IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.660 of 2010

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1. Sarita Devi, wife of Late Sanjay Sah
2. Sudama Devi, Wife of Jagarnath Sah
3. Jagarnath Sah, S/o Late Chaturi Sah @ Chetan Sah
4. Jyoti Kumari, D/o Late Sanjay Sah
5. Vishwajit Kumar, S/o Late Sanjay Sah, both are under guardianship of Sarita Devi
   All are residents of village – Panapur, Haveli Tola, Gangapur, P.S.-Kanti, District-Muzaffarpur.

.... Appellants

Versus

1. Sanjay Kumar Sinha, S/o Madan Prasad Sinha, resident of Mohalla- Church Road, Lane No.3, Ramna, P.S.-Mithanpura, District-Muzaffarpur.
2. Sr. Divisional Manager, The National Insruance Company Ltd., Divisional Office, P.N.T. Chowk, Mithanpura, Muzaffarpur.

.... Respondent/s

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Appearance:
For the Appellant/s : Mr. Dhannjay Kumar-2, Advocate.
For the Respondent no.1 : Mr. Priyank Samdarehi, Advocate.
For respondent no.2 : Mr. Shailendra Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 08-05-2018

Heard learned counsel for the appellants and learned counsel for the respondents on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the claimants-appellants against the judgment dated 13.05.2010 and award dated 27.05.2010 passed by the Additional Motor Accident Claim Tribunal-VI, Muzaffarpur in Claim Case No. 134 of 2007 whereby the learned Tribunal allowing the claim petition directed the opposite party no.2-National Insurance Company Limited to pay compensation to the tune of Rs. 1,34,500/- 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 have filed Claim Case No. 134 of 2007 under Section 166 of the M.V. Act for awarding compensation on account of death of Sanjay Sah in Motor Vehicle Accident who happened to be husband of the claimant no.1, son of Claimant nos. 2 & 3 and father of claimant nos. 4 & 5 with the case in succinct that on 26.04.2005 at around 3 AM, Sanjay Sah was sleeping on the road of his house along with other family members and in the meantime a taxi jeep bearing registration no. BR 06P 0785 being driven rashly and negligently by its driver arrived there and dashed Sanjay Sah who sustained grievous injury in the accident. He was rushed to SKMCH, Muzaffarpur, but he succumbed to his injury. Regarding the aforesaid case, Panapur O.P. P.S. Case No. 95 of 2005 was instituted under Sections 279, 337, 338 and 304A of the Indian Penal Code against the driver of the offending vehicle. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Further case of the claimants is that the deceased was running a grocery shop and used to earn Rs. 3000/- per month from the said vocation. He was aged about 26 years at the time of accident.

4. Opposite parties i.e. owner and insurer of the offending vehicle put their appearance in the case and filed their separate 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. claimants-appellants have assailed the aforesaid judgment and award on the three grounds. Firstly learned Tribunal has worked out the amount of compensation considering the notional income of the deceased as Rs. 15000/- per annum which is very meager amount. Secondly learned Tribunal has awarded Rs. 25000/- towards other traditional heads which is also very paltry and it should be Rs. 70000/- 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 and thirdly the deceased has died leaving behind him his wife and four legal representatives, hence $1/4^{th}$ of the income of the deceased ought to have been deducted as personal expense of the deceased, but learned Tribunal has deducted only $1/3^{rd}$ of the income of the deceased.

8. On the other hand, learned counsel for the respondents advocating the correctness and validity of the aforesaid Judgment and Award submitted that the learned Tribunal has rightly passed the aforesaid judgment and award after correctly appreciating the case of the parties and materials available on record which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

9. From perusal of the record, it appears that the as per the case of the claimants, deceased used to run a grocery shop and earn Rs. 3000/- per month from the said business, but they have failed to adduce any cogent and tangible evidence regarding running of the aforesaid business and earning income by the deceased. The accident is of 26.04.2005 but the learned Tribunal has considered the notional income of the deceased as Rs. 15000/- per annum, which in my considered opinion, considering the prevalent economic era and price inflation, should be Rs. 30,000/- per annum. As the deceased has died leaving behind him his five legal representatives and dependents, hence $1/4^{th}$ of the aforesaid income i.e. Rs. 7500/- 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. 22500/- per annum. As the deceased was aged about 26 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. 4,05,000/-. Besides the aforesaid amount of compensation, I also think it proper and appropriate to award Rs. 70,000/- 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**. reported in **2017 (4) 261 PLJR**. On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 4,75,000/-. Besides the aforesaid amount of compensation, I think also it proper and appropriate to award interest at the rate of 6% per annum on the aforesaid amount of compensation from the date of filing claim case till its realisation.

10. Hence, respondent no.2-National Insurance company is directed to pay the aforesaid amount of compensation and interest thereon to the claimants-appellants within two months from the date of receipt/production of a copy of this order after deduction of the amount, if any, paid by it.

11. As the appellant nos.4&5 happen to be minor daughter and son of the deceased, hence, appellant no. 1 who happens to be mother of the said minors is directed to deposit the share of the aforesaid minors in the aforesaid amount of compensation and interest thereon in some Nationalized Bank of India having its branch office in the local area of the resident of the appellants in some fix deposit scheme renewable after every five years till attaining majority by the said minors.

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	
Transmission Date	