

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.845 of 2010

1. Manoj Kumar Rai @ Manoj Kumar Roy, son of late Lalo Roy
 2. Bhulli Devi, wife of late Lalo Roy
 3. Vikram Kumar roy @ Guddo Roy, minor son of late Lalo Roy through his guardian Bhulli Devi appellant No.2
 4. Sunaina Kumari, daughter of late Lalo Roy
 5. Raj Mahal Kumari, daughter of late Lalo Roy
- All residents of village – Dhepura keota, Tola- Belbanna, P.O. Dhepura, Via and Police Station- Dalsingsarai, District- Samastipur Bihar

... Claimants ... Appellant/s

Versus

1. Ram Sewak Sharma, son of Sri Munnial Sharma of village, Malkallipur, P.O. & P.S. Vidyapatinagar, District, Samastipur (Owner of the offending Truck No.NL-02 A 1740)
2. Sanjay Kumar @ Sanjay Kumar Rai, son of Ajab Lal Rai, resident of Village- Nauachak, P.S. Sarayranjan, District, Samstipur, Bihar, Driver of the offending Truck No. NL-02 A E 1740.
3. National Insurance Co. Ltd. (Subsidiary of General Insurance Corporation of India), registered office, 3, Middletone Streer, Kolkata-700071 through Manager National Insurance Co. Ltd. Nearv Patel maidan, Vijay Raghwan Stadium, P.S. Town Samastipur Bihar

...Opposite Parties no.1 to 3 ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. R. K. Thakur
		Mr. Devendra Kumar, Advocates
For the Respondent/s	:	Mr. Ashok Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 26-08-2019

Heard parties.

2. This miscellaneous appeal has been filed for enhancement of compensation amount awarded to the claimants/appellants by judgment dated 24.05.2010 and award dated 21.06.2010 passed by Additional District Judge, Fast Tract Court- V -cum- Motor Accident Claims Tribunal, Samastipur by which Rs.84,500/- with interest @ 9% p.a. has been granted as



compensation to the claimants.

3. Claimants are widow and minor children of the deceased Lalo Roy who on 14.09.1996 at about 1 p.m. was returning to his house from Dalsingh Sarai Bazar on his bicycle when a truck bearing registration No. NL-02-1740 dashed against his bicycle as a result of which he sustained grievous injury and was carried to hospital where he died during treatment. It has been alleged that the driver of the said offending truck was driving the vehicle in a rash and negligent manner resulting in accident and death of husband of claimant no.1.

4. F.I.R. was instituted giving rise to Dalsing Sarai P.S. Case No. 142/1996 under Sections 279, 338 and 427 of the Indian Penal Code and after death of deceased, Section 304 A of the Indian Penal Code was also added.

5. The age of deceased was 40 years and he was proprietor of Melody Voice Shop and also an agriculturist and his income was Rs.3,000/- per month.

6. Notices were issued to opposite parties. Opposite party no.1 is the owner of the vehicle who appeared but did not file any written statement. Opposite party no.2 is the driver who did not appear. Opposite party no.3, Insurance Company



appeared and filed their written statement in which they have denied the claim of the claimants.

7. Tribunal framed four issues for its determination.

8. In support of her claim case, four witnesses were examined on behalf of the claimants and documentary evidences were also adduced which have been marked as exhibits by the Tribunal. Ext. 1 is fardbeyan of the deceased. Ext. 3 is formal F.I.R. Ext. 4 is the inquest report. Ext.5 is the postmortem report.

9. The Tribunal on the basis of oral and documentary evidences held that due to rash and negligent driving of the driver of the offending truck resulted in accident in which deceased died. Although the claimants had made a claim that deceased earned Rs.3,000/- but since there were no documentary evidences in support of his income, the Tribunal has assessed the income of the deceased to be Rs.15,000/- in view of Schedule II of the Motor Vehicle Act. It is not a case of claimants that the deceased was not earning rather it is the specific case of the appellant that he had a shop and he had also income from agriculture from which he earned Rs.3,000/- per month and for which oral evidences in support of monthly income of deceased were adduced before the tribunal. The age



of deceased was 40 years and Tribunal has found appropriate multiplier to be 10.

10. On the basis of admitted facts and the law laid down by the Hon'ble Supreme Court in *Sarla Verma and Ors vs. Delhi Transport Corporation and Others* since reported in (2009) 6 SCC 121 and *National Insurance Company Limited Vs. Pranay Sethi and Ors.* since reported in (2017) 16 SCC 680, the quantum of compensation is re-assessed by this Court as follows:-

Annual Income	= Rs. 36,000/-
future prospect (40%)	= Rs. 14,400/-
Total Income	= Rs.50,400/-
Personal expenses 1/4	= Rs.12,600/-
Loss of dependency (annual)	= Rs. 37,800/-
Multiplier 15	= Rs.5,67,000/-
Conventional heads	= Rs.70,000/-
Total Compensation Amount	= Rs.6,37,000/-

11. Claimants are entitled for compensation of Rs.6,37,000/- (rupees six lacs thirty seven thousand only) and award passed by the claims tribunal is modified to said extent.

12. The insurance company is directed to pay the remaining compensation amount after deducting the



compensation amount already paid from Rs.6,37,000/- (rupees six lacs thirty seven thousand only) and pay the remaining compensation amount with interest at the rate of 9% per annum on the remaining compensation amount to the claimants from the date of filing of claim application till its payment within three months from the date of receipt/production of copy of order passed by this Court.

13. Miscellaneous appeal stands disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2019
Transmission Date	NA

