IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 542 of 2014

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1. Binod Sah S/O Jai Lal Sah
2. Manisha Devi W/O Binod Sah
3. Nisha Kumar D/O Binod Sah
4. Shivan Kumar S/O Binod Sah

R/O Village- Shekh Dhanvat, P.S.- Saraiya, District- Muzaffarpur

... ... Appellant/s

Versus

1. Ramesh Kumar Agrawal S/O Late Govind Ram Agrawal. (owner)
R/O Mohalla- Raju Sah Lane, P.S.- Mithanpura, District- Muzaffarpur.
2. The Divisional Manager (Insurance Co.)
National Insurance Co. Ltd. P. N. T. Chowk, P.O.-Ramna, District- Muzaffarpur.

... ... Respondent/s

Appearance :
For the Appellant/s : Mr. Sunil Kumar Pandey, Advocate
For the Respondent no.2: Mr. Abhay Kumar Sinha, Advocate
Mr. Gyanendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 13-10-2022

Heard learned counsel for the appellants and learned counsel for the respondent no.2, National Insurance Company Ltd (hereinafter refers to as 'the Insurance Company'). No one appears on behalf of the respondent no.1.

The instant appeal has been preferred by the claimants-appellants against the judgment dated 21.5.2014 passed in Claim Case no. 215 of 2010 whereby the learned 6th Additional District Judge – cum – Motor Vehicle Accident Claim Tribunal, Muzaffarpur was pleased to allow the claim case filed by the claimants and directed the Insurance Company to pay to the claimants total compensation to the tune of Rs.2,78,500/- along with simple interest at the rate of 6% per annum from the date of institution of the case.

The facts and brief are that on 5.12.2010 the son of the applicant nos. 1 & 2 was going to Saraiya for treatment of his mother. On reaching near the Pokhraira Chowk, as a result of the rash and negligent driving by the driver of a truck bearing registration no. BR 06 D 0669 which was coming from the side of Saraiya, the said Vikky Kumar received serious injuries and died on the spot. An F.I.R being Saraiya Police Station Case no. 312 of 2010 was registered.

It is the case of the claimants that the said Vikky Kumar, who was aged about 18 years was working as a labourer and earning Rs.3,000/- per month. The claimants happen to be the father, mother, brother and sister of the deceased. As such the claim case was filed which was registered as Claim Case no. 215 of 2010.

It further transpires from the record that the owner of the offending vehicle, in spite of service of notice did not appear before the learned Tribunal.

After hearing the parties and taking into consideration the materials brought on record, the learned Tribunal proceeded to allow the claim case by its order dated 21.5.2014 in the terms stated herein above.

It is submitted by learned counsel for the appellants that though the claim case filed by the applicants-appellants has been allowed, the instant appeal has been preferred on a limited ground praying therein for enhancement of the total quantum of compensation. It is submitted that the learned Tribunal has erred in not adding the amount payable to the appellants under the conventional heads ie loss of estate and funeral expenses together with interest at the rate of 10 percent on the said amount every three years as decided in the case of **National Insurance Company Ltd vs. Pranay Sethi [(2017) 16 SCC 680]**. It is further submitted that although it has come in the deposition of the witnesses that the deceased was working and earning Rs.150/- per day, future prospects has not been added in computing the total compensation.

The appeal is opposed by learned counsel appearing for the Insurance Company. Learned counsel submits that there is no error in the order of the learned Tribunal. So far as the computation of the compensation etc under the conventional head is concerned, from page no.4 of the judgment impugned it would transpire that the total sum of Rs.4,500/- has been paid under this head which was adequate and appropriate in view of the said accident having taken place in the year 2010. Further the deceased neither being self employed, not having fixed salary nor any document having been brought on record in evidence, the learned Tribunal has rightly not added any amount under the head of future prospects in computing the total compensation.

Having heard learned counsels for the parties and having perused material on record including the lower Court records, the Court is of the following opinion:

(I) So far as the amount under the conventional heads is concerned, it has been held in paragraph no. 59.8 in the case Pranay Sethi (supra) that an amount of Rs.15,000/- under the head of loss of estate and Rs.15,000/- for funeral expenses will be paid and the said amount shall be enhanced at the rate of 10 percent every three years. Thus the claimants-appellants would be entitled for total sum of Rs.30,000/- under the conventional head together with 10 percent interest for the years 2013, 2016, 2019 and 2022.

(II) So far as the amount payable under the head of future prospects is concerned the judgment of Pranay Sethi (supra) concludes the amount payable under this head in paragraph no. 59.3 giving different percentage for the category of different age groups. It may be noted here that the said paragraph no. 59.3 concludes in the terms that the actual salary should be read as actual salary less tax. So far as instant case is concerned, in the opinion of the Court, the deceased was neither self employed nor was having a fixed salary and no documentary evidence for the same has been produced. As such the learned Tribunal has rightly held that the claimants would not be entitled for any amount under the head of future prospects.

In view of the above the computation of total compensation payable by the Insurance Company to the claimants would be as follows:

(i) Annual Income (based on the notional income of Rs.3,000/- per month)	= Rs.36,000/-
(ii) Deduction on account of the personal and living expense of unmarried deceased (50 percent)	= (-)Rs.18,000/-
Net amount (Rs.36,000 - Rs.18,000)	=Rs.18,000/-
(iii) Multiplier (x18)	x18
	= Rs.3,24,000/-

(iv) Conventional heads
(a) Loss of estate = Rs.15000/-
(b) Funeral expenses = Rs.15000/-

(c) Interest at the rate of 10 percent = Rs.12,000/-
every three years (for 2013, 2016, 2019 and 2022)
= Rs.42,000/-

Total amount (3,24,000+42,000) = Rs.3,66,000/-

The Court holds the claimants to be entitled to a total compensation amount of Rs.3,66,000/- which shall be paid within three months from today calculated with the interest at the rate of 6% per annum from the date of filing of the claim case till the date of its payment. In case the amount is not paid within the aforesaid period of three months, the same will carry interest at the rate of 9% per annum from the date the aforesaid period of three month ends.

The amounts will be paid after deducting the amount already paid to the claimants on earlier occasions.

The judgment and the award impugned stand modified to the above extent.

The appeal is disposed of.

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.10.2022
Transmission Date	