IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.447 of 2017

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1. Shashi Kala, W/o Late Krishna Kumar,
2. Rupam Kumari, D/o Late Krishna Kumar,
3. Komal Kumari, D/o Late Krishna Kumar,
4. Subham Kumar, S/o Late Krishna Kumar, Appellant no.4 is minor under the legal guardianship of his mother, Appellant, All resident of Village- New Atwarpur, Ram Jankipath, P.O.- Kurthaul, P.S.- Parsa Bazar, District- Patna.

... ... Appellant/s

Versus

1. Vijay Chaudhary S/o Sadhu Saran Chaudhary, resident of Village- Bharatpur, New Area Aurangabad, P.S. + District- Aurangabad.
2. Yogendra Singh, S/o Bidya Nand Singh, Resident of Village- Baragum, P.S.- Jamhaur, District- Aurangabad.
3. The National Insurance Company Ltd., through its Divisional Manager, Divisional Office-1, Arunachal Building, Exhibition Road Chaurha, District- Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Alok Kumar @ Alok Kr Shahi
	:	Mr. A. Sinha, Adv.
For the Respondent/s	:	Mr.Ashok Priyadarshi, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 02-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of claimant/appellant against the judgment dated 14.12.2015 and award dated 22.02.2017 passed by Motor Vehicles Accident Claim Tribunal, Patna in Claim Case No. 366 of 2012 by which the claimants were granted compensation of Rs. 6,9,812/- to be paid by National Insurance Company Ltd. (Respondent No. 3).

3. Aggrieved by amount of compensation present

miscellaneous appeal has been preferred for enhancing the compensation amount.

4. Claim case has been filed under Section 166 of M.V. Act by Shashi Kala, the widow of deceased Krishna Kumar alongwith one major daughter and one minor daughter and one minor son. Opposite party No. 1 Vijay Chaudhary is the owner of offending vehicle and opposite party No. 2 was the driver and opposite party No. 3 is the Insurer of the offending vehicle.

5. Appellant is aggrieved by the quantum of compensation which has been assessed by the Tribunal in which the monthly income of deceased has been held to be Rs. 6,253/- and the annual income has been assessed as Rs. 75,036/- and 1/3rd has been deducted towards personal expenses of deceased and loss of the dependency has been assessed to be Rs. 50,024/- and 13 has been applied as a multiplier as deceased was 48 years old and the total amount of compensation has been assessed as Rs. 6,50,312/- Apart from compensation amount, the Tribunal has granted additional compensation under the head of loss of consortium as Rs. 5000/-, loss of estate as Rs. 2,500/- and funeral expenses as Rs. 2000/-. Since 50,000/- of interim compensation was already paid to the claimant, the total liability of the owner/insurer comes to Rs. 6,09,812/- with

interest @ 7% per annum which has been directed to be paid to the claimants.

6. It has been submitted on behalf of respondent Insurance Company that the award amount alongwith up-to-date interest has already been paid to the claimant. It has been submitted on behalf of appellant that Tribunal has wrongly deducted 1/3rd as personal expenses of deceased as there were four dependents as such deduction should be 1/4th for personal expenses. Additional compensation granted to the appellant is not in consonance with the law laid down by the Supreme Court in case of National Insurance Company Ltd. Vs. Pranay Sethi and Ors. however, same was opposed on behalf of counsel for the respondent that judgment and order is subsequent to order passed by the Tribunal, as such the Tribunal has rightly calculated the compensation amount and same has already been paid and at appellate stage same cannot be granted to the appellant, however, as per judgment and order of Supreme Court Rs. 70,000/- is to paid under the head of loss of estate, loss of consortium and funeral expenses in all claim cases. The quantum of compensation for which claimants are entitled is being redetermined by this Court.

Head	Compensation awarded
I. Income:	Rs. 6,253x12= Rs.75,036/-

ii. Deduction towards personal expenditure:	Rs. 18,759 i.e. 1/4th of (Rs. 75,036)
iii. Multiplier:	13
iv. Total Income:	Rs. 56,277x13=7,31,601/-
v. Future Prospects:	2,19,480 (i.e. 30% of the income)
	7,31,601+2,19,480=9,51,081/-
vi. Funeral Expenses:	Rs. 15,000
vii. Loss of estate:	Rs. 15,000
viii. Loss of Consortium:	Rs. 40,000/-
Total compensation:	Rs. 10,21,080/-

7. The insurance Company is directed to pay the remaining compensation amount as determined above with 7% interest p.a. from the date of filing of application till its payment.

8. The statutory amount deposited at the time of filing of appeal a cheque of which be prepared by the office in the name of appellant No. 1 and be handed over to her counsel for its payment to claimant No. 1.

9. This miscellaneous appeal is allowed to the extent as indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.07.2019
Transmission Date	N.A.