IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.504 of 2013

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1. Sneha Mawandia D/o Late Rajendra Mawandia Resident of Mohalla R.N. Agrawal Road, Chunihari Tola, P.S- Kotwali, District- Bhagalpur.
2. Ayush Mawandia S/o Late Rajendra Mawandia Resident of Mohalla R.N. Agrawal Road, Chunihari Tola, P.S- Kotwali, District- Bhagalpur.

... ... Appellant/s

Versus

1. Salma Taj W/o Late Md. Ismail Resident of 1-5, 17th Cross, Phase 1, Bharti Nagar, Vellalar, District- Vellore, Madras.
2. Aashida D/o Late Md. Ismail Resident of 1-5, 17th Cross, Phase 1, Bharti Nagar, Vellalar, District- Vellore, Madras.
3. Haniya D/o Late Md. Ismail Resident of 1-5, 17th Cross, Phase 1, Bharti Nagar, Vellalar, District- Vellore, Madras.
4. Royal Sundaram Alliance Insurance Co. Ltd. Through Manager (Claims MACT), 3rd floor, Subramaniam Building no. 1, Club House Raod, Chennai-600 002.

... ... Respondent/s

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with

Miscellaneous Appeal No. 503 of 2013

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1. Sneha Mawandia, D/o Late Rajendra Mawandia.

2. Ayush Mawandia, S/o Late Rajendra Mawandia

3. Parmeshwari Devi @ Parmeshwari Devi Mawandia, W/o Gopi Krishna Mawandia.

4. Gopi Krishna Mawandia, S/o Late Gouri Shankar Mawandia, Appellant no. 2 minor, represented through his sister Sneha Mawandia (appellant no. 1) as guardian and next friend.

All R/o Mohalla R.N. Agarwal Road, Chunihari Tola, P.S. Kotwali, District-Bhagalpur.

... ... Appellant/s

Versus

1. Salma Taj W/o Late Md. Ismail.

2. Aashida

3. Haniya, respondent no. 2 and 3 D/o Late Md. Ismail, Respondent no. 2 and 3 are minor represented through their mother as their natural guardian and next friend, Respondent no. 1 to 3 are resident of 1-5, 17th cross, phase I, Bharti Nagar, Vellalar, Ditrict-Vellore, Madras.

4. Royal Sundaram Alliance Insurance Co. Ltd, through Manager (Claims MACT), 3rd floor, Subramaniam Building no. 1, Club House Road, Chennai-600 002.

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 504 of 2013)
For the Appellant/s : Mr. Madan Mohan
Mr. Ganpati Trivedi
Mrs. Pallavi Pandey
For the Respondent no. 4 : Mr. Durgesh Kumar Singh
Mr. R.C. Narayan.
(In Miscellaneous Appeal No. 503 of 2013)
For the Appellant/s : Mr. Madan Mohan
Mr. Ganpati Trivedi
Mrs. Pallavi Pandey
For the Respondent no. 4 : Mr. Durgesh Kumar Singh
Mr. R.C. Narayan.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 03-07-2018

As both the aforesaid Miscellaneous Appeals have cropped up from the same judgment, hence they are taken up together for consideration and disposed of by this common judgment.

2. Heard learned counsel for the appellants and learned counsel for the respondent no. 4 on these Miscellaneous Appeals.

3. These miscellaneous appeals have been preferred against the judgment dated 30.01.2013 and award dated 01.04.2013 passed by learned 2nd Additional District and Sessions Judge-cum-Motor Vehicle Claims Tribunal, Bhagalpur in Claim Case nos. 85 of 2010 and 86 of 2010 whereby the learned Tribunal allowing the claim petitions filed by the claimants, directed the O.P. no. 4 Royal Sundaram Alliance Insurance Company Ltd. to pay compensation to the tune of Rs. 9,06,884/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants on account of death of Sunita Mawandia in Claim Case no. 85 of 2010 and Rs. 8,95,275/- along with interest @ 6% per annum from the date of filing of claim case till its realization on account of death of Rajendra Mawandia in Claim Case no. 86 of 2010.

4. Factual matrix of the case is that the Claim Case nos. 85 of 2010 was filed by the Sneha Mawandia and Ayush Mawandia while Claim Case no. 86 of 2010 was filed by Sneha Mawandia, Ayush Mawandia, Smt. Parmeshwari Devi Mawandia and Gopi Krishan Mawandia under Section 166 of the M.V. Act on account of death of Rajendra Mawandia and Sunita Mawandia respectively, in motor vehicle accident with the case in succinct that on 30.04.2010 Sunita

Mawandia along with her husband Rajendra Mawandia and children were proceeding from Vellore to Rameshwaram by Tata Indica car bearing registration no. TN23 AJ 4531. On 01.05.2010 at around 06:00 AM when the aforesaid vehicle arrived at NH-49 near village Sundanendal, it collided with road side tree, resultantly, the owner-cum-driver of the offending vehicle died on the spot while Sunita Mawandia, Rajendra Mawandia and their son were injured. The aforesaid injured were rushed to local Health Centre, Parmakudi to accord them medical aid and from there, they were referred to Madurai, but Sunita Mawandia and Rajendra Mawandia succumbed to their injury on the way to Madurai. 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 incident, Parmakundi P.S. Case no. 138 of 2010 was instituted under Sections 279, 338, 304A of the I.P.C. The deceased Sunita Mawandia was aged about 39 years while Rajendra Mawandia was aged about 44 years at the time of their death. Both were running cloth business and were income tax payee. Sunita Mawandia used to earn Rs. 9,763/- per month while Rajendra Mawandia used to earn Rs. 14,251/- per month from the said vocation.

