

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.503 of 2012

1. Dukhni Devi W/o Late Hare Kishaun Mahto (deceased)
 2. Kamlesh Kumar minor son of the deceased Late Hare Kishun Mahto.
 3. Vimlesh Kumar minor son of the deceased Late Hare Kishun Mahto.
- (Appellant nos. 2 & 3 are minor and are under the care and guardianship of their Mother, the appellant no. 1)
4. Ram Prakash Mahto S/o Late Baidhnath Mahto (Father of the deceased)
 5. Siyabati Devi W/o Ram Prakash Mahto (Mother of the deceased)
- All R/o of Vill-Bhupatpur, PO-Illmas Nagar, P.S. Khanpur. Distt- Samastipur, Bihar

... .. Appellant/s

Versus

1. Branch Manager, National Insurance Co. Ltd. Mohanpur Road, Samastipur, through Chief Regional Manager, 3rd floor, Sone Bhawan, R. Block Chauraha, Patna (Insurer of the offending Bus no. BR1P/4631)
2. Mr. K.N. Jha, Principal, Samastipur Central School. Sone Bursa Chowk, Samastipur, Pin-848101 (Owner)
3. Rajkumar Prasad Yadav S/o S.P. Yadav Vill-Noori Chack, Punpun, Distt-Patna (Driver)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Prasad Singh
For the Respondent/s	:	Mr. Ashok Priyadarshi

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 27-08-2018

Heard learned counsel for the appellants and learned counsel for the respondent no. 1 on this Miscellaneous Appeal. Respondent nos. 2 and 3 did not turn up despite service



of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 21.10.2011 and award dated 24.12.2011 passed by learned 3rd Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Samastipur in Claim Case no. 92 of 2009/ 7 of 2011 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 3 The National Insurance Company Limited to pay compensation to the tune of Rs. 4,17,500/- after deducting Rs. 50,000/- already paid under Section 140 of the M.V. Act along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants with liberty to realize the aforesaid amount of compensation from its owner after its payment.

3. Factual matrix of the case is that Claim Case no. 92 of 2009/ 7 of 2011 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 5,00,000/- along with interest @ 10% per annum on account of death of Hari Kishun Mahto in motor vehicle accident with the case in succinct that on 09.09.2009 at around 5:30 AM, said Hari Kishun Mahto was coming from Bazar Samiti Sabji Mandi fetching vegetable on the bicycle for



vending, as soon as at around 5:45 AM, he arrived near Aazad Chowk, a bus bearing registration no. BR1P/4631 coming from western side being driven rashly and negligently by its driver dashed his bicycle, resultantly, he sustained grievous injury and succumbed to his injury on the spot. The 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, Warishnagar P.S. Case no. 164 of 2009 was instituted under Sections 279 and 304A of I.P.C. The deceased was vegetable vendor and used to earn Rs. 200-300 per day from the said vocation. He was aged about 30 years at the time of his death.

4. O.P. nos. 1 and 3 put their appearance in the case and filed their written statement. Claimants adduced their evidence in buttress of their case.

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

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

7. It is submitted by learned counsel for the



appellants that the deceased was vegetable vendor and used to earn Rs. 200-300 per day from the said vocation. The appellants have adduced ocular evidence in buttress of their case, but learned Tribunal ignoring the aforesaid case and evidence of the appellants has wrongly considered the notional income of the deceased as Rs. 100 per day finding that there is no documentary evidence adduced by the appellants in this regard, though, there is consistent ocular evidence regarding the aforesaid vocation and income of the deceased. It is further submitted that the deceased has died leaving behind five heirs and legal representatives. Hence, 1/4th of income of the deceased ought to have been deducted as personal expenses of the deceased from the aforesaid income, but, learned Tribunal has wrongly deducted 1/3rd. It is further submitted that the deceased was self-employed person and was aged about 30 years at the time of accident, hence, 40% future prospect ought to have been granted as loss of income, but learned Tribunal has wrongly and illegally not granted the same. It is further submitted that the amount of compensation awarded towards other traditional heads by the learned Tribunal is very paltry and is not in view of decision of Hon'ble Apex Court rendered in *National Insurance Company Ltd. Vs. Pranay Sethi and*



Ors. reported in 2017 (4) 261 PLJR.

