IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.69 of 2015

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1. Rinku Devi W/o Late Nagendra Yadav
2. Nandani Kumari D/o Late Nagendra Yadav
3. Kallu Kumar S/O Late Nagendra Yadav
4. Girija Devi W/o Sri Rangbahadur Yadav @ Seni Yadav
5. Sri Rangbahadur Yadav @ Seni Yadav S/o Late Panno Yadav Claimant No. 2 to 3 are minor under the guardianship of their Mother, Appellant No. 1, All Resident of village Sabbalpur, P.S.- Punpun, District Patna.

... ... Appellant/s

Versus

1. Gorakh Kumar S/O Brahmdeo Prasad Resident of Village- Chamanchak, Manoharpur Kachhuara, P.S. Ramkrishna Nagar, District- Patna.
2. Sanoj Kumar S/O Lala Prasad Yadav, Resident of Village- Chamanchak, Manoharpur Kachhuara, P.S. Ramkrishna Nagar, District- Patna.
3. Divisional Manager, D.O.- 1, United India Insurance Company Ltd., Resident of Times of India Building, Frazer Road, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Alok Kumar @ Alok Kr Shahi
For the Respondent/s	:	Mr. Ramchandra Lal Das, Adv
	:	Mr. Ashok Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 06-05-2019

Heard the parties.

2. Aggrieved by the judgment dated 10.01.2012 and award dated 05.02.2015 passed by learned Additional District Judge-IX cum, M.V.A.C Tribunal, Patna in Claim Case No. 216 of 2010 by which the learned Tribunal has granted compensation of sum of Rs. 3,67,500/-, the claimants/appellants have filed this Miscellaneous Appeal for enhancement of

compensation amount.

3. Briefly stated, the facts of the case is that on 11.02.2010 the husband of claimant deceased Nagendra Yadav was traveling in Tempo bearing registration No. BR1AP-7720, which was being driven rashly and negligently by the driver and said tempo met with an accident and turned turtle in which the husband of the claimant received grievous injuries and succumbed to injuries in P.M.C.H., Patna. FIR was instituted U/s 279 and 304(A) of I.P.C. giving rise to Gaurichak P.S. Case No. 33/2010 against the driver and after investigation police found the case to be true and filed charge sheet against the driver of offending vehicle. FIR was instituted under sections 279 and 304(A) of IPC giving rise to Gaurichak P.S. Case No. 33 of 2010 against the driver and after investigation police found the case to be true and filed chargesheet against the driver of offending vehicle.

4. The claimant stated that the deceased was an agriculturist and his monthly income was Rs. 4,500/- and he was 32 years of age. The vehicle was insured with opposite party No. 3 United India Insurance Company Ltd.

5. Notices were issued to the opposite parties who were the driver, owner and Insurance Company (opposite

party No. 1, 2 and 3). United India Insurance Company (O.P No. 3) appeared and filed their written statement. Opposite party No. 1 (owner of vehicle) had appeared and had also filed Vakalatnama but had not contested the case whereas the driver (opposite party No. 2) did not appear.

6. In support of her claim case, the claimant had examined four oral witnesses, who have supported the claim of the claimant that the husband of claimant died on 11.02.2010 while he was sitting in a Tempo which was being driven in rash and negligent manner by the driver and the same dashed with a tractor resulting in grievous injuries sustained by the husband of the claimant and who succumbed to injuries in P.M.C.H. They have also supported the age of the deceased being 32 years and his monthly income being Rs. 4,500/-. Apart from oral evidences, the documentary evidences were also adduced before the Tribunal, which were marked as Exhibits which included FIR (Exhibit-1), Charge sheet (Exhibit-2), photocopy of postmortem report (Exhibit-3), and photocopy of Insurance paper (Exhibit-4).

7. On the basis of evidences adduced before the Tribunal, the Tribunal held that the deceased husband of claimant died due to rash and negligent driving of the offending

vehicle by the driver and the vehicle was insured with opposite party No. 3 on the date of accident and as such he is liable to indemnify the owner of the vehicle of the amount of compensation.

8. The claim case has been filed on behalf of Rinku Devi, who is the widow, Nandani Kumari is daughter, Kallu Kumar is son and the Girija Devi is mother of deceased. However, claimant No. 5 is Rang Bahadur Yadav who is the father of deceased but cannot be considered as dependant as such he is not entitled for any compensation. No document was adduced on behalf of claimant showing the monthly income of the deceased, as such, the Tribunal on the basis of notification issued by the government in respect of minimum wages of daily wage earner has assessed his income to be Rs. 100 upon which the monthly income of deceased has been assessed as Rs. 3000/- and his annual income as Rs. 36,000/- After deducting 1/3rd towards his personal expenses, the family contribution has been found to be 24,000/- and applying the multiplier of 17 taking his age to be 32 years, tribunal has come to conclusion that claimants are entitled for compensation of Rs. 4,08,000/-. Apart from compensation amount the Tribunal has also found them entitled for additional compensation on funeral expenses of Rs.

2000/-, loss of estate Rs. 2,500/- and loss of consortium Rs. 5000/- and has calculated just compensation to be Rs. 4,17,500/- and Rs. 50,000/- has been deducted which was paid to them as interim compensation. The net payable compensation amount has been found to be Rs. 3,67,500/- and has directed the Insurance Company to pay said amount to the claimants with an interest of 8% from the date of filing of the claim case till its realization.

9. It has been submitted on behalf of the claimants as well as counsel for the Insurance Company that the compensation amount has been paid as directed by the Tribunal. The claimants are aggrieved by the amount of compensation and has filed this miscellaneous appeal for enhancement of compensation amount. It has been further submitted that the Tribunal has deducted 1/3rd of the annual income of the deceased whereas his dependents are four as such the tribunal ought to have deducted 1/4th as personal expenses as number of dependents are four. It has been further submitted that 40 per cent is to be included for future prospect and correct multiplier would be 17. The claimant is also entitled for additional compensation in funeral expenses as Rs. 15,000/-, loss of consortium Rs. 40,000/- and loss of estate Rs. 15,000/-, in view

of the principles laid by the Apex Court in the case of ***Sarla Verma and Ors vs. Delhi Transport Corporation and Others since reported in (2009) 6 SCC 121*** and in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors since reported in (2017) 16 SCC 680.***

10. Applying these principles the annual income of deceased will be assessed as Rs. 36,000/- in which 40 per cent additional income will be added as Rs. 14,400/- (36,000+14,400=50,400) makes it Rs. 50,400/-, one fourth deduction on personal expenses is Rs. 12,600/- (Rs. 50,400x1/4 =12,600/-), loss of dependency will be (50,400-12,600=37,800/-) Rs. 37,800/-, and applying multiplier of 16 the compensation amount will be Rs. 6,04,800/-(Rs. 37800 x 16) upon which Rs. 15,000/- will be added as loss of estate, loss of consortium Rs. 40,000/-, funeral expenses Rs. 15,000/-, after which the total compensation amount will be Rs. 6,74,800/-.

11. Appellant has already been paid Rs. 4,17,500/- and is entitled for payment of enhanced compensation amount of Rs. 2,57,300/- (Rs. 6,74,800-Rs. 4,17,500) with interest at the rate of 6 per cent per annum from the date of payment of original compensation amount till the date of payment of enhanced amount of compensation.

This Misc. Appeal is allowed to the extent as indicated above.

(S. Kumar, J)

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