IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.335 of 2016
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1. Bimla Devi, wife of Late Arjun Kumar Singh.
2. Madhu Kumari, D/o Late Arjun Kumar Singh.
3. Annu Kumari, D/o Late Arjun Kumar Singh.
4. Khushbu Kumar, D/o Late Arjun Kumar Singh.
5. Gaurav Kumar, S/o Late Arjun Kumar Singh.
6. Saurav Kumar, S/o Late Arjun Kumar Singh.

Appellant No. 6 is minor under the guardianship of his mother, appellant No.1. All residents of Mohalla- Lodipur, P.S. Budha Colony, District- Patna.

... ... Appellant/s

Versus

1. Regional Manager, Oriental Insurance Co. Ltd. , Agriculture Building, Pirmohani, P.S. Kadamkuan, District- Patna.

------ Respondent No. 1/Insurer of Truck, Opposite party No.1

2. Navratna Lal Mishra, S/o Late Mevalal Mishra (Area Manager, M/s Air Transport Corporation Ltd., Assam), Resident of Mohalla- Akhara Ghat Road, P.S. Nagar Thana, District- Muzaffarpur.

------ Respondent No. 2/Owner of truck, opposite party No. 2

3. Md. Asif, S/o Imamuddin, resident of village- Gaun Pir Ohata, P.S. Ezatnagar, District- Bareli (U.P.)
4. Director, M/s Air Transport Corporation (Assam) Ltd., Regd. And Head Office at Kedar Road, Guwahati-781001 (Assam)

------ Respondent No. 4/Owner of vehicle, opposite party No.4.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr.Alok Kumar @ Alok Kr Shahi, Adv.
For the Respondent/s : Mr. Binay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 29-07-2019

Heard the parties.

2. This appeal has been filed under Section 173 of M.V. Act, 1988 for enhancement of compensation amount awarded by judgement dated 22.08.2015 and Award dated 30.10.2015 passed by Additional District Judge-V-cum-M.A.C.T., Patna in Claim Case No. 392/2009/873/2014, (Trial No. 24/14) by which the learned claims tribunal has granted Rs.

3,73,220/- as compensation amount with interest @ 6% p.a.

3. Claimants are widow and children of deceased Arjun Kumar Singh who died in a motor accident on 25.05.2009 caused by container truck bearing registration No. HR-55F-9131 while he was on duty as Assistant Sub-Inspector of Police when the offending vehicle dashed into the jeep, upon which deceased was sitting alongwith other police personnel as a result of which Arjun Kumar Singh was seriously injured and died on the spot. Offending vehicle was being driven by the driver in a rash and negligent manner resulting in said accident. Deceased was aged 51 years and was getting salary of Rs. 19,964/- per month and after deduction Rs. 18,934/- was paid. Deceased was income tax payee.

4. Claimants produced documentary evidences before the Claims Tribunal which were marked as Exhibits by the tribunal which included matriculation certificate, Identity Card, copy of FIR, Chargesheet, Insurance Policy, postmortem report and salary slip. Claims tribunal on basis of oral and documentary evidence found that the offending vehicle was being driven in a rash and negligent manner, as a result of which accident took place in which deceased died and offending vehicle was insured on the date of accident with the

opposite party No. 1 Oriental Insurance Company Ltd. as such, Insurance Company is liable to pay the compensation amount.

5. Claimants made a claim for grant of compensation of Rs. 16,75,692/- from opposite parties. Opposite party No. 1 is the Oriental Insurance Company Ltd., Opposite party No. 2 is the owner of the offending vehicle, opposite party No. 3 is the driver of the offending vehicle and opposite party No. 4 is the Transport Company. The offending vehicle was insured with Oriental Insurance Company Ltd. on the date of accident. The owner and driver of the vehicle in their written statement stated that vehicle was plying with a valid permit and driver had effective driving licence.

6. The claims tribunal has assessed the age of deceased to be 51 years and his monthly income as Rs. 18,302/- after making deduction of Rs. 1,030/- against G.P.F. and Group Insurance and thereafter has deducted Rs. 15,000/- which was being paid to claimant No. 1 as family pension and loss of dependency was found to be Rs. 3,302/- per month and applied multiplier of 11 and has assessed Rs. 4,35,864/- as compensation amount and has further deducted 1/6th towards his personal expenses and has assessed loss of dependency to be Rs. 3,63,220/- and has further granted Rs.5000/- for funeral

expenses and Rs. 5000/- for mental suffering and quantified compensation amount as Rs. 3,73,220/- for which claimants were found to be entitled and directed Insurance Company to make payment of compensation amount as determined by the claims tribunal with interest @ 6% p.a. from the date of filing of claim application till its payment.

7. It has been submitted on behalf of counsel for the appellants that the Apex Court in case of Vimal Kanwar Vs. Kishore Dan since reported in [2013] 4 CPR(SC) 629 and in case of Bhakra Beas Management Board Vs. Kanta Aggarwal and Ors since reported in [2008] 11 SCC 366 and in case of Reliance General Insurance Co. Ltd. Vs. Shashi Sharma & Ors since reported in 2016 9 SCC 627 has held that any amount due to dependents of deceased and any amount received or receivable not only on account of accidental death but which would have come to the claimant even otherwise would not constitute to be pecuniary advantage liable for deduction, as such, payment of family pension to claimant No. 1 was not liable to be deducted while calculating the loss of dependency and entitlement for compensation.

8. The Apex Court in case of Sunil Sharma and Ors. Vs. Bachitar Singh & Ors. since reported in 2011 (11) SCC 425

has held that HRA, CCA, Medical allowance, PPF, GIS have to be taken into consideration in calculation of income of deceased. Salary of deceased including D.A. and allowances was 19,964/-, however, Rs. 80 as duty allowance and Rs. 20 as washing allowance is deducted and monthly income is assessed as Rs. 19,864/-.

9. In view of law laid down by the Apex Court as referred above no deduction could be made against payment of family pension to the claimant as well as deductions made against Group Insurance Scheme and G.P.F. is to be added while assessing the monthly income of deceased.

10. The compensation amount is re-assessed by this Court in terms of judgement and order delivered by 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 as follows:-***

Monthly Income	Rs. 19,864/-
Future Prospect(15%)	Rs. 2,980/-
Total Income	Rs. 22,844/-
Annual Income	Rs. 2,74,128/-
Income tax deduction	Rs. 11,274/-
Net Income	Rs. 2,62,854/-
Personal expenses(1/4th)	Rs. 65,714/-

Loss of dependency	Rs. 1,97,140/-
Multiplier	11
Compensation	Rs. 21,68,540/-
Loss of consortium	Rs. 40,000
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 22,38,540/- (Twenty two lacs thirty eight thousand five hundred forty only).

11. Claimants are entitled for payment of compensation of Rs. 22,38,540/- (Twenty two lacs thirty eight thousand five hundred forty only) and Award passed by the claims tribunal is modified to said extent.

12. The Insurance Company is directed to pay the remaining compensation amount after deducting the compensation already paid from Rs. 22,38,540/- (Twenty two lacs thirty eight thousand five hundred forty only) and pay the remaining compensation amount with interest @ 6% p.a. on the remaining compensation amount from the date of filing of claim application till its payment.

13. With aforesaid modification in the Award, miscellaneous appeal is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.10.2019
Transmission Date	N.A.