

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.436 of 2016

1. Lalan Pd. Shrivastava, s/o Sri Keshar Lal Prasad
2. Madhu Shrivastava, w/o Lalan Pd. Srivastava, Resident of village-Chhagraha, P.S.-Sugauli, Motihari, East Champaran.

... .. Appellant/s

Versus

1. Hardeo Ram, s/o Ieshwar Ram, Resident of village Rajapur, P.S.-Hasantpur, Dist-Siwan (Driver of vehicle).
2. T.K.M. INSOL”TATION Comapny, 14/3 Lakenath Chatterjee Shibpur, Dist.-Howard, West Bengal.
3. National Ins. Co. Ltd. Division-6, Ist Floor, India Exchange Place, Kolkata-1, West Bengal.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sunil Kumar Pandey
For the Respondent/s : Mr.Vikash Chandra Srivastava

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 18-11-2019

Heard the parties.

This Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed for enhancement of the compensation amount granted to the claimant-appellant by Motor Vehicle Accident Claims Tribunal-cum-3rd Additional District and Sessions Judge, East Champaran passed in Claim Case No.115 of 2012 by which compensation of Rs.3,44,000/- has been awarded to the claimants/ appellants.

Claimant who is the mother of deceased has filed claim case for grant of compensation of Rs.6,70,000/- on account of accidental death of her son, Gyan Ranjan Kumar,



who was aged 18 years at the time of accident. It has been stated in the claim case that on 15.06.2010 at about 8.00 A.M., Gyan Ranjan Kumar was going to take tuition on his cycle when a truck being driven in rash and negligent manner dashed against him as a result of which he died on the spot. The age of the deceased on the date of accident was 18 years and he used to earn Rs.4,000/- per month by providing tuition to students.

An FIR was instituted against the driver of the offending vehicle under Section 279 and 304A of IPC and after investigation, the police submitted charge-sheet against the driver of the offending vehicle.

Notices were issued to Opposite Party Nos. 1 to 3. However, despite valid service of notice, Opposite Party No.1, owner, and Opposite Party No.2 driver of the offending vehicle did not appear and case proceeded ex.-parte against them.

Opposite Party No.3-National Insurance Company appeared and filed its written statement in which they have denied the claim of claimant. Although they have admitted that on the date of accident, the vehicle was insured by them. However, it has been stated in their written statement that the driver of the offending vehicle was not holding valid and effective driving license and the truck was being driven without



having any valid permit. They have denied that the deceased had any earning and he was non-earning member of the family.

On the rival pleadings of the parties, the Tribunal framed six issues for its determination : -

- (I) Whether the claim petition is maintainable?
- (ii) Whether the deceased Gyan Ranjan Kumar died in motor accident on 15.06.2010 due to rash and negligent driving of driver of vehicle no.WB-11B/C7087?
- (iii) Whether the driver of the alleged vehicle was holding valid cum effective licence at the time of accident with valid permit?
- (iv) Whether the deceased was an earning member at the time of accident being a tutor?
- (v) Whether the claimants are entitled for compensation as claimed, if so, to what extent and from when?
- (vi) Whether the claimants are entitled to any other relief or reliefs?

The Claims Tribunal on the basis of oral and documentary evidences held that deceased died due to rash and negligent driving by the driver of the truck as such claimants are entitled for compensation. The Claims Tribunal disbelieved the claim of the appellant that deceased was having an income of Rs.4,000/- per month by giving tuition and has held that he was not an earning member of the family. The Tribunal has assessed the age of the deceased as 18 years and has taken his monthly income to be Rs.3,000/- and annual income to be Rs.36,000/-



and since deceased was an unmarried, as such 50 per cent of his income has been deducted towards personal expenses and has assessed the loss of dependency to the family as Rs.18,000/- per year and has applied 18 as a multiplier and worked out the compensation for which the claimants are entitled to be Rs.3,24,000/- and thereafter under conventional head granted Rs.10,000/- each for funeral expenses and loss of estate and has quantified the compensation amount to be Rs.3,44,000/- which is to be paid with interest @ 9 per cent from the date of filing of claim application till its payment, since Rs.50,000/- was already paid as interim compensation, as such Tribunal has directed to pay the remaining compensation amount to the claimants and aggrieved by the quantum of compensation claimant has preferred this appeal for enhancement of compensation amount.

In view of law laid down by the Apex Court in case of *Sarla Verma and Ors vs. Delhi Transport Corporation and Others since reported in (2009) 6 SCC 121* and in the case of *National Insurance Company Ltd. vs. Pranay Sethi & Ors since reported in (2017) 16 SCC 680*.

The compensation amount is re-assessed which is as follows:-

Annual income -	Rs. 36,000/-
Future Prospects (40%)	Rs. 14,400/-



Total Income	Rs. 50,400/-
Personal Expenses (50%)	Rs. 25,200/-
Loss of dependency	Rs. 25,200/-
Multiplier	18
Compensation Amount	Rs. 4,53,600/-
Conventional Heads	Rs. 70,000/-
Total	Rs. 5,23,600/-

Accordingly, the Award passed by the Tribunal is modified to the extent that claimants are entitled for compensation of Rs. 5,23,600/- (Rs. Five lacs twenty three thousand six hundred) with interest @ 9% p.a. from the date of filing of claim case till its payment.

The Insurance Company is directed to pay the remaining compensation amount to the claimants/appellants within two months from the date of receipt/production of a copy of order passed by this Court.

Miscellaneous Appeal is allowed.

Let LCR be returned to the court concerned forthwith.

(S. Kumar, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2020
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