5. O.P. nos. 1, 2 and 3 did not put their appearance in the case despite service of notice, hence, the case proceeded *exparte* against them while the Opposite Party nos. 4 i.e. Royal Sundaram Alliance Insurance Company Ltd. put its appearance in the case and filed its written statement. The claimants adduced ocular and documentary 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 appeals.

8. It is submitted by learned counsel for the claimants-appellants that as the deceased Sunita Mawandia and Rajendra Mawandia were businessmen and they were running the business of cloth at the time of accident, they happened to be self-employed persons and as the Sunita Mawandia was aged about 39 years and Rajendra Mawandia was aged about 44 years at the time of accident, hence, 40% and 25% of their respective income ought to have been awarded as future prospect, but the learned Tribunal has failed to award the same.

It is further submitted that gross income of the deceased Rajendra Mawandia was Rs. 1,85,575/- per annum while that of Sunita Mawandia was Rs. 1,60,737/- per annum and the said gross income ought to have been considered to work out the amount of compensation, but learned Tribunal has wrongly and illegally considered only actual income of Rajendra Mawandia as Rs. 89,077/- and of Sunita Mawandia as Rs. 84,598/-. It is further submitted that as the Rajendra Mawandia has died leaving behind his four legal representatives and dependents, hence, 1/4th of the aforesaid income ought to have been deducted towards personal expenses of the deceased, but the learned Tribunal has wrongly deducted only 1/3rd. It is further submitted that the rate of interest as awarded by learned Tribunal is also very less, instead of 6% per annum it should be 9% per annum. It is also submitted that the compensation awarded by the learned Tribunal towards other traditional heads is also very paltry and not given 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.***

9. On the other hand, learned counsel for the respondent no. 4 submitted that in the Claim Case no. 85 of

2010, though there are four claimants including the father of the deceased Rajendra Mawandia, but father does not happen to be dependent of the deceased. The claimants have neither taken any such case nor adduced any evidence in this regard. Hence, 1/3rd of the income of the deceased is to be deducted as personal expenses of the deceased and learned Tribunal has rightly deducted 1/3rd as personal expenses of the deceased. It is further submitted that learned Tribunal has not given any finding to the effect that the accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident and unless and until, it is found that the accident took place due to rash and negligent driving by driver of the offending vehicle, the Insurance Company cannot be held liable to pay any compensation to the claimants. It is further submitted that income of the deceased from the business of cloth is only to be considered as the income of the deceased, the other income such as income from Bank and other interest, interest from Sunita Mawandia, miscellaneous income in case of Rajendra Mawandia and income from other interest, bank interest and miscellaneous income in case of Sunita Mawandia are not to be considered in assessing the income of the aforesaid deceased as the aforesaid interest will continue to be paid to the claimants even after the death of the deceased and miscellaneous income is very vague and there is no details and evidence as to from where the said income used to be earned by the deceased. It is also submitted that as the owner-cum-driver Md. Ismail has died preceding to the deceased Rajendra Mawandia and Sunita Mawandia, hence, the liability cannot be fastened on the owner of the offending vehicle as the owner has already died, so once, the liability cannot be fastened on the owner, the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the offending vehicle.

10. On perusal of record, it appears that it is the admitted case of the parties that the deceased Rajendra Mawandia and Sunita Mawandia has died in the motor vehicle accident and owner-cum-driver of the offending vehicle has pre-deceased them. It has been found by the learned Tribunal that both the aforesaid deceased, namely, Rajendra Mawandia and Sunita Mawandia used to do the cloth business and earn income from that, hence, they happened to be self employed person. From perusal of Ext-7 series filed in Claim Case no. 85 of 2010 which is the computation of income tax of financial year 2008-09 of Rajendra Mawandia, it appears that he used to earn Rs. 80,453/- per annum from the business. He also used to earn Rs. 14562/- from Bank and other interest, Rs. 50,678/- interest from Sunita Mawandia and Rs. 90,560/- as Misc. income. So far as the interest from Bank and other interest and the interest from Sunita Mawandia are concerned, the earning of the aforesaid amount of interest would not stop even after death of Rajendra Mawandia rather it will continue to flow to the dependents of the deceased as the principal amount from which the aforesaid interest are accrued remains intact and will not be affected by the death of Rajendra Mawandia. The miscellaneous income appears to be very vague as there is no details as to from where the said income used to be earned by the deceased Rajendra Mawandia. Likewise, from perusal of Ext-7 series filed in Claim Case no. 86 of 2010 which is computation of income tax of the financial year 2008-09 of Sunita Mawandia, it appears that she used to earn Rs. 84,598/- from business and Rs. 43,250/- from other interest, Rs. 329/- from Bank interest and Rs. 32,560/- from Misc. income. So far as the other interest and Bank interest are concerned, the aforesaid interest will continue to flow to the dependents of the deceased as the principal amount remains intact and will not be affected by the death of the aforesaid deceased and Misc.

