

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.642 of 2012

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The Divisional Manager, United India Insurance Company Limited, At
Muzaffarpur, Appeal and Appellant through the Manager & Constituted Attorney
Regional Officer, United India Insurance Company Limited, 3rd Floor, Chanakya
Towers, R. Block, Patna

.... Appellant

Versus

1. Rinki Devi W/o Lt. Jitendra Chourasia R/o Village - Kanhara Hardas, P.S. P.S.
Bochahan, District - Muzaffarpur
2. Keshri Devi W/o Sri Maksudan Chaurasia R/o Village - Kanhara Hardas, P.S.
P.S. Bochahan, District - Muzaffarpur
3. Vivek Kumar (Minor) S/o Lt. Jitendra Chourasia Minor And Under The
Natural Guardian Mother - Res. 1 R/o Village - Kanhara Hardas, P.S. P.S.
Bochahan, District - Muzaffarpur
4. Ayush Kumar (Minor) S/o Lt. Jitendra Chourasia Minor And Under The
Natural Guardian Mother - Res. 1 R/o Village - Kanhara Hardas, P.S. P.S.
Bochahan, District - Muzaffarpur
5. Muskan Kumari (Minor) D/o Lt. Jitendra Chourasia Minor And Under The
Natural Guardian Mother - Res. 1 R/o Village - Kanhara Hardas, P.S. P.S.
Bochahan, District - Muzaffarpur
6. Deepak Kumar S/o Chhotelal (Owner of the Vehicle) Resident of Goriya
Asthan, P.O. Sadikpur Maner, Distt. - Patna

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate.
For the Respondent/s : Mr. Mukesh Prasad Singh, Advocate.

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

ORAL JUDGMENT

Date: 29-08-2018



Re.: I.A. No. 6524 of 2014

Appellant has filed the aforesaid interlocutory application for condonation of delay of 25 days in preferring this appeal with the case that the judgment was passed on 08.02.2012 and award was prepared on 02.04.2012 beyond the time limit prescribed for preparation of the same and no copy of the award was made available to the appellant. Appellant applied for certified copy of the judgment and award on 07.02.2012, but it was delivered on 19.05.2012 and thereafter it was handed over to the superior officers for taking decision. After doing the formalities and taking legal opinion, the file was handed over to its learned counsel on 10.09.2012 for preferring appeal and accordingly this appeal was filed on 12.09.2012. Thus there is no deliberate laches on the part of the appellant in not preferring this appeal within time rather the aforesaid delay has been caused due to aforementioned reasons.

Respondents have not filed any rejoinder against the aforesaid interlocutory application.

It is settled principle of law that justice should be done after hearing the parties and injustice should not be done merely on technicality by shutting down the opportunity of hearing to the parties. Hence in the facts and circumstances of the case and in the



interest of justice, aforesaid delay made in preferring this appeal is hereby condoned and the aforesaid interlocutory application is allowed.

Re.: M.A. No. 642 of 2012

Heard learned counsel for the appellant and learned counsel for the respondents on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 08.02.2012 and award dated 02.04.2012 passed by the 5th Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 199 of 2010 whereby the learned Tribunal allowing the claim petition directed the opposite party no.2-United India Insurance Company Limited to pay compensation to the tune of Rs. 8,23,500/- along with the interest at the rate of 6% per annum from the date of filing claim case till its realisation to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case No. 199 of 2010 under Section 166 of the M.V. Act for awarding compensation on account of death of Jitendra Chaurasia in Motor Vehicle Accident with the case in succinct that on 09.10.2010 said Jitendra Chaurasia was going on motorcycle along with his brother namely Anil Chaurasia. As soon as he arrived near Bakhari Chowk, a truck bearing Registration No. BR-1G-5363 being driven



rashly and negligently by its driver coming from Muzaffarpur side dashed the motorcycle arriving on the kachchi flank of the road resultantly Jitendra Chaurasia died on the spot. Aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Regarding the aforesaid accident, Ahiyapur P.S. Case No. 373 of 2010 was registered under Sections 279 and 304A of the Indian Penal Code against the driver of the offending vehicle. Further case of the claimants is that the deceased was aged about 29 years at the time of accident and he was doing a private job and used to earn Rs. 6000/- per month from the said vocation.

4. Opposite party nos. 1 and 2 put their appearance in the case and filed their separate 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, opposite party no.2-United India Insurance Company Limited has preferred the present miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that the certificate allegedly issued by the Maharaja Salt Traders filed



by the respondents in the case has not been proved by its author rather by the maternal uncle of the deceased, hence it is not admissible in evidence and cannot be looked into. It is further submitted that there is no such pleading of the respondents that the deceased was working as salesman in the Maharaja Salt Traders, Nawada. Hence aforesaid evidence adduced by the respondents in this regard is not admissible in evidence as it is settled principle of law that evidence cannot travel beyond pleadings. It is further submitted that the deceased was aged about 29 years at the time of accident, hence multiplier of 17 ought to have been applied to work out the amount of compensation, but learned Tribunal has wrongly applied the multiplier of 18.

