

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.837 of 2011

1. Sanju Devi, wife of Late Jitendra Singh.
2. Raushan Kumar, Son of Late Jitendra Singh
3. Chandan Kumar, Minor son of Late Jitendra Singh
4. Kundan Kumar, Minor son of Late Jitendra Singh
5. Munni Devi, wife of Late Gopal Singh
Appellant nos. 3 and 4 are minors under the guardianship of their mother i.e.
Appellant no.1. All are residents of village – Subhai, P.S.-Hajipur Sadar,
District – Vaishali.

... .. Appellants

Versus

1. Rajinder, S/o Same Ram, resident of village – Birdhena, District – Jhajjar,
Haryana.
2. Surendra Kumar, S/o Jagjit Singh, Resident of village – Ratiouli, District –
Rohtak.
3. United India Insurance Company through (A) the Branch Manager,
Ramashis Chowk, Hajipur. (B) Branch Manager, United India Insurance
Company Limited, 8/130 Dharmapura Delhi, Rohtak Road.
4. Tarkeshwar Prasad, S/o P. Prasad, Resident of 44 Dunlop Estate, Quarter
No. NV-V, Post Sahaganj, District – Hooghly, West Bengal.
5. The New India Assurance Company Limited through (A) the Branch
Manager, New Yadav Chowk, Cinema Road, Hajipur (B) Branch Manager,
the New India Assurance Company Limited, Hooghly.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kumar Shahi
For the Respondent/s : Mr. Ashok Priyadarshi

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 30-10-2018

Re.: I.A. No. 5214 of 2015

Appellants have filed the aforesaid interlocutory
application for condonation of delay of 40 days in preferring
this appeal.

Heard learned counsel for the appellants and
learned counsel for the respondent nos. 3 and 5 on the aforesaid
I.A.



Finding the ground taken by the appellants in the aforesaid I.A. for condonation of delay made in preferring this appeal sufficient and in the interest of justice, aforesaid delay in preferring this appeal is hereby condoned and aforesaid I.A. is accordingly allowed.

Re.: M.A. No. 837 of 2011

Heard learned counsel for the appellants and learned counsel for the respondent nos. 3 and 5 on this miscellaneous appeal. None turned up on behalf of respondent nos. 1, 2 and 4 to advance argument in the case despite service of notice.

2. This miscellaneous appeal has been preferred by the claimants-appellants against the judgment dated 13.04.2010 and subsequent order dated 22.12.2010 passed under Sections 151 and 152 C.P.C. and award dated 03.01.2011 passed by the Additional District Judge-II cum Motor Vehicle Accident Claim Tribunal, Vaishali at Hajipur in Claim Case No. 35 of 2004 whereby the learned Tribunal allowing the claim petition directed the opposite party no.3-United India Insurance Company Limited and opposite party no.5-The New India Assurance Company Limited to pay the compensation to the tune of Rs. 4,94,100/- to the extent of 50% each along with the interest at the rate of 6% per annum.



3. Factual matrix of the case is that claimants filed Claim Case No. 35 of 2004 under Section 166 of the M.V. Act for awarding compensation on account of death of Jitendra Singh in the motor vehicle accident with the case in succinct that said Jitendra Singh was a driver of the truck bearing registration no. WB 15 4082. On 09.04.2004, after loading liquor from Rampur (U.P.) in the truck, he was proceeding to Bagdogra, West Bengal. But on the way on 12.02.2004, a truck bearing registration no. HR 46A 9402 collided with the aforesaid truck on NH-31 near village Raghunathpur, P.S.- Saheb Kamal, District – Begusarai resultantly said Jitendra Singh sustained grievous injuries and he succumbed to his injuries at the place of accident. Regarding the aforesaid accident, Saheb Kamal P.S. Case No. 22 of 2004 was instituted under Sections 304A, 427 and 379 of the Indian Penal Code. Said Jitendra Singh was a professional driver of the aforesaid truck and was getting salary of Rs. 3000/- per month and Rs. 40/- per day as food allowance. He was aged about 35 years at the time of accident.

4. Opposite party nos. 3 and 5 putting their appearance in the case filed separate written statement, while opposite party nos. 1, 2 and 4 did not put their appearance in the case despite service of notice. Hence the case proceeded ex-



parte against them. 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, order and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment, order and award, claimants have preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the deceased has died leaving behind him his five legal representatives and dependents, hence 1/4th 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 same. It is further submitted that the deceased was a 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 same. It is also submitted that the amount of compensation awarded under other traditional heads is also very paltry and meager.



