IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.626 of 2014

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1. National Insurance Company, Branch Begusarai through Sri Arun Kumar, A.O. (Legal) cum Duly Constituted Attorney, National Insurance Company Ltd., Regional Office at Sone Bhawan, 4th Floor, Bir Chand Patel Marg, Patna – 800001

(Opposite Party No. 3/ O.P. 2nd Party)

... ... Appellant/s

Versus

1. Smt. Indra Kala Devi, Widow of Late Dr. Ram Karan Singh
2. Rajesh Kumar
3. Rakesh Kumar
4. Kumari Sarika, Sons and Daughter of Late Dr. Ram Karan Singh All are resident of village - Chak Muzaffar, P.O. - Sisauni, P.S. - Naokothi, Sub Division Bakhari, Dist. - Begusarai

… … Claimants … …. Respondent 1st Set

5. Sri Arun Kumar, Son of Sri Natho Kumar (Owner of the Vehicle), Resident of Village - Bakhadda, P.O. - Badalpura, P.S. - Matihani, Sub Division and Dist.- Begusarai

Opposite Party No. 1/O.P. 1st Party

6. Sri Sanjay Singh, Son of Late Ram Singh (Driver of the Vehicle) Resident of Pahsara, P.O. - Pahsara, P.S. Naokothi, Sub Division Manjhaul, Dist.- Begusarai

… … Opposite Party No. 2/O.P. 1st Party

... ... Respondent 2nd Set

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Appearance :

For the Appellant/s	:	Mr. Kumar Pankaj, Advocate
For the Res. 1 to 4	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 26-03-2019

Heard the parties.

2. This appeal is barred by limitation of 17 days. The delay is explained in I.A. No. 1529 of 2015. Hence, the delay is condoned.

3. National Insurance Company, the insurer of the offending vehicle, has challenged the award of the Motor Accident Claims Tribunal made on 11th April, 2014 in Claim Case No. 18 of

2005 awarding compensation of Rs.29,42,076/- (twenty nine lacs forty two thousand and seventy six) in favour of respondent no. 1 to 4.

4. Other facts of this case are not disputed such as the motor vehicle accident was caused by Commander Jeep bearing registration no. BR- 9C-2124, which caused death of Late Dr. Ram Karan Singh, for the occurrence aforesaid Mufassil P.S. Case No. 214 of 2004 was registered and the vehicle was insured with the appellant.

5. The impugned order has been challenged only to the extent of correctness of the manner of calculation of the award. The challenge of the award is on the ground that the Tribunal has wrongly taken the gross income of the deceased of Rs.31,052/- (thirty one thousand fifty two) per month for reaching at loss of dependency which should have been after deducting the payable income tax by the deceased.

6. It has next been challenged on the ground that the deceased was aged about 55 years, hence, proper multiplier to be used was of 5/6 as only five years service of the deceased was left. Hence, split multiplier of 5 should have been used for present salary and 6 for pension. Reliance has been placed on the judgment of Hon’ble Karnataka High Court dated 29th January, 2013, in the case of **National Insurance Company Limited** vs. **Vijaya Narayan Hegade and Ors**.

7. Third contention is that at the time of accident, the vehicle was on the route for which it had no permit and the Tribunal has wrongly held that exemption of the provisions of Section 66(3) of the Motor Vehicles Act, 1988 would be applicable in favour of the owner of the vehicle.

8. Learned counsel for the claimants/respondents submits that Hon'ble Karnataka High Court has not considered the earlier judgment of the Hon'ble Supreme Court in the case of **Smt. Sarla Verma & Ors.** vs **Delhi Transport Corp. & Anr.** reported in **2009(6)SCC 121** wherein it has specifically been held that multiplier of 11 would be applicable when the age of the deceased is in between 51 to 55 years. In the present case also, the age of the deceased was below 55 years, hence, the correct multiplier of 11 has been used by the Tribunal.

9. Next contention is that this is not a case of "no route permit" rather route permit was there and Section 66(3)(m) of the Motor Vehicles Act, 1988 permits use of another route in the case of eventuality mentioned therein. His contention is that since this issue was not raised before the Tribunal nor any evidence was laid regarding "unforeseen circumstances" which compelled to change the route, the insurer cannot evade liability against the claim of the third party.

10. The accidental death was caused on 28.07.2004. The income tax return of the deceased for the assessment year 2004-2005 available as Ext. 17/1 would reveal that the gross salary of the deceased was Rs.3,13,539/- (three lacs thirteen thousand five hundred thirty nine) per annum. After deduction of non-taxable income, the taxable salary was calculated as Rs.2,70,564/- (two lacs seventy thousand five hundred sixty-four) and the deceased had paid tax of Rs.37,987/- (thirty seven thousand nine hundred eighty seven). After deduction of the income tax, the yearly income of the deceased was calculated as Rs.2,75,552/- (two lacs seventy-five thousand five hundred fifty-two). Since the deceased had died leaving behind four dependents (one widow + three children), the deduction should have been of 1/4th as per guidelines in Sarla Verma **(supra)** and not 1/3rd as done by the Tribunal. On the aforesaid amount 15% would be payable as future prospect of the deceased considering his age of 55 years. Thus, the amount comes to Rs.2,37,664/- (two lacs thirty seven thousand six hundred sixty four). If the said amount is multiplied by 11, the total loss of dependency is Rs.26,14,304/- (twenty six lacs fourteen thousand three hundred four). The Tribunal has allowed Rs.2,00,000/- (two lacs) for medical expenditure of the deceased. Besides the aforesaid, the claimant should be entitled to Rs.70,000/-

(seventy thousand) under the customary head i.e. Rs. 50,000/- (fifty thousand) for loss of consortium, Rs.10,000/- (ten thousand) for loss of the estate and Rs.10,000/- (ten thousand) for funeral expenses. Thus, the total payable compensation is calculated as Rs.28,84,304/- (twenty eight lacs eighty four thousand three hundred four) whereas the Tribunal has awarded Rs.29,42,076/- (twenty nine lacs forty two thousand seventy-six). Other directions of the Tribunal would remain the same.

11. The appellant may entitle to recover the amount from the owner in the event of proof of a case of recovery only after payment of awarded amount to the claimant.

12. The statutory amount be sent back through cheque in the name of claimant-Smt. Indra Kala Devi for payment and adjustment.

13. With the aforesaid modification in the award, this appeal stands allowed to the aforesaid extent.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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