IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.622 of 2011

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1. Most. Parmila Devi Widow of Late Uma Kant Thakur
2. Pawan Kumar Thakur, minor son of late Uma Kant Thakur
3. Babita Kumari, minor daughter of late Uma Kant Thakur
4. Puja Kumari, minor daughter of Late Uma Kant Thakur, Sl. Nos. 2 to 4 are minors under the Guardianship of their mother namely Most. Parmila Devi R/o Vill.- Sahabad, P.S.- Sultanganj, Distt.- Bahgalpur

... ... Appellants

Versus

1. Sri Sanjeev Kumar Singh, S/o Sri Mithilesh Prasad Singh R/o Vill.- Sultanganj, P.S.- Sultanganj, Distt.- Bhagalpur
2. Sunil Kumar Jha S/o Sahdeo Jha R/o Vill.- Sultanganj, P.S.- Sultanganj, Distt.- Bhagalpur
3. Divisional Manager, The New India Assurance Company Ltd. Divisional Office, Red Cross Building, North Gandhi Maidan, Patna, Bihar

... ... Respondents

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Appearance :

For the Appellants	:	Mr. Mukesh Prasad Singh
For the Respondent No.3	:	Mr. Raj Kumar Singh Vikram

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 10-10-2018

Heard learned counsel for the appellants and learned counsel for the respondent no.3 on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the claimants-appellants against the judgment dated 27.01.2011and award dated 18.03.2011passed by the Additional Sessions Judge, Fast Track Court-I cum Motor Vehicle Accident Claim Tribunal, Bhagalpur in Claim Case No. 28 of 2003 whereby the learned Tribunal allowing the claim petition directed the opposite party no.3-The New India Assurance Company Limited to pay the compensation to the tune of Rs.

1,15,000/- along with the interest at the rate of 6% per annum from the date of filing claim case to the claimants.

3. Factual matrix of the case is that claimants filed Claim Case No. 28 of 2003 under Section 166 of the M.V. Act for awarding compensation on account of death of the deceased Uma Kant Thakur in the Motor Vehicle Accident with the case in succinct that on 25.02.1999 said Uma Kant Thakur as a member of the barat party was regressing to his village by a bus bearing registration no. BR-10-9541. As soon as the bus arrived near village Gudma on N.H.-33 within Ichagarh Police Station, it turned turtle. Said Uma Kant Thakur sustained grievous injury in the said accident, resultantly he 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. The deceased was running a saloon and he used to earn Rs. 4000/- per month from the said saloon as a barber.

4. Opposite parties put their appearance in the case and filed their written statements. Claimants also 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 running a saloon and used to earn Rs. 4000/- per month from the aforesaid saloon as a barber. He has also adduced evidence in this regard, but learned Tribunal ignoring the aforesaid evidence of the claimants wrongly considered the notional income of the deceased as Rs. 1500/- per month. It is further submitted that the deceased was running a saloon as a barber and he was a self employed person as found by the learned Tribunal and as per the post mortem report, the deceased was aged about 45 years. Hence as per 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**, 25% of the income of the deceased ought to have been awarded as future prospect, but the learned Tribunal has wrongly ignored the same. It is further submitted that the deceased has died leaving behind him his four legal representatives and dependents, hence 1/4th of the income of the deceased ought to have been deducted as personal expense of the deceased, but learned Tribunal has wrongly deducted 1/3rd of the income of the deceased. It is further submitted that as the deceased was 45 years old as per the post mortem report, hence

multiplier of 14 ought to have been applied to work out the amount of compensation but learned Tribunal has wrongly applied the multiplier of 13. It is further submitted that the learned Tribunal has awarded Rs. 9000/- towards other traditional heads like loss of consortium, funeral expense, loss of estate, etc., but as per the verdict of the Hon'ble Apex Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors. (Supra)**, Rs. 70,000/- ought to have been awarded by the learned Tribunal towards aforesaid traditional heads to the claimants.

8. On the other hand, it is submitted by learned counsel for the respondent no.3 that there is no cogent evidence on record such as certificate regarding running of the saloon by the deceased to substantiate that the deceased was running a saloon and finding no evidence regarding the vocation and income of the deceased, learned Tribunal has rightly considered the notional income of the deceased as Rs. 1500/- per month. It is further submitted that the learned tribunal has found that the deceased was aged more than 45 years old at the time of death, hence he has rightly applied the multiplier of 13 to work out the amount of compensation.

9. From perusal of the record, it appears that as per the case of the claimants the deceased was running a saloon and

used to earn Rs. 4000/- per month as a barber from the said saloon, but he has not filed any document regarding the aforesaid vocation of the deceased. But from perusal of the impugned judgment, it appears that it was submitted by learned counsel for the respondent in the court below that no saloon in the remote village could earn Rs.4000/- per month in the year 1999 and on the basis of the evidence adduced by the parties learned Tribunal has also found that the saloon was in the village and has considered the income of the deceased as Rs. 1500/- per month. Aforesaid aspect of the case indicates that the factum of running of the saloon by the deceased is not denied by the respondent. In the aforesaid facts and circumstances, I find that the deceased was running a saloon. But the claimants have failed to substantiate the aforesaid income of the deceased used to be earned by him from the said vocation. As the accident is of the year 1999, hence considering the aforesaid fact, prevalent economic era and price inflation, Rs. 3000/- per month is considered as notional income of the deceased.

10.From perusal of the record, it appears that the doctor conducting the autopsy of the cadaver of the deceased has assessed the aged of the deceased as 45 years. Claimants have not adduced any other cogent evidence regarding the age of the deceased. So considering the aforesaid post mortem report, I find that the deceased was aged about 45 years at the time of accident. As the deceased was running a saloon as a barber and he was a self employed person, hence considering the aforesaid age of the deceased, as per the verdict of the Hon'ble Apex Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors. (supra)**, 25% of the aforesaid income of the deceased i.e. Rs.750/- is awarded as future prospect. On addition of the aforesaid future prospect, loss of income comes to the tune of Rs. 3750/- per month i.e. Rs. 45,000/- per annum. As the deceased has died leaving behind him his four legal representatives and dependents, hence 1/4th of the aforesaid income i.e. Rs. 11,250/- 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. 33,750/- per annum. As the deceased was aged about 45 years at the time of accident, hence multiplier of 14 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 4,72,500/-. 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. (supra). On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 5,42,500/-. Besides the aforesaid amount of compensation, interest at the rate of 6% per annum on the aforesaid amount of compensation is awarded from the date of filing claim case till its realization.

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

12. 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	12.10.2018
Transmission Date	12.10.2018