

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.649 of 2012

1. Anjani Kumari W/o Ashok Kumar Resident of Village- Nim Chak, P.S- Belaganj, Distt- Gaya, at Present Residing in Mohalla Ma Mangla Co- Operative Colony, Dandibagh, Near Bal Bidya Mandir School, P.S- Civil Line, Distt- Gaya.
2. Ashok Kumar S/o Bindeshwar Singh Resident of Village- Nim Chak, P.S- Belaganj, Distt- Gaya, at Present Residing in Mohalla Ma Mangla Co- Operative Colony, Dandibagh, Near Bal Bidya Mandir School, P.S- Civil Line, Distt- Gaya.

... .. Appellant/s

Versus

1. The Oriental Insurance Co. Ltd, Through its Divisional Manager, Division Office, R.J. Place, Rai Kashi Nath More, Gaya, R.P.S. Gaya, Distt- Gaya.
2. Santosh Kumar S/o Mundrika Singh Resident of Village- Kangali Dhor, Staff Quarter, Near Sarswati Shishu Mandir, Bermo, P.S- Bermo, Dist- Bokaro, Distt- Jharkhand.

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 23-07-2018

Ref: I.A. no. 8335 of 2014

The appellants have filed the aforesaid interlocutory application for condonation of delay of about four months two days in preferring this appeal with the case that after passing the judgment and award by the learned Tribunal, the appellant no. 1 approached his learned counsel at Gaya on 16.07.2012, who after going through the judgment and award, suggested him to file an appeal before Hon'ble Patna High Court as soon as possible. Then after due consultation, the appellant no. 1 came to his residence and managed money for



filing the appeal and then contacted his learned counsel of Patna High Court on 8.09.2012 and after getting appeal drafted, filed the same in this case on 13.09.2012. The appellant being rustic villager had no knowledge of any limitation for filing the appeal before this Court. There has been no deliberate and intentional laches on the part of the appellant in preferring this appeal late.

2. Learned counsel for respondents did not file any rejoinder against the aforesaid limitation petition rather orally opposed the same.

3. It is settled law that the justice should be done after hearing the parties and injustice should not be done merely on technicality by shutting down the opportunity of hearing to the parties.

4. In the facts and circumstances, I find sufficient cause for condonation of delay made in preferring this appeal. Accordingly, the aforesaid interlocutory application is allowed and the delay in preferring this appeal is condoned.

Miscellaneous Appeal no. 649 of 2012

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

6. This miscellaneous appeal has been preferred



against the judgment dated 11.01.2012 and award dated 30.01.2012 passed by learned Additional Sessions Judge-cum-Fast Track Court-IV-cum-Motor Accident Claim Tribunal, Gaya in Claim Case no. 165 of 2009/ 46 of 2010 whereby the learned Tribunal allowing the claim petition filed by the claimants, directed the O.P. no. 1 The Oriental Insurance Company Limited to pay compensation to the tune of Rs. 1,25,000/- along with interest @ 9% per annum from the date of filing of the claim case till its realization to the claimants.

7. Factual matrix of the case is that the Claim Case no. 165 of 2009/ 46 of 2010 was filed by the claimants-appellants under Section 166 of the M.V. Act for awarding compensation on account of death of Soni Kumari in motor vehicle accident with the case in succinct that the said Soni Kumari was student of intermediate final year of Mirja Galib College, Gaya. On 16.07.2009 she was proceeding to aforesaid school by bicycle and as soon as she arrived at Gebal Bigha Mor under P.S. Rampur at 07:55 AM, a truck bearing registration no. 9 AH-8292 being rashly and negligently driven by its driver abruptly arrived there from eastern side and dashed Soni Kumari, resultantly, she died on the spot. Regarding the aforesaid accident, Rampur P.S. Case no. 97 of



2009 was instituted under Sections 279, 304A against the driver of the offending vehicle. Soni Kumari was aged about 18 years at the time of her death. She was brilliant student and also used to give tuition to the student of class 8 to 10 at her home and used to earn Rs. 5000/- per month from the said vocation.

