IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.276 of 2016

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The Oriental Insurance Company Gaya Through Sri Niraj Kumar Assistant Manager and duly constituted Attorney The Oriental Insurance Company Ltd. Regional Office Pir Mohani, Kadamkuan, Patna.

... ... Appellant/s

Versus

1. Mr. Irshad Alam s/o Md. Nezamuddin, r/o Urdu Mohalla Shergati PO and PS Shergati, District Gaya.

2.Manju Devi w/o Lalchand Yadav, r/o village and PO Kumiyadi PS Triveniganj, District Supaul at present ASC Cant North Centre. Q. No. 140/3 Paharpur, Gaya,

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ashok Priyadarshi, Adv
For the Respondent no.1	:	Mr. Arvind Kumar Singh, Adv
For the Respondent no.2	:	Mr. Shailendra Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-10-2019

<u>I.A. No. 3014 of 2016</u>

Heard the parties.

This interlocutory application has been filed for condonation of delay of 18 days in filing the present appeal.

Sufficient reasons have been shown to condone the delay in filing appeal, accordingly the Interlocutory application is allowed and the delay in filing this appeal is condoned.

I.A No. 3014 of 2016 is allowed.

M.A No. 276 of 016

This miscellaneous appeal has been filed under Section 173 of M.V. Act, 1988, by the Appellant-Insurance Company against the judgment and Award dated 21.09.2015/10.11.2015 passed by Additional District Judge-IV cum MACT, Gaya, in Claim Case No. 31 of 2010/ 92 of 2011, awarding compensation of Rs. 8,40,806/- to the Claimant with interest @ 9 per cent per annum.

Claimant Manju Devi is mother of deceased Ajay Kumar who died in a motor accident on 14.12.2009 while he was returning home after tuition when TATA Sumo vehicle bearing registration no. WB 26C 4503 which was being driven in a rash and negligent manner by the driver of the offending vehicle dashed against Ajay Kumar as a result of which he sustained grievous injuries and was admitted in Magadh Medical Hospital and thereafter he was referred to PMCH but died on 15.12.2009.

On the basis of fardbeyan of informant Manju Devi Magadh Medical PS. Case NO. 133 of 2009 was instituted under Sections 279, 304A of IPC against the unknown driver of the offending vehicle and after investigation police found the case to be true and submitted chargesheet against the driver of offending vehicle Manish Kumar Gupta and found the allegation of rash, reckless and negligent driving to be true.

Opposite party no. 1/appellant insurance company appeared before the Claims Tribunal and filed its written statement denying the claim of Claimant.

Opposite party no. 2 owner of the vehicle appeared but did not file any written statement.

On the basis of pleadings, the Claims Tribunal framed five issues for its determination.

On the basis of oral and documentary evidence, the Claims Tribunal found that deceased died due to accident caused by rash and negligent driving by the driver of the offending vehicle, as such Claimant is entitled for compensation.

The Claims Tribunal has held that the offending vehicle was insured by the Oriental Insurance Company on the date of accident, as such Oriental Insurance Company is liable to pay the compensation amount. However, since the owner of the offending vehicle has not contested the case and insurance company has alleged that vehicle was being driven by the driver without any valid and effective driving licence and vehicle was being plied in violation of terms and conditions of policy of insurance as such has granted liberty to the insurance company to pay and recover the compensation amount from the owner of the offending vehicle.

The Claims Tribunal has found that at the time of death, deceased was 18 years 9 months and was a student of intermediate and was a meritorious student and has assessed his notional monthly income to be Rs. 4186/- per month and as he was unmarried 50 per cent of income has been reduced towards his personal expenses and has assessed loss of dependency to be Rs. 2093/- and annual loss of dependency would be Rs. 25,116/- and has added 50 per cent towards his future prospect, as such loss of annual dependency has been assessed as Rs. 37,674/- and has applied 19 to be appropriate multiplier and has quantified compensation amount as Rs. 7,15,806/- and since Rs. 50,000/- has already been paid as interim compensation the compensation amount to be paid comes to Rs. 6,65,806/- and thereafter has granted additional compensation under conventional heads of Rs. 50,000/- for loss of love and affection, Rs. 25,000/- for funeral expenses, Rs. 25,000/- for loss of estate and Rs. 25,000/- for loss of consortium and has directed insurance company to pay a sum of Rs. 7,90,806/- with interest @ 9 per cent per annum from the date of filing of claim case till its realization.

It is submitted by learned counsel for the appellant insurance company that the Claims Tribunal has wrongly assessed notional monthly income and same should be Rs. 3000/- per month as he was a non earning member of the family and has wrongly applied 19 as multiplier whereas it should be 18 and has also wrongly granted 50 per cent as future prospect whereas future prospect should be 40 per cent and under conventional head maximum compensation to be granted is Rs. 70,000/-, however, Tribunal has granted Rs. 1,25,000/-, as such excessive compensation has been awarded by the Claims Tribunal.

On the basis of admitted facts the compensation for which Claimant is entitled is being reassessed by this Court.

Annual income -	**Rs. 36,000/-**
Future Prospects (40%)	**Rs. 14,400/-**
Total Income	**Rs. 50,400/-**
Personal Expenses (1/2)	**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/-**

(Five Lacs Twenty Three Thousand Six Hundred Only).

The Award passed by the Claims Tribunal is modified to the extent that Claimant is entitled for compensation of Rs. 5,23,600/- (Five Lacs Twenty Three Thousand Six Hundred Only). The appellant insurance company is directed to pay the modified compensation amount to the Claimant with interest @ 9 per cent per annum from the date of claim application till its realization after deducting compensation amount already paid within three months from the date of receipt/production of a copy of order passed by this Court.

The miscellaneous appeal is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.12.2019
Transmission Date	NA