

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.159 of 2012

1. Sanju Kumari, W/o Late Nitishwar Shahi
 2. Sweta Kumari, aged about 9 year
 3. Sruti Kumari aged about 7 year
 4. Richa Kumari aged about 5 year
 - Sl. nos. 2 to 4 are daughters of Late Nitishwar Shahi
 5. Sanjay Kumar aged about 3 year
 6. Keshav Kumar aged about 1 year
 - Sl. Nos. 5 to 6 are sons of Late Nitishwar Shahi
- all residents of village – Malikana, P.S.-Dumra, District – Sitamarhi at present
Gurija Sadan, Krishnapuri, Ward No.4, P.S.-Dumra, District – Sitamarhi.

... .. Appellants-claimants

Versus

1. The Bihar State Road Transport Corporation, Sultan Place Birchand Patel Path, Patna through its Chairman & Managing Director.
2. Chairman Bihar State Road Transport Corporation Sultan Place, Birchand Patel Path, Patna.
3. Managing Director, Bihar State Road Transport Corporation, Sultan Place, Birchand Patel Path, Patna.
4. Dept. Manager, Sitamarhi Dept. Bihar State Road Transport Corporation, Sitamarhi.
5. Bus No. BR-1P-5048.
6. Ram Das Pandit, S/o Late Singheshwar Pandit, Resident of village – Daud Nagar, P.S.-Bidupur, District – Vaishali.
7. National Insurance Company, C/o Branch Manager, National Insurance Co. Limited, Apna Bajan Bye Pass Chowk Shahid Chandra Bhushan Dwivedi Chowk, Dumra Road, Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Pandey
For the Respondent no.7 : Mr. Ashok Priyadarshi

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 18-09-2018

Re.: I.A. No. 248 of 2015

Heard learned counsel for the appellants and
respondent no.7 on this interlocutory application.

Aforesaid interlocutory application has been filed by
the appellants for condonation of delay of seven days in



preferring this appeal with the case that the appeal was to be filed on 24.02.2012, but as the appellant no.1 happens to be helpless widow and was busy in catering the need of her family after untimely demise of her husband, she fell ill due to exertion and after recovery from the ailment, she has filed the aforesaid appeal on 30.03.2012. There is no deliberate and intentional latches on the part of the appellant in the aforesaid delay in filing this appeal.

Respondent no.7 did not file any rejoinder against the said petition.

In the facts and circumstances of the case and in the interest of justice, aforesaid delay made in preferring this appeal is hereby condoned and aforesaid interlocutory applications is accordingly allowed.

Re.: M.A. No. 159 of 2012

On the consensus of the learned counsel for the appellants and learned counsel for the respondent no.7 and on their submission, heard both the parties on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the claimants-appellants against the judgment dated 27.08.2011 and award dated 25.11.2011 passed by the 1st Additional District



Judge cum Motor Vehicle Accident Claim Tribunal, Sitamarhi in Motor Accident Claim Case No. 01 of 2004 whereby the learned Tribunal allowing the claim petition directed the opposite party no.2-National Insurance Company Limited to pay the final amount of compensation to the tune of Rs. 7,85,000/- along with the interest at the rate of 6% per annum from the date of filing claim case till 2008 to the claimants.

3. Factual matrix of the case is that claimants filed Motor Accident Claim Case No. 01 of 2004 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 32,00,866/- along with the interest at the rate of 12% per annum on account of death of the deceased Nitishwar Shahi in the Motor Vehicle Accident with the case in succinct that the deceased Nitishwar Shahi was working as Gram Prasar Karta in Runni Saidpur Block and he was also incharge of the Panchayat Secretary, Thumma. On 28.02.2003 after completing his office work at Runni Saidpur Block, he arrived at State Road Transport Bus Stand in the evening to take bus to regress to his house where he met Mukesh Kumar and both were standing at the Muzaffarpur-Sitamarhi main road in front of Morsand High School located towards the north of Runni Saidpur Lakhandei bridge in the wait of bus. In the meantime at around 07:15 PM,



a State Road Transport bus proceeding towards Sitamarhi arrived there. They halted the said bus to board on it, but in the course of boarding the said bus by Nitishwar Shahi, driver of the said bus drove it rashly and negligently resultantly said Nitishwar Shahi fell under the bus and sustained grievous injury. He was rushed to Runni Saidpur Hospital by the locals on jeep to accord him medical aid, but he was declared brought dead by the doctor. The driver of the bus managed to escape alongwith the bus. 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 incident, Runni Saidpur P.S. Case No. 41 of 2003 was instituted under Sections 279 and 304A of the Indian Penal Code. Deceased used to get Rs. 7266/- as salary and he was 35 years old at the time of his death.

4. Both the opposite parties i.e. State Road Transport Corporation and the National Insurance Company Limited put their appearance in the case and filed separate written statements. 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 Nitishwar Shahi was a government employee and salaried person and was aged about 35 years at the time of accident. Hence 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**, 40% of the income of the deceased ought to have been awarded as future prospect, but the learned Tribunal has wrongly ignored the aforesaid aspect of the case. It is further submitted that the deceased has died leaving behind him his six legal representatives and dependents, hence 1/5th of the income of the deceased ought to have been deducted as personal expense of the deceased, but learned Tribunal has wrongly deducted 1/3rd of the income of the deceased. It is further submitted that the deceased was aged about 35 years at the time of accident, hence multiplier of 16 ought to have been adopted to work out the amount of compensation, but the learned Tribunal has wrongly applied the multiplier of 15 only. It is further submitted that as per the verdict of Hon'ble Apex Court rendered in National



Insurance Company Ltd. Vs. Pranay Sethi and Ors. (Supra), learned Tribunal ought to have awarded Rs. 70,000/- towards other traditional heads such as loss of consortium, funeral expense, loss of estate, etc. to the claimants, but the learned Tribunal has not awarded the aforesaid amount of compensation to the claimants.

8. On the other hand, learned counsel for the respondent submitted that the learned Tribunal after considering all the facts and circumstances of the case and evidence available on record has rightly passed the aforesaid judgment and award which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

9. From perusal of the record, it appears that the deceased was a government employee and was working as Gram Prasar Karta in Runni Saidpur Block. He used to get basic pay of Rs. 4900/- and dearness allowance of Rs. 2401/- i.e. total Rs.7301/- per month at the time of his death. He was aged about 35 years at the time of accident. He has died leaving behind him his six legal representatives and dependents. As the deceased was a government employee and salaried person, hence as per the verdict of Hon'ble Apex Court rendered in National Insurance Company Ltd. Vs. Pranay Sethi and Ors. (supra), 40%



of the aforesaid income of the deceased i.e. Rs. 2920/- is awarded as future prospect. On addition of the aforesaid future prospect, loss of income comes to the tune of Rs. 10221/- per month i.e. Rs. 1,22,652/- per annum. As the deceased has died leaving behind him his six legal representatives and dependents, hence 1/5th of the aforesaid income i.e. Rs. 24,530/- 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. 98,122/- per annum. As the deceased was aged about 35 years at the time of accident, hence multiplier of 16 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 15,69,952/-. 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. (supra). On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 16,39,952/-. 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 the year 2008.

10. In the facts and circumstances of the case, National Insurance company Limited is directed to pay the aforesaid amount of compensation and interest thereon to the appellants within two months from the date of this judgment after deducting the amount, if any, paid by it.

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

(Prakash Chandra Jaiswal, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	20.09.2018
Transmission Date	20.09.2018

