

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.373 of 2011

1. Chandrawati Devi, W/o Gopal Choudhary
2. Gopal Choudhary, S/o Late Laxmi Choudhary
All C/o Shatrudhan Paswan, R/o Prabhat Nagar, Bhagwanpur, P.S.-Sadar,
District – Muzaffarpur.

... .. Appellants

Versus

1. Siya Ram Mahto, S/o Shrilal Mahto, R/o Nawada, P.S.-Madepur, District –
Madhubani.
2. National Insurance Company Limited through Local Divisional Manager,
Motijhil, District – Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dhannjay Kumar No.2
For the Respondent/s : Mr. Abhay Kumar Sinha

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 11-10-2018

Heard learned counsel for the appellants and learned
counsel for the respondent no.2 on this miscellaneous appeal.
No one turned up on behalf of the respondent no.1 despite
service of notice.

2. This miscellaneous appeal has been preferred by
the claimants against the judgment dated 25.02.2011 and award
dated 11.03.2011 passed by the 7th Additional District Judge
cum Motor Vehicle Accident Claim Tribunal, Muzaffarpur in
Claim Case No. 266 of 2008 whereby the learned Tribunal
allowing the claim petition directed the opposite party no.2-
National Insurance Company Limited to pay the compensation
to the tune of Rs. 1,79,500/- along with the interest at the rate
of 6% per annum from the date of filing claim petition till its



realization to the claimants.

3. Factual matrix of the case is that claimants who happen to be parents of the deceased filed Claim Case No. 266 of 2008 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 2,64,500/- on account of death of the deceased Vishal Kumar @ Vishal Kumar Choudhary in the Motor Vehicle Accident with the case in succinct that on 13.04.2008 at 12 O'clock, Vishal Kumar @ Vishal Kumar Choudhary was proceeding to Madhubani from Bhej on a motorcycle as a pillion rider. As soon as he arrived near Nawada Pul, a tempo bearing registration no. BR-07P-1749 being driven rashly and negligently by its driver dashed the aforesaid motorcycle which was standing in Kachhi flank of the road resultantly he sustained grievous injury. He was rushed to Primary Health Centre, Madhepur. From where he was referred to DMCH, Darbhanga to accord him better treatment, but he succumbed to his injury on the way to Darbhanga. 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 an unemployed youth and was pursuing his studies to get a government job and hence notional income of the deceased be considered as Rs. 36,000/- per annum.



4. Both the 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 an unemployed youth and was pursuing studies to get a government job and the accident is of the year 2008, hence Notional income of the deceased is to be considered as Rs. 3000/- per month i.e. Rs. 36000/- per annum and considering the aforesaid notional income, the amount of compensation ought to have been awarded to the claimants. It is further submitted that the compensation awarded under other traditional heads is quite meager.

8. Learned counsel for the respondent no.2 advocating the correctness and validity of the impugned judgment and award has submitted that the aforesaid amount of compensation as awarded by the Tribunal is quite proper and reasonable.



9. From perusal of the record, it appears that the deceased was an unemployed youth and accident is of the year 2008 and he was aged about 22-23 years at the time of accident, hence considering the age of the deceased, year of accident, prevalent economic era and price inflation etc., Rs.3000/- per month i.e. Rs. 36000/- per annum is considered as notional income of the deceased. As the deceased was bachelor, hence $\frac{1}{2}$ of the aforesaid amount i.e. Rs. 18000/- 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. 18000/- per annum. As the deceased was aged about 22-23 years at the time of accident, hence multiplier of 18 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 3,24,000/-. Besides the aforesaid amount of compensation, in view of 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**, Rs. 15000/- is awarded as loss of estate and Rs. 15000 is awarded as funeral expense and as the claimants are parents of the deceased, hence in view of the verdict of the Hon'ble Supreme



Court rendered in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors. Reported in (2017) 16 SCC 680**, Rs. 40000/- to each of the claimants i.e. Rs.80000/- is awarded towards loss of filial consortium. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 4,34,000/-. Besides the aforesaid amount of compensation, interest at the rate of 6% per annum is also awarded on the aforesaid amount of compensation from the date of filing claim case till its realization.

10. In the facts and circumstances of the case, respondent no.2-National Insurance Company Limited is directed to pay the aforesaid amount of compensation and interest thereon deducting the amount if any paid by it to the appellants within two months from the date of this judgment.

11. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.10.2018
Transmission Date	12.10.2018

