

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.716 of 2013

1. Anita Devi W/o Late Doodhnath Singh Resident of Village Chainpur, P.O. + P.S. Darihat, District Rohtas.
2. Rabi Kumar (Minor) Son of late Doodnath Singh
3. Surya Kant Kumar (Minor) Son of Doodhnath Singh 2 and 3 under guardianship of mother Anita Devi, W/o late Doodhnath Singh, Resident of Village- Chainpur, P.O.+P.S. Darihat, District-Rohtas.

... .. Appellant/s

Versus

1. The Branch Manager, National Insurance Company Ltd., Branch Office, Sanctum 85, G.B. Road, Gaya, Bihar through The Branch Manager, National Insurance Company Ltd. Branch Office, G.T. Road, Sasaram, District Rohtas.
2. Binod Kumar Singh S/o Babu Nand Singh Resident of Village Berkup, P.O. + P.S. Dehri, District Rohtas.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Siddharth Harsh
For the Respondent no. 1	:	Mr. Ashok Priyadarshi
For the Respondent no. 2	:	Mr. Jai Prakash Singh
		Mrs. Arti Kumari

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date : 26-07-2018

Heard learned counsel for the appellants and learned counsel for the respondent no. 1 on this Miscellaneous Appeal.

2. Respondent no. 2 did not turn up to advance argument despite putting appearance in the case.

3. This miscellaneous appeal has been preferred



against the judgment dated 31.07.2013 and award dated 09.10.2013 passed by learned Adhoc Additional District Judge-IV-cum-Motor Accident Claim Tribunal, Rohtas at Sasaram in MACT Case no. 171 of 2010 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 2 National Insurance Company Limited to pay compensation to the tune of Rs. 3,23,600/- along with interest @ 9% per annum from the date of filing of the claim case till its realization to the claimants.

4. Factual matrix of the case is that MACT Case no. 171 of 2010 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 6,00,000/- on account of death of Doodh Nath Singh in motor vehicle accident with the case in succinct that on 20.09.2010, said Doodh Nath Singh was regressing to his house along with Darbari Singh and Hridyanand Singh after vending the vegetable from Dehri bus stand by City Ride Bus bearing registration no. BR-24P-1446. When the said bus reached near Berkup bus stand, the conductor and khalasi asked the passengers to come at the gate for alighting from the bus. Responding the same, deceased arrived at the gate of the bus, in the meantime, the driver of the bus drove the vehicle



rashly and negligently in ditch, resultantly, deceased fell down from bus and sustained fatal injuries. He was rushed to Bose clinic for according medical aid, but he succumbed to his injuries. 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, Darihat P.S. Case no. 61 of 2010 was instituted against the driver of the offending vehicle. The aforesaid Bus was insured by the National Insurance Company Ltd. The deceased was agriculturist and also used to vend vegetable and earn Rs. 6000-7000/- per month from the said vocation.

5. O.P. no. 2 National Insurance Company Ltd., and owner of the offending vehicle put their appearance in the case and filed their written statement. Both parties adduced evidence in buttress of their case.

6. After hearing the parties and perusing the record, learned Tribunal passed the impugned judgment and award as detailed in the earlier paragraph.

7. Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimants have preferred the present appeal.

8. It is submitted by learned counsel for the



claimants-appellants that the deceased was agriculturist and was vegetable vendor and used to earn Rs. 6000-7000/- per month from the said vocation. He adduced evidence in this regard. But, learned Tribunal has wrongly turned down his claim and assessed income of the deceased to the tune of Rs. 2600/- per month. It is further submitted that as the deceased was vegetable vendor, he was self-employed person and aged about 35 years, hence, 40% of the income of the deceased ought to have been awarded towards future prospect. But, learned Tribunal has wrongly and illegally ignored the same. It is also submitted that as per decision of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR*, Rs. 70,000/- ought to have been awarded to the claimants-appellants towards other traditional heads, but learned Tribunal has awarded only Rs. 20,000/- in the said heads.

9. On the other hand, learned counsel for the respondent no. 1 submitted that the claimants-appellants have utterly and miserably failed to substantiate theirs case that the deceased was agriculturist and vegetable vendor and was self-employed person. He further submitted that learned Tribunal has adopted multiplier of 17 to workout the amount of



compensation instead of 16 as per decision of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi* (supra). As the deceased was aged about 35 years at the time of accident, hence, amount of quantum awarded by learned Tribunal is proper, adequate and correct.

10. On perusal of record, it appears that as per case of the claimants-appellants, the deceased was aged about 35 years at the time of accident and was agriculturist and also used to vend vegetable and earn Rs. 6000-7000/- per month from the said vocation, but the claimants-appellants have not adduced any documentary evidence regarding aforesaid income of the deceased. So far as the nature of vocation of deceased is concerned, the claimants-appellants examined their witness in this regard, but the aforesaid witness has not been cross-examined by the respondents regarding the aforesaid aspects of the case. Hence, the aforesaid vocation being carried out by the deceased as per case of claimants stands admitted to the respondents. As the claimants-appellants have failed to adduce any cogent and convincing documentary evidence regarding income of the deceased, learned Tribunal has assessed income of the deceased as Rs. 2600/- per month. But, as the accident is of year 2010 and deceased was aged



about 35 years at the time of accident, hence, considering the aforesaid facts and circumstances, price inflation and prevalent economic era at the relevant time of accident, notional income of the deceased is considered to the tune of Rs. 36000/- per annum. As the deceased has died leaving behind his wife and two children i.e. three legal representatives and dependents, hence, 1/3 of the aforesaid income of the deceased i.e. Rs. 12,000/- 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. 24,000/- per annum.

11. As I find earlier hereinabove that the deceased was vegetable vendor, hence, he happened to be self-employed person and as he was aged about 35 years at the time of accident, hence, as per decision of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi* (supra), 40% of the aforesaid income i.e. Rs. 9600/- is awarded as future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs. 33,600/- per annum. As the deceased was aged about 35 years at the time of accident, hence, as per decision of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi* (supra), multiplier



of 16 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 5,37,600/-. Besides, the aforesaid amount of compensation, I also think it proper and adequate to award Rs. 70,000/- towards other traditional heads such as loss of consortium, 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. 6,07,600/-. As the claimants-appellants have already received Rs. 50,000/- by way of *ad interim* compensation under Section 140 M.V. Act, they would now entitled to get the rest amount of compensation to the tune of Rs. 5,57,600/-. Besides, the aforesaid compensation, interest @ 9% per annum on the aforesaid amount of compensation, as awarded by the learned Tribunal and not assailed by the respondents by preferring appeal, is awarded from the date of filing of claim case till its realization.

12. The respondent no. 1 National 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 two months from the date of this judgment subject to provisions as made



by the learned Tribunal in the impugned judgment and award.

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	28-07-2018
Transmission Date	N.A.