8. O.P. no. 2, who happens to be owner of truck did not put his appearance in the case despite service of notice, hence, the case proceeded *ex parte* against him. While the Opposite Party no. 1 i.e. The oriental Insurance Company Ltd. putting appearance in the case filed its written statement. The claimants adduced ocular and documentary evidence in buttress of their case.

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

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

11. It is submitted by learned counsel for the claimants-appellants that the deceased was brilliant student of intermediate final year and also used to give tuition to the



students of class 8 to 10 at her home and used to earn Rs. 5,000/- per month from the said vocation. They adduced ocular evidence in buttress of their aforesaid case, but learned Tribunal disbelieving their aforesaid evidence has wrongly and illegally considered notional income of the deceased to the tune of Rs. 15,000/- per annum only. It is further submitted that the deceased was aged about 18 years and was bachelor, hence, $\frac{1}{2}$ of the income of the deceased ought to have been deducted as personal expenses of the deceased, but learned Tribunal has wrongly and illegally deducted 1/3rd income of the deceased towards aforesaid heads. It is further submitted that as the deceased was an earning member, hence, future prospect to the extent of 40% of her income should also be allowed, which learned Tribunal has failed to grant. It is also submitted that the deceased was 18 years at the time of her death, hence, multiplier of 18 ought to have been applying to workout the amount of compensation in view of the decision of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR*, but learned Tribunal has wrongly and illegally considering the age of the parents of deceased has applied the multiplier of 16 to workout the aforesaid amount of compensation. It is also



submitted that in view of the decision of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi* (supra), the claimants-appellants ought to have been given Rs. 30,000/- towards other traditional heads, but learned Tribunal has awarded only Rs. 15,000/- towards aforesaid heads.

12. On the other hand, learned counsel for the respondent no. 1 submitted that the claimants-appellants have not adduced any documentary evidence regarding aforesaid vocation and income of the deceased and has utterly and miserably failed to substantiate the same. Hence, the claimants-appellants are not entitled to get compensation on the basis of aforesaid income of the deceased i.e. Rs. 5,000/- per month as claimed by them. It is further submitted that as the deceased was neither getting fixed salary nor was self-employed person, hence, claimants-appellants are not entitled to get any future prospect.

13. On perusal of record, it appears that the deceased Soni Kumari was student of intermediate final year at the time of her accident. Though, the claimants-appellants have claimed that the deceased used to give tuition to the students of class 8 to 10 at her home and earn Rs. 5000/- per month from the said vocation, but AW-1, who happens to be



own grandfather of the deceased has deposed before the learned Tribunal that the deceased was dependent on her parents. They have not adduced any documentary evidence in this regard. Admittedly, the accident took place in the year 2009, hence, considering the 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. 3000/- per month i.e. Rs. 36,000/- per annum. As the deceased was admittedly bachelor at the time of her accident, hence, $\frac{1}{2}$ of the aforesaid income of the deceased i.e. Rs. 18,000/- 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. 18,000/- per annum. As the claimants-appellants have failed to establish that the deceased was either fixed salaried person or self-employed person, hence, in my considered opinion, the claimants-appellants are not entitled to get any future prospect on the aforesaid income of the deceased. As the deceased was 18 years old 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/-.



As the claimants-appellants happen to be parents of the deceased and deceased was bachelor, hence, Rs. 30,000/- is awarded towards other traditional heads such as funeral expenses and loss of estate, besides the aforesaid amount of compensation. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 3,54,000/-. 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 respondent no. 1 is awarded from the date of filing of claim case till its realization.

14. The respondent no. 1 The Oriental 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.

15. Accordingly, this miscellaneous appeal is disposed of with the aforesaid modification in the impugned judgment and award passed by the learned Tribunal.

rohit/

(Prakash Chandra Jaiswal, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26-07-2018
Transmission Date	N.A.