8. On the other hand, learned counsel for the respondent no. 1 submitted that the appellants have not adduced any documentary evidence regarding vocation and income of the deceased as claimed by them. As per the documentary evidence of the appellants, the deceased was carrying vegetable on his bicycle for the purpose of vending at the time of accident which eloquently indicates that he was petty vegetable vendor hence amount of income of the deceased considered by the learned Tribunal is proper and appropriate. It is further submitted that though the appellants have claimed that the deceased was aged about 30 years, but the postmortem report indicates that the deceased was aged about 32 years at the time of his death, hence, considering the age of the deceased as 32 years, multiplier of 16 ought to have been applied by the learned Tribunal in working out the amount of compensation.

9. On perusal of record, it appears that as per FIR Ext-1, deceased was vegetable vendor and all the three witnesses examined by the appellants have unanimously stated that the deceased used to vend vegetable. The respondent has not adduced any evidence in rebuttal of the aforesaid evidence



of appellants. Hence, considering the aforesaid documentary as well as ocular evidence of the appellants, I find that the deceased was vegetable vendor.

10. So far as the income of the deceased is concerned, as per case of the appellants, the deceased used to earn Rs. 200-300 per day from the said vocation, but the appellants have not adduced any documentary evidence in buttress of their case regarding the aforesaid income of the deceased. Moreover, from perusal of the FIR Exhibit-1 which is the evidence of the appellants itself it appears that at the time of accident, deceased was driving bicycle fetching the vegetable from Bazar Samiti Sabji Mandi on his bicycle for vending the same. The aforesaid aspect of the case indicates that the deceased was petty vegetable vendor. More so, from perusal of ocular evidence adduced by the appellants, it appears that there is no consistency regarding income of the deceased as deposed by the witnesses. As AW-1 & AW-2 have stated in their respective examination-in-chief that the deceased used to earn Rs. 300-400 per day while AW-3 has stated that the deceased used to earn Rs. 10,000/- per month and AW-4, who is the claimant-appellant no. 1 herself has stated that the deceased used to earn Rs. 200-300 per day i.e.



Rs. 10,000/- per month. Thus, in view of want of any documentary evidence and inconsistent ocular evidence regarding income of the deceased I find that the appellants have failed to substantiate the income of the deceased as claimed by them. Hence considering the facts that the accident is of 2009 and the price inflation and prevalent economic era at the relevant time of accident, notional income of the deceased is considered as Rs. 100/- per day i.e. Rs. 3000/- per month i.e. Rs. 36000/- per annum. As the deceased was self employed person and used to vend vegetable and was aged about 32 years at the time of accident as per the postmortem report, 40% of the aforesaid income of the deceased i.e. Rs. 14,400/- is awarded towards future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs. 50,400/- per annum. As the deceased has died leaving behind his five legal representatives and dependents, hence, 1/4 of the aforesaid income of the deceased i.e. Rs. 12,600/- is deducted towards 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.

11. As per the case of the appellants, the deceased was aged about 30 years at the time of accident, but from



perusal of postmortem report Ext-3, which is the evidence of the appellants itself, it appears that at the time of conducting autopsy of the cadaver of the deceased, the doctor has assessed the age of the deceased as 32 years, hence, the age of the deceased is found to be 32 years at the time of accident. Considering the aforesaid age of the deceased, in view of decision of Hon'ble Apex Court rendered in *National Insurance Company Ltd. Vs. Pranay Sethi* (supra), multiplier of 16 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 6,04,800/-. Besides, the aforesaid amount of compensation, I also think it proper and adequate to award Rs. 70,000/- towards other traditional heads such as loss of consortium, funeral expenses and loss of estate. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 6,74,800/-. Besides, the aforesaid compensation, interest @ 6% per annum on the aforesaid amount of compensation is awarded from the date of filing of claim case till its realization.

12. The respondent no. 1 National 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	29-08-2018
Transmission Date	N.A.

