IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.519 of 2007

==

Deba Devi, wife of late Sukhdeo Yadav, the resident of village- Gajhanda, P.S. Barahat, Dist, Banka

(claimant in the court below)

... ... Appellant/s

Versus

1) Dinesh Prasad Yadav, son of Ishwar Prasad Yadav, resident of village- Khiddi, P.S. Rajoun, Distt.- Banka

2) The Branch Manager, the Oriental Insurance Company Ltd. Court compound, P.S. Dumka, Distt- Dumka

3) The Divisional Manager, the oriental insurance Co. Ltd. Malhar Building, R. B. S.S. Road, Kachhari Chaunk, Distt- Bhagalpur

4) Jay Prakash Chaudhary, son of late Prasad Chaudhary, resident of village, Kharik Bazar, P.S. Kharik, Distt- Bhagalpur

(1 to 4 are the opposite party in the court below) ... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Madan Mohan, Adv Mrs. Pallavi Pandey, Advocates
For the Respondent nos.2 & 3	:	Mr. Bimlesh Kumar Jha, Advocate
For respondent no.1	:	Mr. Manoj Kumar Pandey, Advocate

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 09-09-2019

Heard parties.

2. This appeal has been filed under Section 173 of the Motor Vehicle Act on behalf of the appellant for enhancement of the compensation amount granted by judgment and award dated 21.06.2007/20.07.2007 passed in claim case No.51 of 2003 / 2 of 03 passed by VII Additional District Judge-cum-Motor

Accident Claims Tribunal, Bhagalpur by which the learned Tribunal has awarded the compensation of Rs.1,14,500/- to the claimant (mother of the deceased).

3. Claimant who is mother of the deceased-Kumod Kumar has filed claim case before the Claims Tribunal giving rise to Claim Case No.51 of 2003 / 2 of 2003 stating therein that in an accident on 23.02.2003, her son who was going from Punsiya to Bhagalpur on TATA Maxi bearing registration No. BS 10P 3663 and due to rash and negligent driving by the driver of the Tata Maxi, the vehicle turned turtle as a result of which her son was grievously injured and died on the spot.

4. F.I.R. was instituted giving rise to Rajoun P.S. Case No.25/2003 under Sections 279, 337, 338, 304 A of the Indian Penal Code against the driver of the offending vehicle and after investigation chargesheet was submitted against the driver of the offending vehicle.

5. The owner of the offending vehicle was made opposite party no.1, whereas opposite party nos.2 and 3 are the Insurance Company and opposite party no.4 is the driver of the offending vehicle.

6. Opposite parties filed their written statement before the Tribunal in which it was averred that opposite party no.1 is

the owner of the offending vehicle and opposite party no.4 is the driver of the vehicle who was having a valid and effective driving licence on the date and time of accident. It was further stated that offending vehicle was insured by opposite party nos.2 and 3- Insurance Company and same was valid on the date and time of accident as such, Insurance Company is liable to pay the compensation amount.

7.In support of her claim case, the claimant examined herself as witness no.1 Deba Devi and Manoj Thakur was examined as witness no. 2. Claimant Deba Devi in her deposition has stated that his son was 26 years old and was unmarried and his income was Rs.3,000/- per month from business of wheat and rice. She claimed Rs.3,16,500/- as compensation amount on account of his death in motor accident. Other witnesses who were eye witness of the occurrence has supported the claim of Claimant with respect to death of son of Claimant as well as his income. Documentary evidence was also adduced which were marked as exhibits by the Tribunal. F.I.R. is Ext.1. Postmortem Report is Ext.2 and 2/a and Insurance Policy has been marked as Ext.3.

8. On the basis of oral and documentary evidence, the Tribunal has held that due to rash and negligent driving by the

driver of the offending vehicle, the deceased was killed and since offending vehicle was insured by the Insurance Company, it is liable to pay the compensation amount to the claimant.

9. The Tribunal has assessed the age of deceased as 26 years and has taken Rs.15,000/- as his notional income as no income certificate was filed on his behalf and deducted 1/3rd towards his personal expenses and found loss of dependency to be Rs.10,000/- per annum. The Tribunal has applied multiplier of 11 on the basis of age of claimant, Deba Devi being mother of the deceased, who is 51 years old and has assessed the amount of compensation to be Rs.1,10,000/- and further has granted additional compensation under the conventional heads of Rs.2,000/- as funeral expense and Rs.2,500/- as loss of estate and has quantified compensation amount to be Rs.1,14,500/- and as Rs.50,000/- was already paid to the claimant as interim compensation, has directed the Insurance Company to pay Rs.64,500/- with interest @ 6% per annum from the date of filing of claim application till its payment.

10. It has been admitted by learned counsel for the claimant as well as learned counsel for the Insurance Company that said amount has already been paid to the claimant.

11. Aggrieved by the quantum of compensation, the claimant has filed this appeal for enhancement of compensation amount.

12. Evidences were led on behalf of the claimant who was examined as witness and other witnesses also that deceased was doing a business of wheat and rice and his monthly income was Rs.3,000/- per month. The Tribunal has assessed Rs.15,000/- as notional income on the basis of second Schedule of the Motor Vehicle Act that claimant could not produce any documentary evidence of income of deceased. Rs. 15,000/- notional income is with respect to non-earning family member. It is not necessary to produce documentary evidence with respect to income of deceased and same can be determined by oral evidence and nature of work or employment of the deceased as such, this Court is of the considered view that Rs.3,000/- will be reasonable monthly income of the deceased.

13. Accordingly, income of the deceased is assessed as Rs.36,000/- per annum and in view of judgment rendered by the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and Ors. since reported in (2017) 16 SCC 680 , 1/2 of the annual income is to be deducted towards his personal and living expense as deceased was unmarried and loss of

dependency would be Rs. 18,000/- per annum. It has been further admitted that the Tribunal has applied a wrong multiplier and it is the age of the deceased which is to be taken as multiplier and not the age of the deceased mother as per the judgment rendered by the Apex Court in Sarla Verma and Ors. Vs. Delhi Transport Corporation and ors. since reported in (2009) 6 SCC 121, since the age of deceased was 26 years as such appropriate multiplier will be 17. Accordingly, the compensation of claimant is worked out as Rs.18,000x17 = Rs.3,06,000/-. Claimant is also entitled for Rs.70,000/- under conventional heads. Thus, total compensation for which Claimant is entitled would be Rs.3,76,000/-.

14. The Award passed by the Claims Tribunal is modified to the extent that appellant is entitled for compensation of Rs. 3,76,000/- with interest @ 6 per cent per annum from the date of filing of claim application till its payment.

15. The insurance company is directed to pay the remaining compensation amount after making deductions of compensation amount already paid from Rs.3,76,000/- and pay the remaining compensation amount with interest @ 6 % per cent per annum to the claimant from the date of filing of claim petition till date of payment, within two months from the date of

receipt/production of copy of order passed by this Court.

16. Miscellaneous appeal is allowed to the extent as indicated above.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.12.2019
Transmission Date	NA