doctor conducting autopsy of cadaver of the deceased, has found age of the deceased as 50 years. Hence, in the facts and circumstances, the age of the deceased is considered as 50 years at the time of accident.

10. As the deceased was aged about 50 years and accident is of the year 2007, hence, considering the aforesaid facts and circumstances, price inflation and prevalent economic era at the relevant time of accident, notional income of the deceased is considered to the tune of Rs. 3000/- per month i.e. Rs. 36000/- per annum. As the deceased has died leaving behind his four legal representatives and dependents, hence, 1/4 of the aforesaid income of the deceased i.e. Rs. 9,000/- 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 the Rs. 27,000/- per annum. As the deceased was aged about 50 years at the time of accident, hence, in view of decision of Hon'ble Apex Court rendered in *National Insurance Company Ltd. Vs. Pranay Sethi* (supra), multiplier of 13 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 3,51,000/-. Besides, the aforesaid amount of compensation, I also think it proper and adequate to award Rs. 70,000/- towards other traditional heads such as loss of consortium, 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. 4,21,000/-. As the claimants-appellants have already received Rs. 50,000/- by way of *ad interim* compensation under Section 140 M.V. Act, hence, they would now entitled to get the rest amount of compensation to the tune of Rs. 3,71,000/-. Besides, the aforesaid compensation, interest @ 6% per annum on the aforesaid amount of compensation, as awarded by the learned Tribunal and not assailed by the respondents by preferring appeal, is awarded from the date of filing of claim case till its realization.

11. The respondent no. 2 National 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.

12. As the appellant nos. 2 to 4 happen to be minor sons and daughter of appellant no. 1, hence, the appellant no. 1 is directed to deposit the share of the aforesaid minors in the aforesaid amount in some Nationalized Bank of India having its branch in the local area of the resident of the appellants in some fix deposit scheme renewable after every five years till attaining majority by the said minors.

13. 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	31-07-2018
Transmission Date	N.A.