

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.154 of 2012

1. Most. Manju Devi, W/o Late Mundrika Prasad
2. Nidhi Kumari, minor D/o Late Mundrika Prasad
3. Vikash Kumar, minor S/o Late Mundrika Prasad
4. Manish Kumar, minor S/o Late Mundrika Prasad

Serial Nos. 2 to 4 are minor daughter and sons of Late Mundrika Prasad and under guardianship of their mother – appellant no. 1

All are permanent residents of Village- Hararoo, P.S.- Belsar, District- Vaishali, at present mohalla- Bibiganj, Gandhi Nagar, P.S.- Sadar, District- Muzaffarpur. (Claimant Nos. 1 to 4)

... .. Appellants

Versus

1. Sri Mani Bhushan Kumar, S/o Sri Lalan Shukla, R/o Mohalla- Prabhat Nagar, Bhagwanpur, P.S.- Sadar, District- Muzaffarpur. (Owner of Bus No. BR-1P/3969) (Opposite Party No. 1).
2. Sri Gyaneshwar Kumar, Son of Sri Brij Prasad Singh, R/o Village + P.O. - Jawaharpur, Mewala, Bagpat (U.P.) (Opposite Party No. 2)
3. The Divisional Manager, National Insurance Company Ltd. Motijheel, P.S.- Town, District- Muzaffarpur. (Insurer of Bus No. BR- 1P/3969 and Truck No. UP-17A/6717) (Opposite Party No. 3)

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Mukesh Prasad Singh
For the Respondent No. 3	:	Mr. Shailendra Kumar

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 25-09-2018

Respondent Nos. 1 and 2 happen to be owners of the bus and the offending truck respectively and aforesaid two vehicles have been insured by respondent no.3–National Insurance Company Limited. From perusal of the impugned judgment, it appears that there is no order of pay and recovery. Hence no step for fresh service of notice is required to be taken for respondent nos. 1 and 2 and on the submission of the learned counsels for the appellants and respondent no. 3, heard both the parties on this miscellaneous appeal.



2. This miscellaneous appeal has been preferred against the judgment dated 16.11.2011 and award dated 12.12.2012 passed by the 9th Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 204 of 2007 / 22 of 2011 whereby the learned Tribunal allowing the claim petition directed the opposite party no.3- National Insurance Company Limited to pay the compensation to the tune of Rs. 2,74,000/- along with the interest at the rate of 6% per annum till the payment of compensation to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case No. 204 of 2007 / 22 of 2011 under Section 166 of the M.V. Act for awarding compensation on account of death of the deceased Mundrika Singh in the Motor Vehicle Accident with the case in succinct that the said Mundrika Singh happened to be driver of the bus bearing registration no. BR 1P 3969. On 06.07.2007 at 3 AM when he arrived at J. K. High School near Traffic Chowk, Begusarai with his bus, a truck bearing registration no. UP 17A 6717 being driven rashly and negligently by its driver coming from the western side dashed the bus inflicting serious injury to Mundrika Singh. He was rushed to Sadar Hospital, Begusarai but he succumbed to injury



during the course of treatment. Aforesaid accident took place due to rash and negligent driving of the offending truck by its driver at the relevant time of accident. Regarding the aforesaid accident, Begusarai Town P.S. Case No. 252 of 2007 was registered. The deceased was working as driver of the aforesaid bus and the aforesaid bus was hailing to Manibhushan Kumar. The deceased was 38 years 6 months old at the time of accident and used to get Rs. 4,000/- per month as salary and Rs. 50/- per day as diet allowance.

4. Opposite party nos. 1 and 2 did not put their appearance in the case despite service of notice while the opposite party no. 3-National Insurance Company Limited putting its appearance in the case filed written statement. Claimants also 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 impugned judgment and award, the claimants have preferred the present miscellaneous appeal.

