

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1238 of 2016

1. Bageshwar Kumar son of Late Surendra Kumar, Husband of Deceased Lalita Kumari
2. Beauty Kumari aged about 15 years. daughter of Bageshwar Kumar
3. Dipak Kumar aged about 9 years son of Bageshwar Kumar (Appellant No.- 2 & 3 are minor daughter and son respectively of deceased Lal All are resident of Mohalla- Hariharrai Path, P.O. P.S.- Kesri Nagar, District Patna-24. Claimants in the Claim Case.

... .. Claimants/Appellant/s

Versus

1. M/s Mehta Road Line and Ors null null
2. Suleman Shekh son of Not Known, resident of Mohalla- Paraygoan, Tanyewalla, District- Nasik. O.P. No. -2 in the Claim Case.
(Driver of Tanker No. MH- 04 BG/7643).
3. Regional Manager, Oriental Insurance Co. Ltd., Patna Regional Office, Vijay Agriculture Centre Building, Pirmuhani More, P.O.+P.S.-Kadam Kuan,Patna-3. (O.P. No.-3 in the Claim Case).
(Insurer of Tanker No. MH-04-BG-7643).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rajen Sahay,Advocate
For the Respondent/s : Mr.Durgesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 24-11-2022

I.A. No. 2661 of 2017

The aforesaid interlocutory application has been preferred for condoning the delay of 123 days in filing the present appeal.

2. In view of the averments made in the petition, the delay of 123 days in filing the appeal is condoned



and I.A. No. 2661 of 2017 is allowed.

M.A. No. 1238 of 2016

The present appeal has been preferred against the order and judgment dated 30.11.2015 and the award dated 17.03.2016 passed by learned Additional District Judge-14th, Patna in Claim Case No. 115 of 2010 by which the it has been complained that only Rs. 8,23,500/- with interest was paid and the claimants-appellants were also entitled to the future prospects in view of the judgment of the Hon'ble Apex Court.

2. The matrix of facts giving rise to present appeal is/are as follows:-

3. The wife of appellant no.1 namely, Lalita Kumari died in motor vehicle accident on 13.09.2008 while she was travelling in a Sumo jeep alongwith family from Rishikeshwar to Shighnapur when it dashed with a Tanker bearing registration no. MH-04-BG-7643 resulting into her death. Accordingly, the F.I.R was registered bearing Nasik Road P.S. Case No. 169 of 2008 dated 14.09.2008 and subsequently, the charge sheet was also submitted.

4. The claimants-appellants thereafter preferred Claim Case No. 115 of 2010 before the learned Court of District Judge-cum-Motor Accident Claim Tribunal, Patna



(henceforth for short the tribunal).

5. The opposite parties-respondents appeared upon notice and refuted the claim put forward by the appellants.

6. After hearing the parties and going through the records, learned tribunal held as follows:-

“Issue No. 6 and 7:- These two issues are being decided together because they are inter linked with each other. As discussed earlier it is proved that on 13.09.2008 an accident took place due to rash and negligent driving of the driver of vehicle no. MH-04GB-7643 in which the deceased Lalita Kumari died during the course of treatment. At the time of accident O.P. No.02 Suleman Sheikh was driving the tanker under the control and employment of O.P. No. 1 M/s. Mehta Road Lines who is owner of the truck. As such O.P. No. 1 is vicariously liable to pay the compensatory amount on behalf of negligence of O.P. No. 02. But since the vehicle in question was insured at the relevant time and date of occurrence hence O.P. No. 03 has to indemnify the liability of compensation on behalf of O.P. No. 01. As such, O.P. No. 03 is liable to pay compensatory amount.

So far exact age of deceased is concerned claimants have not filed any convincing and documentary evidence to prove her exact age, neither the P.W. 1 and 2



who are the husband and dewar of the deceased have stated about the age of the deceased, but from perusal of Ext-A the Investigation Report of the investigator of the O.P. No. 03 he has found the age of the deceased as 34 years as per her voter I-Card who was 28 years old on 01.01.2003 and the accident took place on 13.09.1998. Hence her age would be presumed 30 to 35 years and appropriate multiplier would be 17 under 2nd Schedule of the M.V. Act.

