# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Miscellaneous Appeal No.262 of 2011**

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1. Shakila Khatoon, W/o Late Md. Gulzar
2. Begum Khatoon, W/o Md. Kamal
3. Md. Kamal, S/o Abdul Rahim\
4. Md. Raso, S/o Md. Gulzar.

.... .... Appellants/ Claimants

Versus

1. Reliance General Insurance Co.Ltd. through Principal Officer at 1308-1310 Ansal Tower 13th Floor, Nehru Place, New Delhi-m 10019
2. Md. Moin, S/o Ibrahim, r/O Village- Bakarpur, P.O.- Baghauni, P.S.- Baheri, District- Darbhanga.

.... .... Respondents/ Opposite Parties

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**Appearance :**
For the Appellant/s : Mr. DHANNJAY KUMAR
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**
ORAL JUDGMENT
**Date: 18-04-2018**

Heard learned counsel for the appellant/claimants as well as learned counsel for the respondents/opposite parties.

This appeal has been filed against the order passed by MACT cum- Additional District Judge, Muzaffarpur in Claim Case No. 255 of 2008 under order dated 10.01.2011.

The learned counsel for the appellants submits that ignoring the settled principle of calculation of loss of dependency, the tribunal has erroneously arrived at the compensation much less than what the plaintiff is entitled. He submits that on account of loss of dependency, the calculation has been done by taking the income of the deceased to be Rs. 15,000/- per annum and the same is contrary to the law, laid down by the Hon'ble Apex Court in the said two judgements, relied upon by the appellants.

Submission is that it was the specific case of the appellants before the Tribunal that deceased was running a tailoring shop and as such, the quantification is highly inadequate,. He rightly submits that since the Tribunal has found the deceased to be working, then loss of dependency, should have been calculated by at least considering his income to be Rs. 3000/- per month by taking income at Rs. 100 per day, at the least in light of the decision in the case of **National Insurance Co. Ltd. Vs. Khimlibai reported in (2009) 10 SCC 640.**

Since the age of the deceased was 40 years, multiplier of fifteen should have been applied and after deducting 1/3$^{rd}$ from such amount on account of personal expenses, the loss of dependency should have been calculated.

As regards the loss of consortium, loss of Estate and funeral expenses, he submits that the issue is now settled as per judgment of the **Hon'ble Apex Court in National Insurance**

**Company Ltd. Vrs. Pranay Sethi and others reported in 2017 (4) PLJR (SC) 261.** As per the said judgment, quantification under these three heads at the Rs. 70,000/- has been found to be reasonable amount.

On behalf of the respondents company, the learned counsel has opposed the prayer of the appellants and he has submitted that there was no evidence to show that the deceased was having a tailoring shop and the tribunal has rightly assessed the income of the deceased. He submits that there is no infirmity in the quantification of compensation, awarded by the Tribunal.

Quantification, as noticed above made by the tribunal is without considering the law.

Submission made on behalf of the appellant appears to be correct. Since the Tribunal has found the deceased to be working, the loss of dependency is required to be assessed by taking his Income to be at least Rs. 3000/- per month. The same comes to Rs. 36,000/- per annum. 1/3$^{rd}$ of the said amount is required to be deducted on account of personal expenses, which brings the entire income to Rs. 24,000/- per annum and multiplying the same by fifteen. Having regard to the fact that the deceased, was aged about 40 years, applying multiplier of fifteen ( 15), the amount of loss of dependency comes to Rs. 3,60,000/. If an amount of Rs. 70,000/- is added to the same on account of loss of consortium, loss of Estate and funeral expenses then the total amount of compensation comes to Rs. 3,60,000 + 70,000, i.e. an amout of Rs. 4,30,000/-.

It is submitted by the learned counsel for the company that the total amount of Rs. 1, 69,500/- quantified by the tribunal alongwith interest thereof, has already been paid to the appellants.

Considering this submission of the learned counsel appearing on behalf of the respondent company, this Court directs that the balance/difference in the amount of compensation arrived due to enhancement of the same as noted here in above, be paid to the petitioner. The difference of amount of compensation arising out of enhancement comes to Rs. 2, 60-500/-( Two lakhs sixty thousand and five hundred only ).

Since the company has already paid the amount awarded by the Tribunal, this Court considering the bonafide of the company, would not levy any interest upon the said difference/ balance found payable to the appellants on account of enhancement, if the same is paid within two months from today.

It is made clear that after two months, if the amount is not paid to the appellants, in light of the enhancement made by this Court, the apellants would be entitled to interest at the rate of 6%, per annum.

This application is allowed in terms of enhancement of compensation as indicated above.

**(Madhuresh Prasad, J)**

Sudha/-

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