8. On the other hand, learned counsel for the respondents submitted that the deceased Jitendra Chaurasia was working as salesman in Maharaja Salt Traders and used to get Rs. 6000/- per month from the said vocation. Respondents have filed the certificate issued by the aforesaid firm marked as Exhibit-2 in substantiation of the aforesaid case. They have also adduced ocular evidence in buttress of their case and witnesses have unanimously stated that the deceased was working as salesman in the aforesaid firm and used to get Rs. 6000/- from the said vocation. Relying upon the aforesaid ocular and documentary evidence of the respondents,



learned Tribunal has rightly passed the aforesaid judgment and award. Learned counsel for the respondents relied upon the judgments rendered in the case of **Dr. K.G. Poovaiah Vs. General Manager/Managing Director Karnataka State Road Transport Corporation** reported in (2001) 9 SCC 167, in the case of **Asha Devi, wife of Shivchandra & Ors. Vs. Renu Shukla, wife of Sri Lalan Kumar Shukla & Anr.** reported in 2009 (3) PLJR 23 and in the case of **Jagdish Vs. Mohan and Others** reported in (2018) 4 SCC 571 in buttress of their case.

9. From perusal of the record, it appears that taking place of accident and death of the deceased in the accident due to rash and negligent driving of the offending vehicle by its driver is not denied. As per the case of the claimants, the deceased used to do private job and earn Rs. 6000/- per month from the said vocation. There is no such case of the claimants in the claim petition that the deceased used to work as salesman in the Maharaja Salt Traders, Nawada. It is settled principal of law that the evidence cannot be led beyond pleadings and if adduced then it is not admissible in the eye of law and cannot be looked into. Hence the ocular and documentary evidence adduced by the respondents regarding working of the deceased as a salesman in Maharaja Salt Traders, Nawada against the aforesaid pleadings, in my considered opinion, is not admissible in



the eye of law and cannot be looked into.

10. Moreover, from perusal of the certificate issued by Maharaja Salt Traders, it appears that it has been issued by one Wazir Prasad, but author of the said certificate has not been examined by the respondents to prove the said certificate rather maternal uncle of the deceased has proved it. Hence, as the said document is not proved by its author, it is not admissible in evidence.

11. More so from perusal of the claim petition, it appears that earlier the respondents have claimed the income of the deceased as Rs. 4000/- per month from private work, but on 02.02.2012 they have enhanced the aforesaid income of the deceased as Rs. 6000/- by incorporating amendment in the petition. But even then they have not asserted that the deceased was working as a salesman in the aforesaid firm instead continued on their previous stand that the deceased was doing a private job. From perusal of the statement of AW-5 who happens to be maternal uncle of the deceased, it appears that that the deceased was working in the said company for the last 2½ years. The aforesaid aspect of the case indicates that it must be well within the knowledge of the respondents that the deceased was working as a salesman in the aforesaid establishment, but respondents have not narrated the aforesaid aspect of the case in the claim petition. Hence aforesaid



case of the respondents and the certificate filed by them later on appear to be after thought and concocted.

12. Though from perusal of the ocular evidence of the claimants-respondents, it appears that AW-1, AW-4 and AW-5 have unanimously stated that the deceased was working as salesman in the Maharaja Salt Traders and used to get Rs. 6000/- per month, but in view of the aforesaid discussions made by me, aforesaid evidence does not appear to be worth credence and reliable. In the case of **Dr. K.G. Poovaiah Vs. General Manager/Managing Director Karnataka State Road Transport Corporation** reported in **(2001) 9 SCC 167**, Hon'ble Apex Court has relied upon the testimony of the appellant who happens to be doctor in the disability case for the want of salary certificate or examination of his employer. In the case of **Asha Devi, wife of Shivchandra Lal Karn & Ors. Vs. Renu Shukla, wife of Sri Lalan Kumar Shukla & Anr.** reported in **2009 (3) PLJR 23**, this Court has relied upon the uncontroverted ocular evidence of the claimants adduced in support of the claim and found income of the deceased as Rs. 3000/- per month. In the case of **Jagdish Vs. Mohan and Others** reported in **(2018) 4 SCC 571**, Hon'ble Apex Court in absence of the documentary evidence relying upon the case of the appellant that he was a carpenter and used to earn Rs. 6000/- per month has held that



the income as claimed by the appellant should be the basis of computation. But the aforesaid case laws relied upon by the learned counsel for the respondents are not applicable in the case under hand because each case has its own merit and it depends upon the facts and circumstances of the case and in the case under hand as found by me hereinabove, ocular evidence adduced by the respondents is beyond pleadings and is also not worth credence and reliable as respondents have not taken the case in the pleading that the deceased was a salesman in Maharaja Salt Traders, Nawada despite knowledge. Moreover though by way of amendment, they have enhanced the income of the deceased as Rs. 6000/- per month but they did not amend the vocation of the deceased as brought on record by way of evidence rather continued with their earlier stand of doing private job by the deceased.

13. In the facts and circumstances of the case, I find and hold that the respondents have utterly and miserably failed to substantiate the aforesaid vocation and income of the deceased as claimed by them. Hence considering the year of the death of the deceased as 2010, price inflation and prevalent economic era, notional income of the deceased is considered Rs. 3000/- per month i.e. Rs. 36000/- 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. 9000/- 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. 27000/- per annum. As the deceased was aged about 29 years at the time of accident, hence 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, 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. 5,29,000/-.

14. Hence, appellant is directed to pay the aforesaid amount of compensation i.e. Rs. 5,29,000/- along with the interest at the rate of 6% per annum from the date of filing claim petition till its realization as awarded by the learned Tribunal and not assailed by the appellant to the claimants after deducting the amount if any paid by it within two months from the date of this judgment.

15. Accordingly, this appeal is disposed of with the



aforesaid modification in the impugned judgment and award.

16. Let the statutory amount deposited by the appellant be sent down to the learned Tribunal through cheque in the name of respondent no.1 towards adjustment in the amount of compensation.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	01.09.2018
Transmission Date	01.09.2018

