

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.16 of 2014

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1. Rita Devi W/O Late Shashi Bhushan Prasad
 2. Sri Narayan Lal S/O Late Jago Lal
 3. Suraj Kumar Son Of Late Shashi Bhushan Prasad
 4. Saurav Kumar Son Of Late Shashi Bhushan Prasad under the guardianship of his minor namely Rita Devi (A.1) All Resident Of Village Bhikhampur, P.S.-Nawada, District- Nawada.

... .. Appellant/s

Versus

1. Sukhdeo Yadav, Son of Barhan Yadav, R/o Village-Dukhimati, P.S.-Kodarma, District-Kodarma.
2. Sanjit Kumar @ Sanjiv Kumar Son of Sukhdeo Prasad, R/o Village-Dukhimati @ Dukhimati, P.S.-Kodarma, District-Kodarma.
3. Divisional Manager The Oriental Insurance Co. Ltd., R.J. Palace Raj Karhi Nath More, Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Jitendra Kumar, Adv
	:	Mr.Bhavesh Kumar, Adv
For the Oriental Ins. Co. Ltd.:		Mr.Barun Kumar Chaudhary, Adv
For Respondent Nos.1 & 2:		Mr. Ajay Kumar, Adv.
	:	Mr. Awadhesh Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the parties.

2. The appellants were claimants before the Motor Accident Claim Tribunal in Motor Vehicle Case No.53 of 2003. They had claimed compensation of Rs.2,50,000/- for death of Shshi Bhushan Prasad in a motor vehicle accident. Shshi Bhushan Prasad was husband of claimant-Rita Devi and father of two other claimants and son of appellant No.2.

3. The learned Tribunal awarded total compensation of Rs.1,87,000/- alongwith 9% interest from the date of claim



application. The claimants are not satisfied with the award on the ground that it is not fair and just in the facts and circumstances of this case. The fairness of award has been challenged even on the ground that some other claimants who are dependants of Chhotan Chaudhary who died in the same accident have got more compensation by another learned Tribunal.

4. So far the present case is concerned, the deceased was travelling on a jeep bearing Registration No.JH02A 4827. The FIR of Rajauli P.S.Case No. 33 of 2003 which was registered for the aforesaid occurrence would reveal that a jeep was also rash and negligent and the L.P. truck which was coming down was also rash and negligent as a result of head on coalition took place and the deceased alongwith Chhotan died. The deceased was aged about 31 years and he was doing business of sale of cloths by moving here and there and was earning Rs.150/- per day. Since no material in support of income of the deceased was brought on the record, the learned Tribunal, while deciding the award in the year 2010, took the notional income of Rs.15,000/- as given in Schedule-II of Section 163 A of the Motor Vehicles Act as the income of the deceased. The learned Tribunal multiplied the same with multiplier 18 considering the age of the deceased and deducted 1/3rd for personal expenses of the deceased.



5. In my view, the accident had taken place in the year 2003. Hence, notional income taken as multiplicand by the learned Tribunal was not unfair one because the subsequent judgments were not applicable on that day. Hence, this Court affirms the notional income of the deceased as Rs.15,000/- per annum. However, considering the age of the deceased as 31 years, multiplier of 16 should have been applied as held in the case of ***Sarla Verma and Ors Vs. Delhi Transport Corporation and Anr***, reported in **2009 (6)SCC 121**, whereas the impugned judgment was pronounced in the year 2010. Similarly, since the number of dependants were four, the deduction for personal expenses of the deceased should have been 1/4th instead of 1/3rd. The aforesaid errors in calculation are fit to be corrected and accordingly stands corrected. Accordingly, the notional income of the deceased is taken at Rs.15,000/- which is multiplied by 16 then the amount comes to Rs.2,40,000/-. Out of that 1/4th is deducted against personal expenses of the deceased. Thus the loss of dependency is calculated at Rs.1,80,000/-. The learned Tribunal has awarded Rs.2,000/- for funeral expenses and Rs.5,000/- for loss of consortium which stands affirmed. Thus, the total payable compensation is calculated at Rs.1,87,000/- alongwith 9% interest from the date of filing of the claim petition.



6. I find substance in the contention of learned counsel appearing for Oriental Insurance Company Ltd. i.e. the insurer of the jeep involved in the accident that this was a case of contributory negligence between the driver of the jeep and the driver of the truck. Hence, both the vehicles were liable to pay. The law is settled that smaller vehicle would pay 40% of the total amount and bigger vehicle 60% of the same. Accordingly, the liability of the Oriental Insurance Company Ltd. is held to be 40% of the total awarded amount alongwith interest. Since the owner or the insurer of the truck were not parties before the learned Tribunal or in this appeal, this Court is not going to pass any order against them.

7. With the aforesaid modification in the impugned judgment, this appeal stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2019
Transmission Date	NA

