

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.680 of 2013

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1. Shaila Devi Wife Of Valmiki Singh Resident Of Village - Berauti Tola Inderpur, P.O. Nepura, P.S. - Deepnagar, District - Nalanda.
2. Valmiki Singh Son Of Late Ram Khelawan Singh Resident Of Village -Berauti Tola Inderpur, P.O. Nepura, P.S. - Deepnagar, District - Nalanda.

... ... Appellant/s

Versus

1. Prem Niranjana Kumar Son Of Sri Surendra Singh Owner Of Tractor No. BR- 21B/1831, Chechis No. N.G.H. 17886, Engine No. N.G.H. 17886, Vill.- Jalalpur, P.O. - Ekdauga, P.S. - Velchhi, District - Patna.
2. Pappu Kumar Son Of Late Prasuram Singh Driver Of Tractor No. BR- 21B/1831 Vill.-Parasi, P.S. - Bhaganbigha, District - Nalanda.
3. United India Insurance Co. Ltd. Through The Branch Manager Office Ranjan Complex, Patna Ranchi Road Biharsharif.
4. Md. Sami Ahmad Son Of Md. Ghasu Village - Nirpur, P.S. - Bind, District -Nalanda.

... ... Respondent/s

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Appeal against judgement of Motor Vehicle Accident Claim Tribunal—for fair and adequate compensation—no evidence of income of deceased—income of daily wages earner taken into consideration—judgment of the Hon’ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (6) SCC 121.

Held: The Tribunal erred in assuming income of Rs.1,000/- per month which should be Rs.5,000—total payable compensation should have been multiplied by 18, not 16—claimant entitled for interest @ 6% from the date of filing of the claim petition—compensation to be paid to the mother of the deceased as father of the deceased might be an earning person.

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... .. Respondent/s

Appearance :

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| For the Appellant/s | : | Mr.Rabi Bhushan Prasad No. 1, Adv |
| | : | Mr. Vijay Prakash Bhargave, Adv |
| For the Respondent No. | : | Mr.Bimlesh Kumar Jha, Adv |

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the parties.

2. Parents of deceased-Tutu Kumar @ Arvind Kumar were claimant before the Motor Accident Tribunal, they have challenged the judgment and award dated 30.05.2013 passed in M.A.C.T. Case No.92 of 2005 on the ground that fair and adequate compensation has not been awarded by the learned Tribunal.

3. The claimants had claimed compensation of Rs.Three Lacs on the ground that the deceased was aged about 20 years at the time of death and he was a shopkeeper. However, no proof of income from the business was brought on the record.



4. The learned Tribunal held that in absence of any material to substantiate the monthly income of the deceased, his average monthly income is taken as Rs.1,000/-. Multiplier of 16 was applied and thereafter 1/3rd was deducted for personal expenses of the deceased. Besides aforesaid amount, Rs.2,000/- was awarded for funeral expenses and Rs.5,000/- for loss of consortium.

5. Submission of learned counsel for the appellants is that even where there is no evidence of income of the deceased in a catena of judgments, it has been stated that income of daily wages earner should be taken into consideration. Therefore, monthly income of the deceased should have been assessed to Rs.5,000/-. Moreover, considering the age of the deceased the multiplier of 18 should have been applied instead of 16.

6. I find substance in the submission of learned counsel for the appellants, the learned Tribunal has erred in assuming income of Rs.1,000/- per month which should be Rs.5,000/- in absence of any evidence to the contrary on the record. Likewise, the multiplier of 18 should have been used in view of the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Ors Vs. Delhi Transport Corporation and Anr* reported in *2009 (6) SCC 121* considering the age of the deceased.



Thus, the total payable compensation should have been Rs.60,000/- multiplied by 18 which is equal to Rs.10,80,000/-.

7. Considering the age of the deceased, who was self-employed, 40% of the aforesaid amount should be awarded as future prospect in view of the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi*, reported in **2017(4) PLJR 261**. Thus the amount comes to Rs.10,80,000/- +40% of that which is equal to Rs. 4,32,000/- total Rs. 15,12,000/- out of aforesaid amount 50% is deductible for personal expenses of the deceased, who was a bachelor. Thus, the actual payable compensation comes to Rs.7,56,000/-. The claimant also entitled for interest @ 6% awarded by the learned Tribunal from the date of filing of the claim petition and not from the date of order as directed by the learned Tribunal.

8. Learned counsel for the respondents has no reservation on the law prevailing for deciding just compensation as calculated hereinabove. The amount of compensation should be paid to claimant- Shaila Devi the mother of the deceased as another claimant-Valimiki Singh, who was father of the deceased might be an earning person.



9. Since death was caused in the year 2004, the grant of Rs.2,000/- for funeral expenses need not require interference. However, the claimants are not entitled for any amount awarded against loss of consortium, as the deceased was a bachelor.

10. If any amount has already been paid to the claimant, the same would be deducted from the payable amount.

11. With the aforesaid modification in the impugned judgment and award, this appeal stands disposed of.

(Birendra Kumar, J)

Nitesh/-

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