8. On the other hand, it is submitted by learned counsel for the respondent nos. 3 and 5 that as the deceased was a monthly paid employee of the truck, the appellants may take recourse of either Workmen's Compensation Act or Motor Vehicles Act and in the Workmen's Compensation Act, there is no provision of allowing any future prospect.

9. From perusal of the record, it appears that as per the case of the claimants, deceased Jitendra Singh was a professional driver of the truck and used to earn salary of Rs. 3000/- per month and Rs. 40 per day as food allowance and has adduced evidence in this regard. Learned Tribunal has also assessed the income of the deceased as Rs.4200/- per month which has not been assailed by the respondents. From perusal of the evidence adduced by the appellants, it appears that AW-1 Munni Devi who happens to be mother of the deceased has stated about getting salary of Rs. 3000/- per month and Rs. 40/- per day as food allowance by the deceased. In para-3 of her cross-examination made by respondent no.5, she has further stated that he used to accord his salary to her. AW-2 Dinesh Singh who happens to be khalasi of the truck in question has also stated in his examination-in-chief that the deceased used to get Rs. 3000/- per month and Rs. 40/- per day as food allowance. He was crossed by respondent no.3 giving



suggestion in para-4 of his cross-examination that the deceased used to get salary of Rs. 1500-1600/- per month. AW-3 Sanju Devi who happens to be wife of the deceased has stated that the deceased used to get monthly salary of Rs. 3000/- and food allowance of Rs. 40/- per day. In Para-3 of her cross-examination, she has been given suggestion by respondent no.3 that she has deposed wrong quantum of salary of the deceased. AW-4 Birendra Singh who happens to be brother of the deceased has stated in his examination-in-chief that the deceased used to get salary of Rs. 3000/- per month and food allowance of Rs. 40/- per day. He has not been cross-examined by the respondent no.3 on the aforesaid aspect of the case. Thus, due to giving suggestion to AW-2 regarding earning salary not to the tune of Rs. 3000/- as claimed by the appellants rather Rs. 1500-1600/- per month and giving suggestion to AW-3 about deposing wrong quantum of salary of the deceased by her and no cross-examination of AW-4 on the point of getting salary by respondent no.3, I find that it is the admitted case of the respondents that the deceased was a salaried person.

10. As the deceased was a salaried person and used to earn Rs. 4200/- per month i.e. Rs. 50400/- per annum 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. (supra), 40% of the aforesaid annual income of the deceased i.e. Rs. 20160/- is awarded as future prospect. On addition of the aforesaid future prospect, loss of income comes to the tune of Rs. 70560/- per annum. As the deceased has died leaving behind him his five legal representatives and dependents, hence 1/4th of the aforesaid income i.e. Rs. 17640/- 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. 52920/- 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. 8,46,720/-. Besides the aforesaid amount of compensation, Rs. 70,000/- is awarded towards other traditional heads such as Rs. 15000/- as funeral expense, Rs. 15000/- as loss of estate and Rs. 40000/- as loss of consortium 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. 9,16,720/-. From perusal of the record, it appears that the



claim petition was filed in the year 2004 and it was decided in the year 2010 i.e. after 6 years and Learned Tribunal considering the facts and circumstances of the case has awarded the interest at the rate of 6% per annum on the amount of compensation from the date of the judgment which, in my considered opinion, also appears to be proper and appropriate. Hence the claimants are entitled to get the interest at the rate of 6% per annum on the aforesaid amount of compensation from the date of judgment passed by the learned Tribunal.

11. As the appellants have taken recourse of Motor Vehicles Act and have not opted Workmen's Compensation Act and in view of the verdict of the Hon'ble Supreme Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** (supra), provision of future prospect for salaried person under the Motor Vehicles Act has been made, hence non-availability of the provision of future prospect under the Workmen's Compensation Act is not going to debar from granting future prospect to the appellants under the Motor Vehicles Act.

12. Learned Tribunal has found contributory negligence of both the vehicles in the accident and assessed the extent of negligence of each of the aforesaid vehicles as 50% and the same has not been assailed by the respondents, hence



both the respondent nos. 3 and 5 are liable to pay aforesaid amount of compensation and interest thereon to the extent of 50% each.

13. In the facts and circumstances of the case, respondent nos.3 and 5 are directed to pay aforesaid amount of compensation and the interest thereon to the extent of 50% each after deducting the amount, if any, paid to the claimants within two months from the date of this judgment.

14. Accordingly, this miscellaneous appeal is allowed with the aforesaid modification in the impugned judgment, order and award.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	02.11.2018
Transmission Date	02.11.2018

