

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.139 of 2012

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1. Babli Devi, W/o Late Ashok Kumar @ Ashok Singh, Resident of Village- Sherpur, P.O +P.S- Maner, District- Patna.
 2. Neha Kumari, D/o Late Ashok Kumar @ Ashok Singh
 3. Nidhi Kumari D/o Late Ashok Kumar @ Ashok Singh
 4. Sahil Kumar S/o Late Ashok Kumar @ Ashok Singh
- Appellants nos. 2 to 4 are minor daughters and son of the deceased represented through legal and natural guardian (mother) i.e. appellant no.1 and are residents of Village- Sherpur, P.O +P.S- Maner, District- Patna.
5. Lal Pati Devi, W/o Munshi Lal Singh Resident of Village- Sherpur, P.O +P.S- Maner, District- Patna.
 6. Munshi Lal Singh S/O Late Dhurkhali Rai Resident of Village- Sherpur, P.O +P.S- Maner, District- Patna.

... .. Appellants

Versus

1. Sheo Shankar Noniya, S/o Chandrika Noniya (Driver of Truck No. UP-60D-8853), Resident of Village- Shepur of Police Station- Maner, District- Patna.
2. Manoj Choudhary S/o S.N. Choudhary (Owner of Truck No. UP-60D-8853) and Gopal Choudhary, S/o Janak Choudhary Resident of Village- Kishunpur, Narayanee, Tariyani, P.O.+P.S- Sitamarhi At Present Gola Road, Danapur, P.O+P.S- Danapur, District- Patna.
3. National Insurance Company Ltd., C/o Divisional Manager, National Insurance Company Ltd., Division No. 2, Arunachal Bhawan Exhibition Road, G.P.O, District- Patna.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate.
For Respondent no.3 : Mr. Abhay Kumar Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 20-11-2018

Re.: I.A. No. 9712 of 2014

Appellants have filed the aforesaid interlocutory application for condonation of delay of 4 months and 11 days in preferring this appeal.

Heard learned counsel for the appellants and learned counsel for the respondent no. 3 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. 139 of 2012

Heard learned counsel for the appellants and learned counsel for the respondent no.3 on this miscellaneous appeal. None turned up on behalf of respondent nos.1 and 2 despite service of notice to advance argument in this appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 14.03.2011 and award dated 14.07.2011 passed by the Additional District Judge-IV cum Motor Vehicle Accident Claim Tribunal, Patna in Claim Case No. 197 of 2008 whereby the learned Tribunal allowing the claim petition, finding the compensation amount to be Rs. 4,41,500/- awarded Rs. 3,00,000/- to the claimants as claimed by them in the claim petition and directed the opposite party no.3-National Insurance Company Limited to pay the aforesaid amount of compensation along with the interest at the rate of 7% per annum from the date of institution of the case to the claimants with right to recover the aforesaid amount from the owner of the offending vehicle after its payment to the claimants.



3. Factual matrix of the case is that claimants filed Claim Case No. 197 of 2008 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 3,00,000/- on account of death of Ashok Kumar @ Ashok Singh in the motor vehicle accident with the case in succinct that the said Ashok Kumar @ Ashok Singh was the cleaner of the Truck bearing registration No. UP-80D-8853. On 21.02.2008, he was returning from Muzaffarpur along with the aforesaid truck. He got filled air in the wheel near Bhagwanpur College at Banthu More located at N.H. 77 and when after getting the air in the wheel, he tried to climb on the said truck, in the meantime, driver of the truck sped it up, resultantly he fell down from the said truck and died on the spot and the driver of the said truck fled away. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Deceased used to earn Rs. 3000/- per month out of the said vocation.

4. Opposite party nos. 1 and 2 did not put their appearance in the case despite service of notice, hence the case proceeded ex-parte against them. Opposite party no.3 putting its appearance in the case filed its written statement. Claimants 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 this miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that as the deceased was a cleaner and was a salaried person and was aged about 28 years at the time of accident, hence 40% of the income of the deceased ought to have been awarded as future prospect, but learned Tribunal has wrongly ignored the same. It is further submitted that the deceased has died leaving behind him his six legal representatives and dependents, hence 1/4th of the aforesaid income of the deceased ought to have been deducted as personal expense of the deceased to work out the amount of compensation, but learned Tribunal has wrongly deducted 1/3rd of the income of the deceased. It is further submitted that the amount of compensation awarded towards other traditional heads i.e. Rs. 9500/- is very meager and paltry and 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) 261 PLJR**, it ought to be Rs. 70000/-.



8. On the other hand, it is submitted by learned counsel for the respondent no.3 that as the deceased has contributed towards accident and there has been contributory negligence of the deceased in the accident, hence the claimants are not entitled to get the aforesaid total amount of compensation from the Insurance Company. It is also submitted that as the deceased was a cleaner, so he cannot be branded as 3rd party and hence on account of death of the deceased in the motor vehicle accident, claimants are not entitled to get any compensation.

9. From perusal of the record, it appears that the deceased happens to be cleaner of the offending truck and he has died falling from the said truck in the course of climbing on it. Neither Respondent no.3 has taken any case of contributory negligence of the deceased in the accident by filing its written statement nor any issue regarding contributory negligence of the deceased has been framed by the learned Tribunal and decided by it. Hence respondent no.3 cannot take aforesaid plea of the contributory negligence for the first time at this appellate stage.

10. Admittedly the deceased was a cleaner of the offending truck, hence he happens to be 3rd party to the policy of contract entered into between the Insurance Company and



the insured of the truck. As per the case of the claimants, deceased used to earn Rs. 3,000/- per month from the aforesaid vocation, but it is not the case of the claimants that the deceased was a salaried person and used to get salary of Rs.3000/- per month and no evidence in this regard has been adduced by the appellants. Hence, in my considered opinion, appellants are not entitled to get any future prospect on the aforesaid income of the deceased as claimed by the appellants.

11. As the deceased has died leaving behind him his six legal representatives and dependents, hence $1/4^{\text{th}}$ of the aforesaid income i.e. Rs. 750/- 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. 2250/- per month i.e. Rs. 27000/- per annum. Admittedly the deceased was aged about 28 years at the time of accident, hence as per the verdict of Hon'ble Apex Court rendered in **Sarla Verma (SMT) and others Vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121**, multiplier of 17 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 4,59,000/-. Besides the aforesaid amount of compensation, claimants are also



entitled to get Rs. 70,000/- 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 (Supra)**. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 5,29,000/-.

12. The appellants have claimed the amount of compensation to the tune of Rs.3,00,000/- in their claim petition but this court finds the appellants entitled to get Rs. 5,29,000/- as just and appropriate amount of compensation. In my considered opinion, there is no bar in awarding amount of compensation, which is just and appropriate, even if it is more than the amount of compensation claimed by the appellants in the claim petition. Besides the aforesaid amount of compensation, appellants are also entitled to get the interest at the rate of 7% per annum on the aforesaid amount of compensation as awarded by the learned Tribunal and not assailed by the Insurance Company from the date of filing claim petition till its realization.

13. In the facts and circumstances, respondent no.3-National Insurance company is directed to pay the aforesaid amount of compensation and interest thereon after



deducting the amount, if any, paid by it to the appellants within two months from the date of this judgment with right of recovery as granted by the learned Tribunal.

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

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	27.11.2018
Transmission Date	27.11.2018

