

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.619 of 2009

1. Renu Devi W/o Ram Shakal Sah
2. Banarshi Devi W/o Parikshan Sah All resident of Village-Belari, P.S. Ujiarpur, District- Samastipur.

... .. Claimant-Appellant

Versus

1. Shri Pankaj Kumar Son of N.K. Choudhary Of Village and P.O. Raini, District- Muzaffarpur, Owner of Offending Vehicle Marshal Jeep No. BR06D/9569
2. Branch Manager, United Insurance company Ltd. Muzaffarpur.
.....Opp.Party 1st Set.
3. Sheema Kumari, aged about years 7
4. Rani Kumari aged about years 6
5. Khusbu Kumari, aged about 5 years
6. Sonu Kumari aged about 4 years
7. Raju Kumar Sah, aged about 3 years
8. Rahul Kumar Sah, aged about year 1 All minor sons and daughter of late Ram Shakal Sah and are in care and guardianship of this claimant No.1 Resident of Village- Belari P.S. Ujiarpur, Distt. Samastipur.

... .. Claimant-Respondents

Appearance :

For the Appellant/s :	Mr.Mukesh Prasad Singh, Adv.
For the Respondent No.1:	Mr.Ashok Priyadarshi, Adv
For the Respondent No.2:	Mr.Kamaldeo Sharma, Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 29-01-2019

Heard learned counsel for the parties.

2. The claimants are dependents of late Ram Shakal Sah, husband of claimant-Renu Devi, who died in a motor vehicle accident on 01.01.2003 caused by a Marshal Jeep bearing Registration No. BR06D/9569.

3. The claimants had claimed Rs.2,50,000/-. However, the learned Tribunal allowed compensation of Rs.1,17,000/- with



interest @ 6% from the date of filing of the court fee on 16.07.2004.

4. The claimants have challenged the said award on the ground that it is not fair and just one because the learned Tribunal has strayed away in making calculation of the award on several points.

5. The learned counsel for the appellants submits that the deceased was a Halwai by profession and as such he was a skilled person. The monthly income of the deceased was Rs.5,000/- per month though no documentary evidence was placed on the record. Contention is that in ***R. Venkata Ramana and Anr Vs. United India Insurance C.Ltd. And Ors*** reported in ***2013 (4)T.A.C.376(S.C.)***, the accident was caused on 30.05.1998 and the deceased was a polisher. The Hon'ble Supreme Court set aside the view of the learned Tribunal as well as of the High Court that notional income of Rs.15,000/- as given in the Schedule-II of Section 163A of the Motor Vehicles Act is applicable. In paragraph-8 of the judgment the Hon'ble Supreme Court held that in such a situation a sum of Rs.5,000/- as the monthly income of the deceased having regard to the nature of the job that the deceased was performing as a polisher which is a skilled job would be applicable. Learned counsel for the insurance could not



place any contrary case law. Hence, the notional income of the deceased be taken as Rs.5,000/- per month for fresh calculation of the compensation amount. Next submission of the learned counsel for the appellants is that the learned Tribunal had used multiplier of 16 which will be of 18 in the present facts and circumstances of this case. The parties are not disputing the aforesaid position after judgment of the Hon'ble Supreme Court in *Sarla Verma Case* reported in **2009(6)SCC 121**. Hence, the multiplier of 18 shall be used in calculating the compensation afresh.

6. There is no dispute that deduction 1/5th of the income of the deceased for personal expenses would be just and proper in the present facts and circumstances of the case as the deceased had left nine dependents who are claimants herein. The learned Tribunal has deducted 1/3rd which is not sustainable in view of judgment in *Sarla Verma Case*.

7. Similarly, the learned Tribunal has committed error in awarding interest from the date of filing of the court fee which should have been from the date of presentation of the petition in view of the settled principle in catena of decisions.

8. Finding the aforesaid infirmities in calculation and adjudication of just and fair compensation the award dated 20.03.2008 passed in Claim Case No.06 of 2003 by the learned



District Judge-cum-Claim Tribunal, Samastipur is hereby set aside and the matter is remitted back to the learned Tribunal to decide just and fair claim within three months and while reaching at the just decision, the learned Tribunal shall take into consideration that in the facts and circumstances of this case (I) the notional income of the deceased shall be taken as Rs.5,000/- per month, (ii) deduction of 1/5th of the income of the deceased is permissible in the present facts and circumstances of this case, (iii) the multiplier of 18 would be applicable and (iv) the interest shall be awarded from the date of presentation of the petition.

9. With the aforesaid observation, the impugned order is set aside and the matter is remitted back to the learned Tribunal to decide according to law. The lower court records be sent down at once.

10. Accordingly, this appeal stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2019
Transmission Date	NA

