

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.72 of 2015

1. Lalti Devi, W/o Munna Chaudhary
 2. Kiran Kumari, D/O Munna Chaudhary
 3. Suraj Kumar, S/O Munna Chaudhary
 4. Shamaru Chaudhary, S/O Brajmohan Chaudhary
- Claimant no. 2 to 3 are minor under the guardianship of their Mother,
Appellant no.1, All resident of Village Jeenpura P.S.- Pali, District- Patna.

... .. Appellant/s

Versus

1. Shambhu Yadav, S/O Rajendra Yadav, Resident of Village- Jeetan Chapra Ranipur, P.S. Rani Talab (Bikram), District Patna
2. Santosh Kumar, S/o Kameshwar Yadav, Resident of Village- Raghapur P.S. Bihta District Patna.
3. Regional Manager, Oriental Insurance Company Ltd. Regional Office, Pirmuhani Kadamkuan, Near Uma Cinema Hall, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Alok Kumar @ Alok Kr Shahi, Adv, & Mr. A. Sinha, Adv.
For the Respondent/s	:	Mr.Bimlesh Kumar Jha, Add.
For the respondent no.3	:	Mr. Sanjay Kumar-1, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT

Date : 26-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of claimant/appellant for enhancement of compensation amount granted by the judgment dated 09.12.2013 and Award dated 03.02.2015 passed by Additional District Judge-XIV-cum- Motor Vehicle Accident Claims, Tribunal, Patna in Claim Case No. 106 of 2011 by



which compensation of Rs. 3,93,500/- has been awarded to the claimant/appellant.

3. Briefly stated the facts of the case as disclosed in the claim petition is that claimants are widow and children of Munna Choudhary, who was helper in the Truck No. BR-1GA-9183 who died in motor accident on 03.06.2010 at 12:30 a.m. when said truck met an accident. Deceased was 27 years old and was having income of Rs. 4,500/- per month and died due to rash and negligent driving of driver of said truck. The driver. The driver was holding a valid driving license. The offending truck was owned by opposite party no.1 and insured by opposite party no.3 Oriental Insurance Co. Ltd.

4. F.I.R. was instituted against the driver of offending vehicle giving rise to Simri P.S. Case No. 171 of 2010 and after completion of investigation police submitted chargesheet against the driver of the offending vehicle.

5. Opposite party no.3 insurance company appeared and filed their written statement denying the claim and claim case to be not maintainable. Offending vehicle collided with standing Dumper and there was contributory negligence and owner of the both vehicle are liable to pay



the compensation. Opposite party no. 1 and 2 who are the owner and driver of the vehicle did not appear in spite of valid service of notice and the case proceeded ex parte against them.

6. On the basis of pleading of the parties, the Tribunal framed six issue. In support of her claim, three witnesses were examined by the claimant. AW-1 Lalti Devi is claimant, AW-2 Somaru Choudhary is claimant and AW-3 is Manish Kumar. Claimants have also produced documentary evidence in support of their claim case. Exhibit-1 is certified copy of F.I.R. of Simri P.S. Case No. 171 of 2010, Exhibit-2 is certified copy of chargesheet, Exhibit-3 is Photocopy of Postmortem report, Exhibit-4 is photocopy of insurance policy.

7. The Tribunal has held that due to rash and negligent driving of the offending vehicle by the driver of vehicle which dashed from behind from a standing dumper as a result of which Munna Choudhary suffered serious injuries and subsequently succumbed to his injuries in course of treatment in P.M.C.H. The name of the driver of offending truck is Raju Yadav and number of the offending vehicle was BR-1GA-9183 and the number of dumper was BR-1G-



9867.

8. Deceased was helper in the offending vehicle as such he was not a third party and since no objection has been taken by the insurance company, it will be presumed that the insurance policy covered the risk of unlimited liability of helper in the offending vehicle. Insurance company has not filed any appeal or cross appeal.

9. On the basis of admitted facts the compensation for which claimants are entitled is reassessed by this Court.

Annual income -	Rs. 36,000/-
Future Prospects (40%)	Rs. 14,400/-
Total Income	Rs. 50,400/-
Personal Expenses (1/3rd)	Rs. 16,800/-
Loss of dependency	Rs. 33,600/-
Multiplier	17
Compensation Amount	Rs. 5,71,200/-
Conventional Heads	Rs. 70,000/-
Total =	Rs. 6,41,200/-

(Six Lacs Forty One Thousand Two Hundred Only).

10. The insurance company is directed to pay the remaining compensation amount after making deduction from enhanced compensation amount of Rs. 6,41,200/- (Six Lacs Forty One Thousand Two Hundred Only) to the



claimants with interest @ 6 per cent per annum on the remaining compensation amount which becomes due for payment after enhancement of claim amount from the date of filing of claim case till its payment.

11. The miscellaneous appeal is disposed of.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	09.05.2019
Uploading Date	27.07.2019
Transmission Date	NA

