IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.686 of 2012

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National Insurance Company Ltd., Division 1 Patna through Sri Anjani Kumar A.O. Cum and Duly Constituted Attorney National Insurance Company Limited Regional Office 4th Floor Sone Bhawan B.C. Patel Road P.O. G.P.O., P.S. Sachiwalaya Patna, District – Patna

... ... Appellant/s

Versus

1. Sri Laleshwar Prasad Sharma, Son of C.P. Sharma, Resident of Bistipur P.O. and P.S. Jai Nagar Dhanbad, Jharkhand
2. Brahamdeo Barhi, Son of Radri Barhi, Resident of P 80 C.I.T. Road Kolkata-54
3. Smt. Saroj Devi, wife of Late Sidhnath Prasad.
4. Rakesh Aman, Son of Late Sidhnath Prasad.
5. Manita Kumari, daughter of Late Sidhnath Prasad

All are residents of Salimpur, Bakerganj, Bakerganj Park Road P.S. and P.O. Kadam Kuan Patna, District – Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Ashok Priyadarshi, Advocate.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 11-12-2018

Heard learned counsel for the appellant on this miscellaneous appeal. None turned up on behalf of respondents nos. 3 to 5 despite service of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 18.01.2012 and award dated 01.08.2012 passed by Fast Track Court-V cum Motor Vehicle

Accident Claim Tribunal, Patna in Claim Case No. 116 of 2009 whereby the learned Tribunal allowing the claim petition directed the opposite party no.3-National Insurance Company Limited to pay final amount of compensation to the tune of Rs. 23,80,460/- along with the interest at the rate of 6% per annum from 01.07.2010 till payment to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case No. 116 of 2009 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 40,50,000/- on account of death of one Sidhnath Prasad in Motor Vehicle Accident with the case in succinct that on 25.01.2009 said Sidhnath Prasad was proceeding to Chapra along with Asarfi Roy on motorcycle and when he was crossing village Dumri Bujurg at NH-19, Naya Gaon, District – Chapra, a truck bearing registration no.WB-25A-7013 being driven rashly and negligently by its driver dashed the said Sidhnath Prasad resulting into his death. The aforesaid accident took place due to rash and negligent driving of the offending truck by its driver at the relevant time of accident.

4. Opposite party no.3 put its appearance in the case and filed its written statement while 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. 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, Opposite Party No.3-National Insurance Company Limited has preferred the present miscellaneous appeal.

7. Filing the copy of the claim petition furnished to it by the claimants bearing seal of the District and Sessions Judge, Patna and date in buttress of its case, it is submitted by learned counsel for the appellant that as per the claim case itself, deceased Sidhnath Prasad was aged about 54 years at the time of accident, but learned Tribunal has assessed the age of the deceased as 45 years on the basis of the post mortem report furnished by the appellant by way of documentary evidence in the case. But in view of the aforesaid claim case of the appellant disclosing the age of the deceased as 54 years, aforesaid documentary evidence cannot be taken into considerration as no evidence can be adduced against the pleading of the parties and as the deceased was aged about 54 years at the time of accident, hence multiplier of 11 ought to have been adopted to work out the amount of compensation instead of 15 as adopted by the learned Tribunal. It is also submitted by learned counsel for the appellant that as the gross salary of the deceased was Rs. 20170/- per month i.e. Rs. 2,42,040/- per annum, hence admissible income tax at the relevant time of accident is to be deducted from the aforesaid gross salary and after deduction of the aforesaid income tax, net income of the deceased ought to have been taken into consideration to work out the amount of compensation.

8. From perusal of the aforesaid claim petition, it appears that it is the case of the claimants that the deceased Sidhnath Prasad was 54 years old at the time of accident as his date of birth is 01.05.1954. But from perusal of the impugned judgment, it appears that as per the post mortem report filed by the claimants doctor conducting the autopsy of the deceased has assessed the age of the deceased as 45 years at the relevant time. As the claimant has specifically mentioned the age of the deceased in the claim petition with his date of birth in precise, hence evidence adduced by the claimants against its aforesaid case is not admissible in the eye of law as no evidence can be given against the pleading. Hence, in the facts and circumstances of the case, I find that the deceased was aged about 54 years at the time of accident.

9. From perusal of the impugned judgment, it appears that the gross salary of the deceased Sidhnath Prasad was Rs.20,170/- per month i.e. Rs.2,42,040/- per annum. Aforesaid accident is of the year 2009 and as per the slab of income, tax payable on the aforesaid income at the relevant period of accident is Rs. 8204/- which is deducted as payable income tax. On aforesaid deduction of the income tax, net income of the deceased comes to the tune of Rs.2,33,836/- per annum.

10. As the deceased has died leaving behind him his three legal representatives and dependents, hence 1/3rd of the aforesaid income i.e. Rs. 77945/- is deducted as personal expenses 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. 1,55,891/- per annum. As the deceased was aged about 54 years at the time of his death, hence in view of the verdict of the Hon'ble Supreme Court rendered in **Sarla Verma (SMT) and others Vs. Delhi Transport Corporation and another,**

reported in **(2009) 6 SCC 12,** multiplier of 11 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 17,14,801/-. Besides the aforesaid amount of compensation, Rs. 70,000/- is awarded 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 and Ors.** reported in **2017 (4) 261 PLJR**. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 17,84,801/-. Besides the aforesaid amount of compensation, claimants are also entitled to get interest at the rate of 6% per annum from 01.07.2010 till payment as awarded by the learned Tribunal and not assailed by the appellant.

11. In the facts and circumstances of the case, appellant is directed to pay compensation to the tune of Rs.17,84,801/- along with the interest at the rate of 6% per annum from 01.07.2010 till payment deducting the amount already paid by it to the claimants within two months from the date of this judgment.

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

13. Let the statutory amount deposited by the appellant be sent down to the learned Tribunal through cheque in the name of claimant no.1 Saroj Devi for its adjustment in the awarded amount of compensation.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	14.12.2018
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