# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Miscellaneous Appeal No.53 of 2015**

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1.Tetri Devi w/o Late Harilal Sharma.

2. Geeta Kumari d/o Late Harilal sharma

All resident of village Jahangirpur Patedha, P.s. Sarai, District Vaishali.

... ... Appellant/s

Versus

1.Veena Shahi w/o Late Hemant Kumar Shahi, village Rasulpur Silani,P.S. Kazi Mohammadpur, District Vaishali.

2.Mohammad Anwar s/o Mohammad Jahirul Haque, r/o Village+P.O. Madarna, P.S. Kazi Mohammadpur, District Vaishali.

3.The New India Assurance Company Ltd. through Branch manager, New India Assurance Company Ltd Cinema Road Hajipur.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr.Alok Kumar @ Alok Kr Shahi, Adv & Mr. A. Sinha, Adv |
| For the Insurance Company | : | Mr. Sanjay Singh, Adv |

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**
**ORAL JUDGMENT**
**Date : 17-07-2019**

Heard learned counsel for the parties.

This appeal under Section 173 of M.V Act has been filed for enhancement of amount of compensation awarded by judgment and order dated 17.07.2014 and Award dated 31.07.2014 passed by Adhoc Additional District Judge-II-cum MACT, Vaishali at Hajipur in Claim Case No. 4 of 2009 by which the learned Claims Tribunal has awarded compensation of Rs. 3,12,680/- with interest @ 6 per cent per annum to the Claimants.

Claimants-appellants are widow and minor daughter of deceased Hari Lal Sharma who died in a motor accident caused by Bus bearing registration No. BR 06D 8483 which was being driven in rash and negligent manner by the driver of the Bus resulting in accident and death of Hari Lal Sharma who was a pillion rider on a motorcycle.

Deceased Hari Lal Sharma was 38 years old at the time of accident and he was private contractor and Carpenter and his monthly income was Rs. 10,000/- per month. The Claimants have claimed compensation of Rs. 5 Lacs with interest.

On notice to opposite parties, opposite party nos. 1 and 2 who are owner and driver of offending bus did not appear, however, opposite party no. 3 the Insurance Company, which had insured the offending Bus appeared and contested the case. It was admitted by the Insurance Company that on the date of accident the offending Bus was insured with it.

The Claims Tribunal has assessed the income of deceased to be Rs. 77/- per day on the basis of notification issued by the Labour Department of Government of Bihar under the Minimum Wages Act. The annual income of deceased will be Rs. 27,720/- and after deducting 1/3rd towards personal expenses has assessed loss of dependency to be Rs. 18,480/-. Claims Tribunal has assessed the age of deceased as 36 Years and applied 16 as multiplier and assessed compensation amount as Rs. 2,95,680/-. Claims Tribunal has further granted compensation under conventional heads as Rs. 2500/- for funeral expenses and Rs. 4500/- for loss of estate and Rs. 10,000/- with respect to expenses incurred in treatment of deceased and quantified the compensation amount as Rs. 3,12,680/- and directed the New India Insurance Company Ltd. to pay the compensation amount with interest @ 6 per cent per annum from the date of filing of application till its payment. Aggrieved by quantum of compensation, Claimants have preferred this appeal for enhancement of compensation amount.

It has been submitted by learned counsel for the appellant that deceased was a private contractor and Carpenter and used to earn Rs. 10,000/- per month.

Vishwanath Singh has been examined on behalf of Claimant as witness no. 2 and he in his deposition has stated that deceased was a Carpenter and used to earn Rs. 8000/- to 10,000/- per month and had some agricultural land also. Rajiv Ranjan was examined as Witness No. 3 who also deposed income of deceased to be Rs. 8000/- to Rs, 10,000/- and also having agricultural land of about 7 to 8 Kathas. Deceased was ex Up-Mukhiya and a respected person of society and his income was Rs. 8000/- per month. He had income from agriculture also and possessed some agricultural land. There is no cross-examination with respect to income of deceased as disclosed by witnesses. Tetari Devi is the widow of deceased who has been examined as witness no. 4 and has stated that her husband was a Carpenter and also engaged in sale and purchase of woods and his monthly income was Rs. 8000/-. There is no cross-examination with respect to income of deceased. Claims Tribunal has not accepted the income of deceased to be Rs. 8000/- for the reason that no detail account of earning or saving of the deceased has been furnished, as such income of deceased as Rs. 8000/- per month cannot be believed. The reasoning given by the Claims Tribunal to disbelieve the income of deceased in spite of consistent oral evidence cannot be countenanced and courts should accept the monthly income as given in claim application if it appears to be proper and realistic and supported by oral evidence. Taking a pragmatic and realistic view, this Court assesses Rs. 5000/- as monthly income of deceased to be just and proper and reassesses the quantum of compensation 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:-***

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| Annual income | Rs. 60,000/- |
| Future Prospect(40%) | Rs. 24,000/- |
| Total Income | Rs. 84,000/- |
| Personal expenses(1/3rd) | Rs. 28,000/- |
| Loss of dependency | Rs. 56,000/- |
| Multiplier (15) | Rs. 8,40,000/- |
| Loss of consortium | Rs. 40,000/- |
| Loss of estate | Rs. 15,000/- |
| Funeral expenses | Rs. 15,000/- |
| **Total Compensation** | **Rs. 9,10,000/** |

**(Rupees Nine Lacs Ten Thousand ).**

The insurance company is directed to pay the remaining compensation amount after making deduction from compensation amount already paid to the Claimants from **Rs. 9,10,000/- (Rupees Nine Lacs Ten Thousand)** with interest @ 6 per cent per annum on the remaining compensation amount from the date of filing of claim case till its payment.

The Award is modified to the extent as indicated above.

The miscellaneous appeal is disposed of.

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

**(S. Kumar, J)**

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