

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.768 of 2013

1. Dhale Sah, Son of Late Janak Sah
 2. Kushma Devi, Wife of Dhale Sah
- Both are residents of Village- Sadadpur, P.S. Kanti, District- Muzaffarpur

... .. Appellants

Versus

1. Mohan Prasad Yadav Son of Late Sawaliya Prasad Yadav Resident of Village- Sonho Veldi, P.S.- Amnour, District- Chapra
2. Harihar Saw @ Surendra Prasad, Son of Jagarnath Sah Resident of Pozi Persa, P.S.- Persa, District- Chapra
3. The Divisional Manager, United India Insurance Co. Ltd.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Kumari Sujata Sinha
For the Respondent/s : Mr. Durgesh Kumar Singh

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 25-10-2018

Re.: I.A. No. 8671 of 2013

Heard learned counsel for the appellants and learned counsel for the respondent no.3.

Appellants have filed the aforesaid interlocutory application for condonation of delay of 1 year 6 months and 2 days in preferring this appeal with the case that the appellants are labourers and were working for their livelihood in the State of Haryana, hence they could not contact their counsel to know about the fate of the case. However on regressing to their house and on contacting with their counsel, they came to know that the claim case filed by the appellants was decided on 25.08.2012. Then procuring the certified copy of the judgment and award,



they have preferred this appeal. There is no deliberate and intentional laches on their part in not filing the appeal in time rather the aforesaid delay has been caused due to unavoidable circumstances.

Respondent no.3 did not file any rejoinder against the aforesaid interlocutory application rather orally opposed the same.

It is settled principle of the 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 finding sufficient reason for condonation of aforesaid delay made in filing the aforesaid appeal, aforesaid delay is hereby condoned and aforesaid I.A. is accordingly allowed.

Re.: M.A. No. 768 of 2013

On submission of the parties to hear the aforesaid appeal on merit even today, heard both the parties on the aforesaid miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the claimants against the judgment dated 25.08.2012 and award dated 25.09.2012 passed by the Ad hoc Additional District



Judge cum Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 278 of 2005 whereby the learned Tribunal allowing the claim petition directed the opposite party no.3-United India Insurance Company Limited to pay the compensation to the tune of Rs. 1,72,000/- along with the interest at the rate of 6% per annum from the date of institution of the case.

3. Factual matrix of the case is that claimants who happen to be parents of the deceased filed Claim Case No. 278 of 2005 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 2,72,000/- on account of death of the deceased Rakesh Kumar in the motor vehicle accident with the case in succinct that on 13.09.2005, aforesaid Rakesh Kumar was proceeding to his house on bicycle. When he arrived near Laskaripur and halted on the flank of the road in the wait of his companion Umesh Sah, in the meantime a truck bearing registration no. BR 15 4731 being driven rashly and negligently by its driver coming from Motihari side dashed the deceased and resultantly the deceased sustained grievous injury and he succumbed to his injury 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, Kanti P.S. Case No. 221 of 2005 was registered. The deceased was aged about 22 years at the time of accident and was bachelor. He was a mason by profession and used to earn Rs.4500/- per month from the aforesaid vocation.

4. The owner and driver of the vehicle did not contest the case while opposite party no.3-United India Insurance Company Limited contested the same by filing 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 the present miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the deceased was a mason and used to earn Rs. 4500/- per month from the said vocation, but learned Tribunal without any basis has wrongly assessed the income of the deceased only at Rs.1500/- per month. It is further submitted that the deceased was 22 years at the time of accident, hence multiplier of 18 ought to have been applied to work out the amount of



compensation but learned Tribunal has wrongly applied the multiplier of 17 only. It is also submitted that learned Tribunal has awarded only Rs. 2000/- as funeral expense under the conventional head which is very paltry and meager and not as per the recent verdict of the Hon'ble Apex Court.

8. On the other hand, it is submitted by learned counsel for the respondent no.3 that as the deceased was a bachelor and survived by the claimants who happen to be his parents, hence $\frac{1}{2}$ of the income of the deceased ought to have been deducted as personal expense of the deceased instead of $\frac{1}{3}$ rd as made by the learned Tribunal. It is further submitted that amount of compensation as awarded by the learned Tribunal under other heads is just and proper.

9. From perusal of the record, it appears that as per the case of the appellants the deceased was a mason and used to earn Rs. 4500/- per month from the said vocation but appellants have not adduced any clinching and cogent evidence regarding the aforesaid income of the deceased. As the deceased was 22 years and accident is of the year 2005, hence in the facts and circumstances of the case and considering the price inflation and prevalent economic era, notional income of the deceased is considered as Rs.3000/- per month i.e. Rs. 36000/- per annum.



As the deceased was bachelor, hence $\frac{1}{2}$ of the aforesaid income i.e. Rs. 18000/- 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. 18000/- per annum. As the deceased was aged about 22 years at the time of accident, hence in view of the verdict of the 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 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. 3,24,000/-. Besides the aforesaid amount of compensation, 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**, Rs. 15000/- is awarded as loss of estate and Rs. 15000 is awarded as funeral expense and on the request of the learned counsel for the appellants to award loss of filial consortium to the tune of Rs. 40000/- in view of the verdict of the Hon'ble Supreme Court rendered in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors. Reported in (2017) 16 SCC 680**, Rs. 40000/- is awarded



as loss of filial consortium. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 3,94,000/-. Besides the aforesaid amount of compensation, interest at the rate of 6% per annum is also awarded on the aforesaid amount of compensation from the date of filing claim case till its realization.

10. In the facts and circumstances of the case, respondent no.3-United India Insurance Company Limited is directed to pay the aforesaid amount of compensation and interest thereon deducting the amount, if any paid by it to the appellants within two months from the date of this judgment.

11. Accordingly, this appeal is allowed with the aforesaid modification in the judgment and award.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	30.10.2018
Transmission Date	30.10.2018

