

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.798 of 2014

=====

1. Indu Devi, wife of Late Suresh Prasad.
2. Vikram Kumar, Minor.
3. Vikash Kumar, Minor. Minor sons of Late Suresh Prasad, under the guardianship of their mother appellant no.1 Indu Devi. All resident of village - Telariya, P.O. and P.S.- Barachati, District - Gaya. Appellants.

Versus

1. The Cholamandalam Ms General Insurance Company Ltd. through its Manager Legal, 4 Marigold, 2nd Floor, Shahnajaf Road, Lucknow-226001.
2. Md. Mansoor Ahmad, S/o Md. Issa, Resident of Roti Gaon, Mandwa Khaga, Fathepur, District - Fathepur, U.P. owner of Vehicle No. UP-71B/8722. Respondents.

=====

Appearance :

For the Appellants : Mr. Shailendra Kumar, Advocate.

For the Respondent No.1 : Mr. Durgesh Kumar Singh, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 25-10-2018

Re.: I.A. No.6102 of 2015

The aforesaid I.A. has been filed for condoning the delay of 91 days in preferring this appeal.

2. For the reasons mentioned in this interlocutory application, I find that the appellants were prevented by sufficient cause in preferring this appeal within time.

3. As a result, this interlocutory application is allowed and the delay in filing this appeal is hereby condoned.

M.A. No.798 of 2014

4. Heard learned counsel for the appellants and learned counsel for the respondent no.1 on this



miscellaneous appeal.

5. This miscellaneous appeal has been preferred against the judgment dated 26.04.2014 and award dated 09.06.2014 passed by the 3rd Additional District Judge-cum-M.V.A.C.T., Gaya (hereinafter in short referred to as the 'Tribunal') in Claim Case No. 165/12/125 of 2013, whereby the learned Tribunal allowing the claim case directed the respondent no.1 to pay compensation to the tune of Rs.5,15,688/- along with interest at the rate of 8% per annum from the date of admission of the case to the claimants.

6. The factual matrix of the case is that claimants filed Claim Case No. 165 of 2012/125 of 2013 under Section 166 of M.V. Act for awarding compensation on account of death of Suresh Prasad in a motor vehicle accident with the case in succinct that on 05.08.2012 at around 8:00 A.M. said Suresh Prasad was proceeding to shop to purchase some article and when he arrived at northern lane of G.T. road at village Telariya. Suddenly a truck, bearing registration no.UP71B 8722, being driven rashly and negligently by its driver, dashed him and inflicted grievous injuries to him. He was rushed to the



P.H.C., Barachatti and from there he was referred to Gaya, but his relative brought him to RIMS, Ranchi to accord him better treatment but he succumbed to his injuries on 01.09.2012. Regarding the aforesaid accident Barachatti P.S. Case No.362 of 2012 was instituted under Section 279,337 and 338 of the Indian Penal Code. The deceased was a mason and he used to earn Rs.300/- per day from the aforesaid vocation.

7. Opposite parties put their appearance in the case and filed their separate written statement. Claimants adduced ocular and documentary evidence in buttress of their case.

8. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in earlier paragraph.

9. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred this appeal.

10. It is submitted by learned counsel for the appellants that the deceased was mason and he used to earn Rs.300/- per day out of the aforesaid vocation. Claimants have adduced ocular evidence i.e. the testimony of the



claimants and his two witnesses in this regard who have unanimously stated that the deceased was a mason and used to earn Rs.300/- per day but the learned Tribunal has wrongly and without any basis discarded the aforesaid ocular evidence of the claimants and considered his earning as Rs.158/- per day as per Minimum Wages Act finding him semiskilled person. It is also submitted that 40% of the aforesaid income ought to have been awarded as future prospect but the learned Tribunal has wrongly ignored the same. It is further submitted that the compensation awarded under traditional head is Rs.7000/- which is very paltry and meager and not as per the verdict of the Hon'ble Apex Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors** reported in **2017 (4) PLJR 261 (SC)**.

11. On the other hand, learned counsel for the respondent no.1 has submitted that there is no cogent and clinching evidence regarding the earning of the deceased and finding the deceased as semiskilled person, the learned Tribunal has rightly considered the income of the deceased as Rs. 158/- per day and Rs.4108/- per month as per the prevalent Minimum Wages Act. It is further submitted that



it is the consented award and the learned Tribunal has considered the aforesaid income of the deceased on the basis of consent given by both the parties and the appellants have not assailed the aforesaid observation of the Tribunal regarding giving his consent in respect of the aforesaid aspect of the case in this appeal. Hence, the appellants cannot resile from their earlier stand taken before the learned Tribunal.

12. From perusal of record, it appears that the appellants have adduced ocular evidence to the effect that the deceased was mason and he used to earn Rs.300/- per day out of the said vocation but they have not adduced any cogent and clinching evidence in this regard. Moreover, from perusal of the impugned judgment it appears that on the consensus of the appellants and the opposite party no.1, the learned Tribunal has considered the income of the deceased as Rs.158/- per day as per prevalent Minimum Wages Act finding him semiskilled worker and the appellants have not denied the same in this appeal. Hence, the aforesaid income of the deceased as considered by the learned Tribunal appears to be just, proper and consented one and does not require any interference by this Court. As



the deceased was a mason and semi-skilled person and was neither a salaried person nor was self employed hence the claimants are not entitled to get any future prospect on the aforesaid income of deceased. So far as the compensation awarded under the traditional head is concerned, the learned Tribunal has awarded Rs.7000/- under the said head which appears to be very meager and paltry, which must be Rs.70,000/- in view of the verdict of the Hon'ble Apex Court rendered in the case of **Pranay Sethi (supra)**. On addition of aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs.5,78,688/-. Besides the aforesaid amount of compensation, claimants would also be entitled to get interest on the aforesaid amount of compensation at the rate of 8% per annum from the date of filing of the claim case till its realization.

13. In the facts and circumstances the respondent no.1 is directed to pay the aforesaid amount of compensation and interest thereon to the appellants after deducting the amount of compensation if any, paid by it within two months from the date of this judgment.

14. Accordingly, this appeal is disposed of



with the aforesaid modification in the impugned judgment
and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2018
Transmission Date	31.10.2018

