

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.262 of 2014

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1. Rinku Devi Wife of Late Pramod Prasad @ Pramod Yadav
 2. Prinka Kumari Daughter of Late Pramod Prasad @ Pramod Yadav
 3. Khushi Kumari Daughter of Late Pramod Prasad @ Pramod Yadav
 4. Vigan Kumar Son of Late Pramod Prasad @ Pramod Yadav
- 2 and 3 are minor daughter of Late Pramod Prasad @ Pramod Yadav and 4 is the Minor Son of Late Pramod Prasad @ Pramod Yadav, 2 to 4 are under their natural guardian mother namely Rinku Devi. Appellant No.1 All are resident of Village-Chakkistipur, P.O- Sanda, Police Station- Dhanaura, District-Patna.

... .. Appellant/s

Versus

1. Sri Janardhan Singh Son of Lalan Singh Shivastan, Station Road Burnpur, District Vardwan (B. Bengal), Driver of BR-1AP-4150, Mini Bus.
2. Sandip Kumar Son of Manohar Prasad Janakdhari Lal Road, Danapur Cantt., District Patna, owner of the Mini Bus No. BR-1AP-4150.
3. Divisional Manager D-I, II, The Oriental Insurance Company Ltd. Jaintpur Kothi, Bank Road, Patna, back to Biscoman Bhawan, Insurer of BR-1AP-4150, Mini Bus.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar
For the Respondent no. 3	:	Mr. Ashok Priyadarshi

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 19-06-2018

Seen the office note and records.

2. Respondent no. 1, who has not been served with notice happens to be driver of offending vehicle, hence, on consensus of the parties, the appellants are exempted to take fresh steps for sending notice against the aforesaid respondent.

3. Learned counsel for the appellants and learned counsel for the respondent no. 3 (The Oriental Insurance



Company Ltd.) present before the Court submitted to make hearing of the case today. On the aforesaid submission, heard learned counsel for the appellants and learned counsel for the respondent no. 3 on this miscellaneous appeal.

4. This miscellaneous appeal has been preferred against the judgment dated 15.05.2013 and award dated 24.01.2014 passed by learned Additional District Judge-VII-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case no. 575 of 2009 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 3 of the said case i.e. The Oriental Insurance Company Ltd. to pay final amount of compensation to the tune of Rs. 3,91,500/- along with interest @ 7% per annum from the date of filing of the claim case till its realization to the claimants with liberty to recover the same from the owner of vehicle after its payment.

5. Factual matrix of the case is that the Claim Case no. 575 of 2009 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 4,50,000/- on account of death of Pramod Prasad @ Pramod Yadav in motor vehicle accident with the case in succinct that the said Pramod Prasad @ Pramod Yadav who happened to be husband of the claimant no. 1 and father



of the claimant nos. 2 to 4 was proceeding from Jehanabad to Patna by Mini Bus bearing registration no. BR-1AP-4150 on 2.10.2008. When the bus arrived near Ramganj, it turned turtle and plunged into ditch of water due to rash and negligent driving by its driver at the relevant time inflicting serious injury to Pramod Prasad @ Pramod Yadav who succumbed to injury on the spot. The deceased was *khalsi* of the offending vehicle and used to get Rs. 3,000/- per month as remuneration. He was aged about 25 years at the time of his death.

6. Only, the Opposite Party nos. 3 i.e. The Oriental Insurance Company Ltd. put its appearance in the case and filed its written statement. The claimants adduced ocular and documentary evidence in buttress of their case.

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

8. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred the present appeal.

9. The claimants-appellants have preferred this appeal for enhancement of quantum of compensation on three grounds. Firstly, that the deceased was aged about 25 years at



the time of accident. He was *khalasi* of the offending vehicle and used to get fixed salary of Rs. 3,000/- per month. Hence, as per the recent decision of Hon'ble Apex 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 should be awarded towards future prospect. Secondly, as the deceased has died leaving behind his four legal representatives and dependents, hence, 1/4th of the income of the deceased ought to have been deducted towards personal expenses of the deceased, but the learned Tribunal has wrongly deducted 1/3rd income of the deceased in the aforesaid head, and thirdly as per the aforesaid judgment of the Hon'ble Apex Court, 70,000/- ought to have been awarded to the claimants towards other traditional heads, but instead, the learned Tribunal has awarded only, 9,500/-.

10. On the other hand, learned counsel for the respondent no. 3 submitted that the deceased was not a permanent employee, hence, the claimants are not entitled to get any future prospect. He has further submitted that the impugned judgment is earlier to that of the aforesaid judgment of Hon'ble Apex Court, hence, amount of compensation awarded by learned Tribunal in traditional heads is proper and



adequate.

11. On perusal of impugned judgment and record, it appears that it is the admitted case of the parties that the deceased was *Khalasi* of the offending vehicle. It is also admitted to the parties that he has used to get Rs. 3,000/- per month out of the aforesaid vocation. As the deceased was a *Khalasi* of the offending vehicle, he must have been getting fixed salary and as he was aged about 25 years at the time of his death, as per verdict of Hon'ble Apex Court rendered in *National Insurance Company Ltd. (Supra)* 40% of the aforesaid income i.e. Rs. 1200/- is awarded towards the future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs. 4200/- per month i.e. Rs. 50,400/- per annum. As the deceased has died leaving behind his four legal representatives and dependents, hence, 1/4th of the aforesaid income i.e. Rs. 12,600/- is deducted as the personal expenses of the deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to the Rs. 37,800/- per annum. As the deceased was 25 years old at the time of accident, hence, the multiplier of 18 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the



amount of compensation comes to the tune of Rs. 6,80,400/-. Besides, the aforesaid amount of compensation, Rs. 70,000/- is awarded to the claimants-appellants towards other traditional heads such as loss of consortium, funeral expenses and loss of estate etc. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 7,50,400/-. Besides, the aforesaid compensation, I also think it proper to award interest @ 6% per annum on the aforesaid amount of compensation from the date of filing of claim case till its realization.

12. The respondent no. 3 the Oriental Insurance Company Ltd. is directed to make payment of aforesaid amount of compensation and interest thereon to the appellants after deducting the amount, if any paid by it within two months from the date of this judgment.

13. Accordingly, this miscellaneous appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	22-06-2018
Transmission Date	N.A.

