

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.944 of 2010

1. Ashma Khatoon, widow of Late Jainuddin Ansari
2. Kuresha Khatoon, w/o Md. Hakim Ansari
3. Md. Hakim Ansari, s/o Late Jainuddin Ansari
4. Md. Taushif, minor s/o Late Jainuddin Ansari
5. Md. Juwair, minor s/o Late Jainuddin Ansari

Serial No. 4 and 5 are minor sons of Late Jainuddin Ansari under the guardianship of their mother the natural guardian appellant no. 1. All are resident of village – Mithansarai, P.S. - Ahiyapur, District – Muzaffarpur. (Claimants No. 1 to 5)

... .. Appellant/s

Versus

1. Pawan Kumar Singh, son of Kaushal Prasad Singh, Resident of village Sandhopahi, P.S. Sakara, District – Muzaffarpur. (Owners of the Jeep No. HR-20D-5060) (Opposite Party No. 1)
2. Ansarul Haque, son of Anwarul Haque, resident of village – Pakri Pakohi, P.S. Karja, District – Muzaffarpur. (Owner of Motorcycle No. BR06D-1292) (Opposite Party No. 2)
3. The Divisional Manager, National Insurance Company Ltd. Motijheel, Muzaffarpur. (Insurer of Jeep No. HR-20D-5060 and Motorcycle) (Opposite Party No. 3)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Prasad Singh, Advocate
For the Resp. No. 3	:	Mr. Ashok Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 25-02-2019

This appeal is barred by limitation of two months five days. The delay in filing of this appeal is explained in I.A. No. 8732 of 2013. Hence, the delay is condoned and the aforesaid interlocutory application stands allowed.

2. Notices have already been served on respondent no. 1 and 2 i.e. the owners of the vehicle involved in the accident.

3. Heard learned counsel for the appellants as well as respondent no. 3-National Insurance Company Limited. With the



consent of parties, the matter is being heard and disposed of at this stage itself.

4. This appeal has been preferred, under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 17.06.2010 passed by the learned Additional District Judge, F.T.C.-III-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 108 of 2007.

5. The appellants are not satisfied with the quantum of compensation allowed by the Motor Vehicle Accident Claims Tribunal, Muzaffarpur in Claim Case No. 108 of 2007.

6. The appellants had claimed Rs.3,69,500/- (rupees three lakhs sixty nine thousand five hundred) whereas the Tribunal allowed Rs.2,76,500/- (rupees two lakhs seventy six thousand five hundred) along with 6% interest.

7. The case of the claimants is that Md. Jainuddin Ansari was going on a motorcycle on 14.05.2007 when the motorcycle met with an accident with a Commander Jeep bearing registration no. HR-20D-5060. Both the vehicles were insured with National Insurance Company Limited. However, the Tribunal has fixed the liability against the owner of the jeep only. Since, the jeep was insured and the insurance was admitted by the National Insurance Company Limited in the written statement filed before the court



below, there is no dispute that insurer is bound to bear the liability of the owner and pay compensation to the claimants.

8. Deceased Md. Jainuddin Ansari, at the time of death, was aged about 29 years and he was doing job in a shop and was getting Rs.3,000/- (rupees three thousand) per month. Thus, the total income of the deceased at the time of death per year was Rs.36,000/- (rupees thirty six thousand) and chances of future prospect was 40% of the aforesaid Rs.36,000/- (rupees thirty six thousand) i.e. Rs.14,400/- (rupees fourteen thousand four hundred). Thus, the total loss of dependency comes to Rs.50,400/- (rupees fifty thousand four hundred) out of that $\frac{1}{4}^{\text{th}}$ was deductible for personal expenses of the deceased and the Tribunal wrongly deducted $\frac{1}{3}^{\text{rd}}$ without considering that the number of dependents were five and in view of the judgment of the Hon'ble Supreme Court in the case of **Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **2009 (6) SCC 121**, the deduction should have been only of $\frac{1}{4}^{\text{th}}$. Thus, Rs.12,600/- (rupees twelve thousand six hundred) is deductible from the aforesaid amount. In the result, the multiplicand comes to Rs.37,800/- (rupees thirty seven thousand eight hundred).

9. Considering the age of the deceased appropriate multiplier would be of 17 and not of 18 applied by the Tribunal. Thus, the payable compensation comes to Rs.6,42,600/- (rupees six lakhs forty two thousand six hundred). Besides the aforesaid, the



claimants are also entitled to Rs.70,000/- (rupees seventy thousand) under customary head i.e. Rs.15,000/- for funeral expenses, Rs.15,000/- (rupees fifteen thousand) for loss of estate and Rs.40,000/- (rupees forty thousand) for loss of consortium. Thus, the total compensation payable would be Rs.7,12,600/- (rupees seven lakhs twelve thousand six hundred) along with interest of 8% per annum from the date of application. The Tribunal had allowed 6% interest which is too low applicable on the date of the accident as well as on the date judgment by the Tribunal. Therefore, it is directed that the respondent no. 3-National Insurance Company Limited shall pay to the claimant the aforesaid amount of Rs.7,12,600/- (rupees seven lakhs twelve thousand six hundred) along with 8% interest per annum from the date of filing of the claim case within three months. Any amount already received by the claimants shall be deducted from the final payment.

10. With the aforesaid observation, this appeal stands allowed.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	28.02.2019
Transmission Date	28.02.2019

