IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.841 of 2016

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1. Mala Singh, Wife of Late Umesh Kumar Singh,
2. Abhishek Kumar, Son of Late Umesh Kumar Singh,
3. Archana Kumari, Daughter of Late Umesh Kumar Singh,
   All resident of Village Unthoo, P.O. Unthoo, P.S. Aurangabad (Muffasil), District Aurangabad, at present residing at Mohalla Satendra Nagar, P.O. Aurangabad, P.S. Aurangabad, District Aurangabad.

... ... Appellant/s

Versus

1. The Oriental Insurance Company Ltd. Janipur Kothi, Bank Road, P.S. Gandhi Maidan, District Patna.
2. Rajnish Kumar Khemka, S/o Late Badri Prasad Khemka, resident of Mohalla Ramesh Chowk, New Area, Aurangabad, P.S. Aurangabad, District Aurangabad... Owner of the vehicle bearing registration No. BR. 26 B/4351.
3. Dharmendra Kumar Singh, son of Ram Kripal Singh, resident of Village Karma Road, Near Police Line Aurangabad, P.S. Aurangabad, District Aurangabad.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar
For the Respondent no. 1	:	Mr. Bimlesh Kr. Jha

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 07-05-2018

Heard learned counsel for the appellants and learned counsel for the respondent no. 1 (The Oriental Insurance Company Ltd.) on this miscellaneous appeal.

2. This miscellaneous appeal has been filed against the judgment dated 29.02.2016 and award dated 28.05.2016 passed by learned Additional District Judge-IV-cum-Motor Vehicle Accident Claim Tribunal, Aurangabad in Claim Case no. 31 of 2011/ 15 of 2012 whereby the learned

Tribunal allowing the claim petition filed by the claimants, directed the O.P.no. 3 of the said case i.e. The Oriental Insurance Company Ltd. to pay compensation to the tune of Rs. 4,20,000/- along with interest @ 6% per annum to the claimant no. 1 Mala Singh.

3. Factual matrix of the case is that the Claim Case no. 31 of 2011/15 of 2012 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 10,00000/- on account of death of Umesh Kumar Singh, who happened to be husband of claimant-appellant no. 1 and father of claimants-appellants no. 2 and 3, in the motor vehicle accident on 30.11.2010 at 09:00 PM at Karma More in the township of Aurangabad due to rash and negligent driving of the vehicle bearing registration no. BR 26B 4351 (Tata Model Tanker) by its driver at the relevant time of accident. Further case of the claimants is that the deceased was lecturer in Anugraha Memorial College, Aurangabad and also used to run tuition classes and was used to get monthly salary Rs. 25,000/- and Rs. 20,000/- per month from tuition.

4. The Opposite Party nos. 1 and 2 who happen to be owner and driver of the offending vehicle did not put their appearance in the case despite service of notice. So the case proceeded *ex parte* against them while the Opposite Party no. 3 filed its written statement. The claimants adduced ocular and 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. The claimants-appellants appear to have assailed the aforesaid judgment and award on three grounds. Firstly, total income of the deceased happens to be 45,000/- per month and his wife was employed on compassionate ground in the said college and she used to get Rs. 10,750/- per month as salary and after deducting the aforesaid salary of the wife, learned Tribunal has assessed monthly loss of income to the tune of Rs. 34,250/- and worked out the amount of compensation by multiplying the aforesaid amount by 13 instead of annual loss of income. Secondly, the future prospect has not been given by the learned Tribunal as per the recent decision of Hon'ble Apex Court rendered in ***National***

Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR. Thirdly, compensation awarded towards loss of consortium, funeral expenses and loss of estate by the learned Tribunal is very paltry and not as per the aforesaid decision of Hon'ble Apex Court. As per the aforesaid decision, it should be Rs. 70,000/-.

8. On the other hand, learned counsel for the respondent no. 1 submitted that learned Tribunal has not deducted the income tax from the salary and it has also not deducted personal expenses of the deceased to the extent of 1/3rd from the aforesaid income of the deceased while calculating the loss of income. He has relied upon the verdict of Hon'ble Apex Court in ***Manasvi Jain Vs. Delhi Transport Corporation reported in AIR 2014 SC (Civil)*** in buttress of his argument.

9. On perusal of impugned judgment and record, it appears that the deceased was lecturer in Anugraha Memorial College, Aurangabad and used to earn Rs. 3,00,000/- per annum as salary and evaluation, work and grant etc. There is no cogent and tangible evidence of making earning by the deceased by way of tuition. Moreover, the private tuition by a government teacher is not expected and appreciated. Hence, I do not think it proper and appropriate to consider the aforesaid alleged income of Rs. 20,000/- from the tuition as a loss of income of the deceased. On calculating the annual income of the deceased from salary etc. it comes to the tune of Rs. 3,00,000/- per annum. Besides, the aforesaid income of the deceased from salary etc. as per recent Judgment of Hon'ble Apex Court rendered in National Insurance Company Ltd. (supra), I think it proper to add the future prospect in the aforesaid income of the deceased. As the deceased was a government employee and was admittedly aged about 48 years old at the time of his death. Hence, in veiw of aforesaid case law, 30 % of the aforesaid income i.e. Rs. 90,000/- is awarded as future prospect. On addition of the aforesaid heads, total amount of income comes to the tune of Rs. 3,90,000/- per annum.

10. The Hon'ble Apex Court in *Manasvi Jain Vs. Delhi Transport Corporation (Supra)* has been pleased to rule that income tax be deducted from the monthly salary of the deceased to decide net salary or take-home salary**.** The deceased has died on 30.11.2010, so as per the prevalent income tax slab in the financial year 2010-11, Rs. 32,000/- will be deducted as income tax payable. On deduction of the aforesaid income tax, loss of income comes to the tune of Rs. 3,58,000/-. As the deceased has died leaving behind his widow and two childeren, hence, 1/3rd of aforesaid income i.e. Rs. 1,19,333/- will be deducted as the 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. 2,38,667/- per annum. As the deceased was 48 years old at the time of accident, hence, the multiplier of 13 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 31,02,671/-. Besides, the aforesaid amount of compensation Rs. 70000/- is awarded to the claimants towards other traditional heads such as loss of consortium, funeral expenses and loss of estate etc. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 31,72,671/-. Besides, the aforesaid compensation, I also think it proper to award interest @ 9% from the date of judgment passed by the learned Tribunal.

11. As the claimant-appellant no. 1 happens to be widow of the deceased and claimant-appellant nos. 2 and 3 are his scion, hence, all the appellants come under the category of legal representatives as mentioned under Section 166 of M.V

Act, hence, the respondent no. 1 The Oriental Insurance Company Ltd. is directed to make payment of aforesaid amount of compensation and interest thereon to all the aforesaid claimants/appellants within two months from the date of this judgment.

12. The amount already received by the claimants/appellants would be deducted from the aforesaid amount of compensation.

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	11-05-2018
Transmission Date	