7. It is submitted by learned counsel for the appellants



that the deceased was aged about 38 years 6 months at the time of accident. Besides the ocular evidence, appellants have filed voter identity card which indicates the age of the deceased as 33 years in the year 2002 and as per the aforesaid voter identity card the deceased was aged about 38 years 6 months at the relevant time of accident. In the post-mortem report age of the deceased has not been mentioned though it is mentioned in the inquest report as 50 years and the learned Tribunal relying upon the aforesaid age as mentioned in the inquest report has wrongly assessed the age of the deceased as 50 years. The age of the deceased as mentioned in the inquest report does not happen to be decisive ascertainment of the age as the inquest report was prepared by the police personnel merely on the basis of guessing without perusing the document regarding the age of the deceased while the age adverted in the voter identity card which is treated as document of identity of the person is more authentic and it ought to have been considered by the learned Tribunal in assessing the age of the deceased. It is further submitted that the deceased used to get Rs. 4,000/- per month as salary and Rs. 50/- per day as diet allowance. Besides the ocular evidence, appellants have also adduced the salary certificate of the deceased marked as Exhibit -3 given by its employer Mani



Bhushan Kumar. The said certificate has been proved by AW-5 Pramod Jha on the basis of the authority letter marked as Exhibit- 4 given by the aforesaid owner of the bus. But the learned Tribunal ignoring the aforesaid evidence of the appellants has wrongly assessed the income of the deceased as Rs. 3,000/- per month. It is further submitted that the deceased has died leaving behind him his four legal representatives and dependents, hence 1/4th of the aforesaid income of the deceased ought to have been deducted as personal expense of the deceased but the learned Tribunal has wrongly deducted 1/3rd. It is also submitted that as the deceased was 38 years 6 months old at the time of accident, hence multiplier of 15 ought to have been applied to work out the amount of compensation but the learned Tribunal has wrongly applied the multiplier of 13.

8. On the other hand, learned counsel for the respondent no. 3—National Insurance Company Limited submitted that the claimants are not entitled for the compensation on the basis of the diet allowance given to the deceased as the said diet allowance was given to the deceased during his lifetime and after his departure his legal representative are not entitled to get the same.

9. From perusal of the voter identity card filed by the



appellants marked as Exhibit- 1, it appears that the deceased was aged about 33 years in the year 2002 and the accident is of 06.07.2007. So as per the aforesaid document, the deceased must be 38 years 6 months at the time of accident. Though the age of the deceased has not been mentioned in the post-mortem report but in the inquest report as 50 years. Age of the deceased is mentioned in the inquest report by the police official merely on the basis of guessing without perusing the authentic document regarding the age of the deceased, so it can not be treated as decisive finding regarding the age of the deceased. While age adumbrated in the voter identity card which is treated as a document of identity of person is more authentic. Hence in the facts and circumstances, I find the age of the deceased as 38 years 6 months at the time of accident on the basis of the voter identity card.

10. From perusal of the salary certificate of the deceased given by its owner marked as Exhibit- 3, it appears that the deceased used to get Rs. 4,000/- per month as salary and Rs. 50/- per day as diet allowance. The aforesaid certificate has been proved by AW-5 Pramod jha who happens to be the conductor of the bus on the basis of the authority letter marked as exhibit-4 given by the aforesaid owner of the bus. Hence in



view of the aforesaid facts and circumstances I find that the deceased used to get Rs. 4,000/- per month as salary and Rs. 50/- per day as diet allowance. But as the diet allowance used to be given to the deceased for his diet and as the deceased has died, hence after departure of the deceased, claimants are not entitled to get the aforesaid diet allowance.

11. As the deceased has died leaving behind him his four legal representatives and dependents, hence 1/4th of the aforesaid income i.e. Rs. 1,000/- 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. 3,000/- per month i.e. Rs. 36,000/- per annum. As the deceased was aged about 38 years 6 months at the time of accident, hence multiplier of 15 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 5,40,000/-. Besides the aforesaid amount of compensation, Rs. 70,000/- is awarded towards other traditional heads such as loss of consortium, funeral expense, loss of estate, etc. in view of the verdict of the Hon'ble Supreme Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** reported in 2017 (4)



261 PLJR. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 6,10,000/-. Besides the aforesaid amount of compensation, appellants are also entitled for the interest at the rate of 6% per annum on the aforesaid amount of compensation from the date of filing claim case till its realization.

12. In the facts and circumstances of the case, respondent no.3-National Insurance company Limited is directed to pay the aforesaid amount of compensation and the interest thereon to the appellants within two months from the date of this judgment after deducting the amount, if any, paid by it.

13. 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	A.F.R.
CAV DATE	N.A.
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