So far as the exact income of deceased is concerned claimants have filed Ext-8 a certificate issued by the Snatak and Berojgar Vikash Sansthan, Patna in which it has been stated that the deceased with the help of the aforesaid organization was running a Tailoring Training Institute at Mohalla, Indrapuri, Harihar Rai Path, Patna and she was earning Rs. 6,000/- month. A.W.1 and 2 have stated in their respective evidences regarding the business of the deceased and her income as Rs. 6,000/- from the said business. But the learned counsel for the O.P. No. 3 vehemently opposed this fact and referring Ext-A the Investigation Report of his investigator he submitted that on verification his investigator did not find any Tailoring Institute at the given place. As such I find that the claimants have failed to establish the fact that the deceased was earning Rs. 6,000/- per month from her business of Tailoring



Institute, but considering her age as well as the fact that the deceased was technically educated lady her income would be presumed as Rs. 6,000/- per month. Hence the loss of dependency after deducting 1/3rd towards personal expenses would be $4000 \times 12 = 48,000/-$ per year. And as such the compensation amount would be $Rs. 48,000 \times 17 = Rs. 8,16,000/-$, besides this claimants are entitled to Rs. 3,000/- as loss of consortium, Rs. 2,000/- as funeral expenses and Rs. 2500/- for loss of State, total Rs. 8,23,500/-. From perusal of the record it appears that Rs. 50,000/- as ad interim compensation has already been given to the applicant, as such the claimants are entitled Rs. 7,73,500/-. Besides this the claimants are also entitled to get 9% interest on the above mentioned amount from the filing of the case till its realization.

It is therefore

Ordered

that the O.P. No. 3 Oriental Insurance Co. Ltd. To pay Rs. 7,73,500/- along with interest @ 9% per annum from the filing of the case till its final realization within two months from the passing of the order. O.P. No. 3 is directed to pay the said amount to the claimants through account payee cheque or bank draft, failing which claimants will be at liberty to realize the said amount through the process of the Court. O/C is directed to prepare award after deposit deficit court fee on the



awarded amount”.

7. Thereafter, as per the submission put forward by the learned counsel for the appellant, ‘the Oriental Insurance’ paid the amount that was ordered by the ‘learned Tribunal’ along with the interest. However, the present appeal came to be filed complaining that while granting compensation with the interest amount, the learned Tribunal could not take into account the future prospects as also general damages in the light of the order passed by the **Hon'ble Apex Court passed in National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 680 16 SCC** and as such the same should also be awarded/granted/paid to the claimants-appellants.

8. Heard Mr. Rajan Sahay, learned counsel for the appellant and Mr. Durgesh Kumar Singh, learned counsel who represent the Oriental Assurance Company Limited (henceforth for short “the Oriental Assurance”).

9. Learned counsel for the appellant on the basis of the aforesaid order passed by the Apex Court in **National Insurance Company Vs. Pranay Shetty** (supra) submits that the claimants are entitled to future prospects to the tune of 40 per cent of the award as also Rs. 70,000/- with further enhanced interest of 10 per cent towards general damages.



10. Per contra, Mr. Durgesh Kumar Singh, submits that the multiplier should have been 16 and not 17 as held by 'the learned Tribunal'.

11. This Court on this point observes that in view of the fact that the Oriental Insurance chose not to file any appeal against the said order, that part should be put to rest.

12. His next submission is that taking into account his income as Rs. 6,000/- and after including future prospects (40%), the amount will come to Rs. 48,000+Rs.19,200= Rs. 67,200. Further by using the multiplier of 17 on Rs. 67,200, it will come to Rs. 11,42,400/-.

13. Further, excluding the conventional amount, as he is entitled to general damages the sum total award comes to Rs. 8,16,000/-. The appellant will thus be entitled to Rs. 11,42,400-Rs. 8,16,000/-=Rs. 3,26,400/-. Further, if the general damages of Rs. 70,000/- with enhanced 10 per cent amount of Rs. 7,000/- is added, it will come to Rs. 4,03,400/-.

14. Learned counsel for the appellant submits that the claimants-appellants will be satisfied, if the aforesaid amount of Rs. 4,03,400/- with 6% interest is paid to the appellants.

15. Having heard the parties at length and



fully appreciating the two learned counsels, who finally came to a possible conclusion, the order dated 30.11.2015 passed by Mr. Raghwendra Kumar Singh, learned Additional District Judge-14th Patna in Claim Case No. 115 of 2010 is modified to the extent that beside the compensation amount that was paid to the claimants-appellants, they will also be entitled towards the future prospects as also the general damages to the tune of Rs. 4,03,400/- only along with interest of 6 per cent.

16. Both the parties have further agreed that the aforesaid amount will also entail an interest of 6 per cent from the date of filing till the payment made.

17. All the aforesaid exercise shall be completed within a period of two months.

18. Mr. Durgesh Kumar Singh, learned counsel for the Oriental Insurance submits that liberty may be granted to take necessary steps in accordance with law against the vehicle owner in view of the fact that there was negligence on the part of the said owner/driver.

19. It goes without saying that the Oriental Insurance Company always have the liberty to take appropriate steps in accordance with law for the furtherance of any grievance it has.



20. With the aforesaid observations/directions, the Miscellaneous Appeal stands disposed off.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26.11.2022
Transmission Date	

