

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.61 of 2013

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1. Savitri Devi and Ors. W/O Late Binod Paswan R/O Village - Chak Dhanauti, P.S. Industrial Area Hajipur, District - Vaishali
 2. Vikky Kumar S/O Late Binod Paswan R/O Village - Chak Dhanauti, P.S. Industrial Area Hajipur, District - Vaishali
 3. Veena Kumari D/O Late Binod Paswan R/O Village - Chak Dhanauti, P.S. Industrial Area Hajipur, District - Vaishali
 4. Varsha Kumari D/O Late Binod Paswan R/O Village - Chak Dhanauti, P.S. Industrial Area Hajipur, District - Vaishali
 5. Vandana Kumari D/O Late Binod Paswan R/O Village - Chak Dhanauti, P.S. Industrial Area Hajipur, District - Vaishali

... .. Appellant/s

Versus

1. Abhay Kumar @ Abhay Sharma and Ors. S/O Rajendra Prasad Sharma R/O Mohalla - Inderpuri, Near Birla Maidan, Ratu Road, District - Ranchi
2. Deo Deep Singh S/O Sri Parmanand Singh R/O Quarter No - Dt 2922, Dhurwa, District - Ranchi, State Jharkhand
3. Oriental Insurance Co Ltd Through The Manager, Branch Ramashish Chowk, Hajipur, District - Vaishali

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Alok Kumar @ Alok Kr Shahi
For the Respondent No. 1	:	Mr. Pankaj Kr Singh, Adv
For the Insurance Company	:	Mr. Bimlesh Kumar Jha, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-07-2019

Heard learned counsel for the parties.

This appeal under Section 173 of M.V Act has been filed on behalf of Claimants-appellants for enhancement of compensation amount awarded by judgment and order dated 29.08.2012 passed by District Judge-cum-MACT, Vaishali at Hajipur in Claim Case No. 71 of 2006 by which Claims Tribunal has granted compensation amount of Rs. 4,68,500/-



with interest @ 9 per cent per annum from the date of filing of claim application till its realization.

Claimants-appellants are widow and children of deceased Vinod Paswan who filed an application for grant of compensation of Rs. 8 Lacs on account of death of Vinod Paswan in a motor accident on 08.11.2006 caused by Maruti Van No. JH-1H-7539 which was being driven by the driver of said Van in a rash and negligent manner which dashed against the motorcycle of the deceased resulting in his death. The income of the deceased at the time of accident was Rs. 8000/- per month and he was 30 years of age and was self employed and engaged in artificial insemination of animals.

Opposite party no. 1 is the owner of the offending vehicle, Opposite party no. 2 is the driver of the offending vehicle and Opposite party no. 3 is the Oriental Insurance company, insurer of the offending vehicle.

Five witnesses were examined on behalf of Claimants and documentary evidence were also produced before the Tribunal which were marked as Exhibits. No witnesses were examined on behalf of opposite parties.

Claims Tribunal has assessed the monthly income of deceased as Rs. 4500/- and annual income to be Rs. 54,000/-.



Claims Tribunal has assessed the age of the deceased as 30 years and has applied multiplier of 17 and ascertained compensation amount as Rs. 9,18,000/- and has deducted 1/3rd towards personal expenses of deceased and ascertained loss of dependency to be Rs. 6,12,000/-. The Claims Tribunal has reduced the amount to the extent of 1/4th on account of contributory negligence and has found Claimants to be entitled for compensation of Rs. 4,59,000/- and has granted compensation under conventional head as Rs. 2000/- for funeral expenses, Rs. 5000/- for loss of consortium and Rs. 2500/- for loss of estate and has quantified the compensation amount to be Rs. 4,68,500/-. Since Rs. 50,000/- has already been paid as interim compensation, Claims Tribunal has directed the Insurance Company to make payment of Rs. 4,18,500/- to the Claimants with interest @ 9 per cent per annum from the date of filing of claim petition till its payment. Aggrieved by quantum of compensation as well as reducing compensation by 1/4th on account of contributory negligence the Claimants-appellants have preferred this appeal.

The Claims Tribunal has deducted 1/4th of the compensation amount for contributory negligence without any basis. Police after investigation has submitted chargesheet



against the driver of the offending vehicle and has stated nothing against the deceased of committing any fault resulting in or contributing to accident. Claims Tribunal only on the analogy that three persons were sitting on the motorcycle which is in violation of traffic Rules has reduced the compensation amount by 1/4th without any finding as to same in any manner resulted or contributed to said accident. Only on the ground that three persons were sitting on motorcycle which is in violation of traffic Rules, it cannot be inferred that there was contributory negligence on behalf of deceased unless and until such issue is framed by the Tribunal and evidence is led by the other side, as such reducing the compensation amount by 1/4th for contributory negligence is not sustainable and, accordingly, is set aside.

This Court on the basis of admitted facts re-assesses the compensation payable to claimants in terms of judgment and order passed by the Apex Court in the case of *National Insurance Company Ltd. vs. Pranay Sethi & Ors* since reported in (2017) 16 SCC 680 as follows:-

Annual income	Rs. 54,000/-
Future Prospect(40%)	Rs. 21,600/-
Total Income	Rs. 75,600/-
Personal expenses(1/4th)	Rs. 18,900/-
Loss of dependency	Rs. 56,700/-



Multiplier (17)	Rs.9,63,900
Loss of consortium	Rs. 40,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 10,33,900/-

(Rupees Ten Lacs Thirty Three Thousand Nine Hundred Only).

The award is modified to the extent that claimants are entitled for compensation amount of Rs. 10,33,900/-(Rupees Ten Lacs Thirty Three Thousand Nine Hundred Only). The Insurance Company is directed to pay the remaining compensation amount, after making deduction of the compensation amount already paid to the claimants, from Rs. 10,33,900/- within three months from the date of receipt/production of a copy of order passed by this Court with interest @ 9% per annum on the remaining compensation amount from the date of claim application till date of payment.

The miscellaneous appeal stands disposed of.

LCR of this case be returned to the court concerned forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.10.2019
Transmission Date	NA

