

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.978 of 2011

1. Kamala Devi W/o Late Madan Singh R/o Village - Sambal Gadh Dariyapur of Police Station Baraihiya District - Lakhisarai, at present resident of Mohalla-Mithapur of Police Station-Jakkanpur, District - Patna
2. Chandan Kumar S/o Late Madan Singh R/o Village - Sambal Gadh Dariyapur of Police Station Baraihiya District - Lakhisarai, at present resident of Mohalla - Mithapur of Police Station - Jakkanpur, District - Patna
3. Niranjana Kumar S/o Late Madan Singh R/o Village - Sambal Gadh Dariyapur of Police Station Baraihiya District - Lakhisarai, at present resident of Mohalla - Mithapur of Police Station - Jakkanpur, District - Patna

... .. Appellant/s

Versus

1. Sarwan Kumar Sah S/o Sri Shiv Prasad Sah R/o English Vidyapith, Chok, Lakhisarai, P.O. + P.S. + District – Lakhisarai (owner of tractor)
2. Anil Kumar Yadav S/o Arjun Yadav R/o English Vidyapith, Chok, Lakhisarai, P.O. + P.S. + District – Lakhisarai (driver of the tractor)
3. The Oriental Insurance Co. Ltd. through its Regional Manager, Regional Office, Pirmuhani, District - Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar
For the Respondent no. 3	:	Mr. Barun Kumar Chaudhary
		Ms. Kumari Khusboo
		Ms. Pratima Kumari

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 26-11-2018

Heard learned counsel for the appellants and
learned counsel for the respondent no. 3 (The Oriental Insurance



Co. Ltd.) on this Miscellaneous Appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 26.02.2011 and award dated 28.09.2011 passed by learned Additional District Judge-VIII-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case no. 432 of 2009 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 3 The Oriental Insurance Company Ltd., to pay compensation to the tune of Rs. 6,34,500/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants.

3. Factual matrix of the case is that Claim Case no. 432 of 2009 was filed by the claimants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 15,00,000/- on account of death of Madan Singh @ Madan Kumar in motor vehicle accident with the case in succinct that on 20.07.2009 at around 09:30 AM said Madan Singh was proceeding to vend vegetables at Barhiya Bazar near Sambalgarh at NH-80. In the meantime, a tractor bearing registration no. BR-53-4339 being driven rashly and negligently by its driver dashed him, resultantly, he died on the spot. Regarding the aforesaid accident, Barhiya P.S. Case no.



128 of 2009 was instituted under Sections 279 and 304(A) of the Indian Penal Code. The 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 Madan Singh was a businessman and he was also the owner of the Truck and used to vend Sudha Milk and was a vegetable supplier and used to earn Rs. 12,000/- per month from the said vocation. He was aged about 45 years at the time of accident.

4. O.P. no. 3 (The Oriental Insurance Co. Ltd.) putting its appearance in the case filed written statement. Claimants adduced ocular as well as documentary 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 Madan Singh was a truck owner and used to run the truck bearing registration no. BR-1G-2256. He also used to vend the milk and was a vegetable supplier and



used to earn Rs. 12,000/- per month from the said vocation. The appellants have filed documentary evidence regarding running of the truck and doing business of dairy and vegetable which are exhibited as Ext-1 to Ext-22. The appellants have also adduced ocular evidence in this regard, but learned Tribunal ignoring the aforesaid ocular and documentary evidence of the appellants has wrongly and without any basis assessed the income of the deceased as Rs. 5,000/- per month. It is further submitted that the deceased was self-employed person and was aged about 45 years at the time of accident, so in view of the judgment of Hon'ble Apex 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 granted as future prospect, but learned Tribunal has wrongly ignored the same. It is further submitted that as per the verdict of Hon'ble Apex Court rendered in ***National Insurance Company Ltd. (supra)***, Rs. 70,000/- ought to have been awarded towards other traditional heads, but the learned Tribunal has wrongly awarded Rs. 9,500/- in the said heads.

8. On the other hand, learned counsel for the respondent no. 3 submitted that the claimants-appellants have



not adduced any cogent and convincing evidence in support of earning of the deceased and learned Tribunal considering the evidence on record has rightly assessed the income of the deceased as Rs. 5,000/- per month. It is further submitted that against the aforesaid judgment and award, this respondent had filed Miscellaneous Appeal in this Court vide M.A. no. 41 of 2012 and in the said appeal, this Court has also approved the aforesaid income of the deceased as considered by the learned Tribunal. Hence, the said income has become final. It is also submitted that as the deceased was not a salaried person, hence, the claimants-appellants are not entitled to get any future prospect.

9. On perusal of record, it appears that as per the case of the appellants, the deceased Madan Singh was a truck owner and used to run the truck. He also used to do dairy business and business of vegetable. In substantiation of their case, the appellants have filed several documents such as invoice, passbook, cash memo of regarding hiring truck and vending milk. From perusal of the aforesaid documents filed by the appellants, it appears that the deceased used to run the truck bearing registration no. BR-1G-2256 and was also running the dairy business and used to supply the milk to depot



of Sudha milk. Hence, considering the aforesaid facts and circumstances and the evidence of the appellants, I find it proper and appropriate to assess the income of the deceased as Rs. 8,000/- per month. From perusal of the record, it appears that vide M.A. no. 41 of 2012 filed by respondent No. 3, this Court has approved the income of the deceased as Rs. 5,000/- as considered by the learned Tribunal, but the aforesaid order has been passed by this Court without hearing the appellants, hence, the aforesaid finding of this Court is not binding upon the appellants.

10. As the deceased was doing the aforesaid business and was running the aforesaid truck, he was self-employed person, hence, as per the verdict of Hon'ble Apex Court rendered in *National Insurance Company Ltd. (supra)*, 25% of the aforesaid income of the deceased i.e. Rs. 2000/- is awarded towards future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs. 10,000/- per month i.e. Rs. 1,20,000/- per annum. As the deceased has died leaving behind his four legal representatives and dependents, hence, 1/4 of the aforesaid income of the deceased i.e. Rs. 30,000/- 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. 90,000/- per annum. As the deceased was aged about 45 years at the time of his death, hence, multiplier of 15 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 13,50,000/-. Besides, the aforesaid amount of compensation, as per the verdict of Hon'ble Apex Court rendered in *National Insurance Company Ltd. (supra)*, 70,000/- is awarded towards other traditional heads such as loss of consortium, loss of estate and funeral expenses. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 14,20,000/-. Besides, the aforesaid compensation, interest @ 6% per annum on the aforesaid amount of compensation, as awarded by the learned Tribunal and not assailed by the respondent no. 3 by preferring appeal, is awarded from the date of filing of claim case till its realization.

11. In the facts and circumstances the respondent no. 3 The Oriental 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 three months of the date of this judgment.



12. 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	28-11-2018
Transmission Date	28-11-2018