income appears to be very vague as no details of the aforesaid income has been given. Hence, in view of the aforesaid facts and circumstances, in my considered opinion, the income from business used to be earned by the aforesaid deceased be considered as their income which comes to the tune of Rs. 80,453/- per annum in case of Rajendra Mawandia and Rs. 84,598/- per annum in case of Sunita Mawandia. In the financial year 2008-09, the income upto Rs. 1,50,000/- per annum in case of male and that upto Rs. 1,80,000/- per annum in case of female was not taxable. Hence, there will no deduction of income tax from the aforesaid income of the deceased.

11. As per the finding of learned Tribunal, not assailed by the appellant the deceased Rajendra Mawandia was aged about 44 and Sunita Mawandia was 39 years at the time of accident and as the aforesaid persons happened to be self-employed, hence, in view of the verdict of the Hon'ble Apex Court rendered in ***National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR,*** 25% of the aforesaid income of Rajendra Mawandia i.e. Rs. 20,113/- and 40% of the aforesaid income of deceased Sunita Mawandia i.e. Rs. 33,839/- is awarded as future prospect. On addition of the aforesaid heads, the loss of income comes to the tune of Rs.1,00,566/- per annum regarding Rajendra Mawandia, Rs.1,18,437/- per annum regarding Sunita Mawandia. As the deceased Sunita Mawandia has died leaving behind her two legal representatives and dependents, hence, 1/3rd of the aforesaid income i.e. Rs. 39,479/- is deducted as the personal expenses of the aforesaid deceased which she would have made had she been alive. On the aforesaid deduction, the loss of dependency comes to the Rs. 78,958/- per annum. As the deceased Rajendra Mawandia has died leaving behind his three legal representatives and dependents as the father of Rajendra Mawandia does not happen to be his dependent because neither the claimants have stated so in his claim petition nor have adduced evidence in this regard, hence, 1/3rd of the aforesaid income i.e. Rs. 33,522/- is deducted as the personal expenses of the aforesaid deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to the Rs. 67,044/- per annum. As the deceased Sunita Mawandia was 39 years old at the time of accident, hence, the multiplier of 15 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 11,84,370/- per annum in case of Sunita Mawandia. As the deceased Rajendra Mawandia was 44 years old at the time of accident, hence, the multiplier of 14 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs.9,38,616/- per annum in case of Rajendra Mawandia. Besides, the aforesaid amount of compensation, claimants-appellants are also entitled to get Rs. 30,000/- towards other traditional heads such as funeral expenses and loss of estate in each case in view of verdict of Hon'ble Apex Court rendered in ***National Insurance Company Ltd. (supra).*** On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 12,14,370/- in Claim Case no. 85 of 2010 and Rs. 9,68,616/- in Claim Case no. 86 of 2010. Besides, the aforesaid compensation, I also think it proper to award interest @ 7% per annum on the aforesaid amount of compensation from the date of filing of claim cases till its realization.

12. From perusal of record, it appears that it is the case of the claimants that the aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. AW-1 and AW-2 examined by the claimants have also unanimously stated in their respective deposition that the aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Aforesaid witnesses have not been cross-examined by the respondents on the aforesaid aspects of the case. Hence the aforesaid aspect of the case stood admitted to the respondents. Though, learned Tribunal has not given any specific finding to the said effect, but considering the aforesaid facts and circumstances and aforesaid evidence of AW-1 and AW-2, I find and hold that accident in question took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident.

13. Admittedly, the driver of the offending vehicle, namely, Md. Ismail has died preceding to Rajendra Mawandia and Sunita Mawandia in the said accident as the former had died on the spot while the later duo had died on the way to Madurai. But, in my considered opinion, cause of action has accrued immediately on taking place of accident and not death. The death of owner of vehicle has followed the accident and as at the time of accident, the owner of offending vehicle Md. Ismail was alive, so in my considered opinion, the

Md. Ismail is liable to pay the compensation to the claimants and as the offending vehicle was insured by the respondent no. 4, hence, the aforesaid Insurance Company is liable to pay the aforesaid amount of compensation and interest thereon to the appellants indemnifying the owner of the offending vehicle.

14. In the aforesaid facts and circumstances of the case, the respondent no. 4, Royal Sundaram Alliance Insurance Company Ltd. is directed to make payment of aforesaid amount of compensation and interest thereon to the appellants of the aforesaid two appeals after deducting the amount, if any paid by it within two months from the date of this judgment.

15. Accordingly, the aforesaid two miscellaneous appeals are 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	14-07-2018
Transmission Date	N.A.