

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.321 of 2012

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1. Saket Bihari S/o Sri Nand Lal Prasad Resident of Village Dariya Chak, P.O. Malil Chak, P.S. Barbighaa, District Shekhpura A/P Dak Bangala Road, Harnaut, P.S. Harnaut, District Nalanda.
 2. Gaurabh Kumar aged about 9 Years M/S/o Saket Bihari Resident Of Village Dariya Chak, P.O. Malil Chak, P.S. Barbighaa, District Shekhpura A/P Dak Bangala Road, Harnaut, P.S. Harnaut, District Nalanda.
 3. Saurabh Kumar aged about 6 Years S/o Saket Bihari minor of the deceased Nutan Kumari are u/g/o their father well wisher and next friend Resident of Village Dariya Chak, P.O. Malil Chak, P.S. Barbighaa, District Shekhpura A/P Dak Bangala Road, Harnaut, P.S. Harnaut, District Nalanda.

... .. Appellant/s

Versus

1. Shashi Bhushan Kumar S/o Sri Kailash Yadav Owner Of Truck No. AS-25B-3051 at Nemdarganj, P.O. Audhe, P.S. + District Shekhpura.
2. United India Insurance Co. Ltd. through the Branch Office, Raju Complex, Ranchi Road, Bihar Sharif, Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rabi Bhushan Prasad No. 1 Mr. Vijay Prakash Bhargava Ms. Binita Singh
For the Insurance Comp :		Mr. Ashok Priyadarshi
For the Respondent no. 1:		Mrs. Sheema Sinha Mr. Prem Ranjan Kumar Ms. Kumari Shubham

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 28-08-2018

Heard learned counsel for the appellants and
learned counsel for the respondents on this Miscellaneous



Appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 13.02.2012 and award dated 29.02.2012 passed by learned Additional District Judge-FTC-3rd-cum-Motor Vehicle Accident Claim Tribunal, Nalanda in Claim Case no. 48 of 2007 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 2 United India Insurance Company Limited to pay compensation to the tune of Rs. 4,20,000/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants with liberty to recover the amount of compensation from the owner of the offending vehicle after its payment in due course of law.

3. Factual matrix of the case is that Claim Case no. 48 of 2007 was filed by the claimants-appellants under Section 166 of the M.V. Act on account of death of Nutan Kumari in motor vehicle accident with the case in succinct that on 10.03.2007 at around 1 P.M. said Nutan Kumari was proceeding from Dariyachak to Sheikhpura on motorcycle along with her brother. As soon as, she arrived near Tatipul, a truck bearing registration no. AS-25B-3051 being driven rashly and negligently by its driver arrived there and dashed the



aforesaid motorcycle from rear side. Resultantly, Nutan Kumari fell down from the motorcycle and was run over by the said truck resulting into her death 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, Sheikhpura P.S. Case no. 50 of 2007 was instituted under Sections 279, 337 and 304(A) of I.P.C against the driver of the offending vehicle. The deceased was aged about 31 years at the time of accident and she was teacher in Bal Vikash Academy, Thana Road, Harnaut and used to get salary Rs. 3000/- per month from the said vocation. The offending vehicle was insured by the O.P. no. 2 United India Insurance Company Ltd. at the relevant time of accident.

4. O.P. nos. 2 put its appearance in the case and filed written statement while case proceeded *ex-parte* against the O.P. no. 1. 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 as the deceased Nutan Kumari was teacher in the school, she was fixed salaried person and was aged about 31 years at the time of her death, 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*, 40% of the income of the deceased as future prospect ought to have been granted, 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. (supra)*.

8. On the other hand, learned counsel for the respondents submitted that the husband of the deceased does not happen to be dependent on her, hence, he is not entitled to get any compensation and also compensation in lieu of loss of consortium.

9. On perusal of record, it appears that the deceased Nutan Kumari has died in the motor vehicle accident. She was aged about 31 years at the time of accident and was



teacher in Bal Vikash Academy, Thana Road, Harnaut and used to get salary Rs. 3000/- per month from the said vocation. Learned Tribunal has also assessed the age and salary of the deceased as 31 years and Rs. 3000/- per month respectively. As the deceased was fixed salaried person and was 31 years at the time of accident, hence, 40% of the aforesaid income of the deceased i.e. Rs. 1200/- is awarded towards future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs. 4200/- per month i.e. Rs. 50,400/- per annum. As the deceased has died leaving behind her two children as her legal representatives and dependents, hence, 1/3 of the aforesaid income of the deceased i.e. Rs. 16,800/- is deducted towards personal expenses of the deceased which she would have made had she been alive. On the aforesaid deduction, the loss of dependency comes to the Rs. 33,600/- per annum. As the deceased was aged about 31 years at the time of her death, 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. 5,71,200/-. Though, the claim petition has been filed by the husband and children of the deceased, but the husband does not happen to be dependent of the deceased as neither in the claim petition he



himself asserted to be dependent of the deceased nor adduced any evidence in this regard. Albeit, being legal representative, he may file petition under Section 166 of M.V. Act, but he is not considered to be dependent of the deceased and no compensation is awarded to the husband as the amount of compensation under Section 166 of M.V. Act is worked out on the basis of loss of dependency. As the husband of the deceased is not dependent of the deceased, he will not be considered in computing the loss of dependency and he will not get any compensation under any head. Hence, in view of decision of Hon'ble Apex Court rendered in *National Insurance Company Ltd. (supra)*, Rs. 30,000 is awarded towards other traditional heads such as 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. 6,01,200/-. 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. 2 by preferring appeal, is awarded from the date of filing of claim case till its realization.

10. In the facts and circumstances the respondent no. 2 United India Insurance Company Ltd. is directed to make



payment of aforesaid amount of compensation and interest thereon to the appellants no. 2 and 3 after deducting the amount, if any paid by it within two months from the date of this judgment with liberty as given by the learned Tribunal in the impugned judgment and award.

11. 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	30-08-2018
Transmission Date	N.A.

