



2025:JHHC:8709

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 362 of 2014

Jhonga Guiya & Ors.

.....

..... Appellants

Versus

Md. Aslam Ansari & Ors.

..... Respondents

With

M.A. No. 330 of 2014

.....

Oriental Insurance Co. Ltd.

..... Appellant

Versus

Md. Aslam Ansari & Ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

For the Appellants

: Ms. Rishi Bharti, Advocate (In M.A. No.362/2014)

Mr. Abhay Kr. Mishra, Advocate (In M.A. No.330/2014)

For the Resp.

:

05/Dated: 05/02/2021.

Heard, learned counsel, Ms. Rishi Bharti on the instruction of learned counsel for the appellants/claimants Mr. Ashutosh Anand and learned counsel for the Insurance Company, Mr. Abhay Kr. Mishra.

The claimants namely, Jhonga Guiya, Rabi Guiya, Rashmi Guiya, Sangita Guiya and Mani Kui have preferred this instant Miscellaneous Appeal for enhancement of the award dated 14.03.2014 passed by learned District Judge-III-cum-M.V.A.C.T., Jamshedpur in Compensation Case No.85 of 2009 whereby the claimants have been awarded compensation to the tune of Rs.11,77,912/-, out of which an amount of Rs.50,000/- has already been paid under Section 140 of the MV Act and after deduction compensation amount comes to Rs.11,27,912/- which has been rounded to Rs.11,28,000/- along with interest @ 9% per annum from the date of filing of the claim application till the date of actual payment with certain conditions to keep part of money for the minor children. Applicants Jhonga Guiya is directed to deposit 60% of the received compensation amount in a fixed deposit scheme for a period of six years in a nationalized bank and applicant, Mani Kui is also directed to deposit 50% of the received compensation amount in fixed deposit scheme of a nationalized bank for a period of two years.

Learned counsel for the appellants/claimants has submitted that deceased (Raju Hoe) died in an accident while he was going on a motorcycle



which was dashed by a Mini Bus bearing registration no.BR16P-5188-2025 JHC:8709. Deceased was permanent employee of UCIL having monthly income of Rs.7,437/-. The deceased left behind his five dependents and the vehicle was duly insured before the Oriental Insurance Company Limited. The Insurance Company has also admitted that the vehicle was insured and verification report dated 29.04.2010 has been brought on record as Exhibit-A, the original verification report 01.07.2010 on record as Exhibit-B.

Learned counsel for the appellants/claimants has submitted that the deceased had income of Rs.7,437/-, per month and the learned Tribunal has deducted 25% (i.e. 1/4th) towards personal and living expenses and consider the income for computation of compensation as Rs.5,578/- per month. The learned Tribunal has applied multiplier of 17 considering the age of the deceased to be 26 years, as his date of birth was 12.08.1983 on the alleged date of accident as per Exhibit 9 and as per the finding recorded by the learned Tribunal in view of the judgment passed by the Apex Court in the case of *Sarla Verma (Smt) & others vs. Delhi Transport Corporation & another*, reported in (2009) 6 SCC 121 at para 42.

Learned counsel for the appellants/claimants has further submitted that future prospect of the deceased has not been granted which ought to have been @ 50% in view of the judgment passed by the Apex Court in the case of *National Insurance Company Ltd. vs. Pranay Sethi*, reported in (2017) 16 SCC 680 at para 59.3, as deceased had a permanent job and he died below the age of 40 years.

Learned counsel for the appellants/claimants has submitted that under the conventional head Rs.70,000/- should have been granted in view of the judgment passed by the Apex Court in the *Pranay Sethi (Supra)* at para 59.8, where for the loss of Estate has been considered to be Rs.15,000/-, for loss of consortium to be Rs.40,000/- and for funeral expenses to be Rs.15,000/- which has been wrongly awarded by the learned Tribunal Rs.25,000/- for loss of consortium, Rs.10,000/- i.e. for funeral expenses and for loss of Estate Rs.5,000/-.

Accordingly, the total compensation has been wrongly calculated to be Rs.11,77,912/- out of which Rs.50,000/- has already been paid as ad-interim compensation under Section 140 of the MV Act. Thus, after deducting the



compensation amount comes to Rs.11,27,912/- which has rounded to Rs.11,28,000/- along with interest @ 9% from the date of filing of the claim application.

Learned counsel for the appellants/claimants has thus submitted that amount may be enhanced.

Learned counsel for the appellants/claimants has further submitted that there is delay of 82 days in preferring the appeal, for condonation of the same, I.A. No.3580 of 2015 has been preferred.

Learned counsel for the claimants has further submitted that vide order dated 01.05.2019, co-ordinate Bench of this Court has directed the claimants to file requisites etc. under both process for issuance of notice upon respondents in limitation matter as well as in appeal, but requisites etc. could not be filed though the analogous appeal is also being heard preferred by the Oriental Insurance Company Ltd. The learned Tribunal has directed the Oriental Insurance Company to indemnify the award objection has been raised by the learned counsel for the Oriental Insurance Company, but from perusal of the analogous appeal, it appears that Oriental Insurance Co. Ltd. has also preferred analogous appeal vide M.A. No.330 of 2014.

Learned counsel for the Insurance Company, Mr. Abhay Kr. Mishra has submitted that he accepts notice on behalf of the Insurance Co. Ltd. as analogous appeal has been preferred by the Insurance Company vide M.A. No.330 of 2014 with delay of 68 days and for condonation of I.A. No.2803 of 2020 has been preferred.

Learned counsel for the Insurance Company has assailed the impugned award on the ground that though the driver of the offending vehicle was not authorized to drive heavy motor vehicle as driving licence was to drive only light motor vehicle and to that effect the Oriental Insurance Company Ltd. has examined D.W.-2 (Sarbesh Kumar), who has stated that there was no PSV Badge of the driver of the offending vehicle. The report of DTO, Patna has disclosed that driver was authorized to drive only light motor vehicle and in this accident, it has been found that vehicle No.BR16P-5188 though was insured before the Oriental Insurance Co. Ltd., but with regard to the weight of vehicle no oral or documentary evidence



has been brought on record, if a vehicle is below 7,500/- Kg it would be treated as a LMV and if the weight of the vehicle is more than 12000 kg it would be treated as heavy motor vehicle and in between 7500 Kg to 12000 Kg vehicle would be treated as medium motor vehicle, but in absence of such positive evidence adduced by the Insurance Company, the learned Tribunal has not adjudicated the issue on the basis of consideration made with regard to bus bearing registration no.BR16P-5188.

Considering such submissions, the counsels are directed to file their counter-affidavit in this matter.

Office is directed to call for LCR.

Learned counsel, Mr. Abhay Kumar Mishra appearing for the appellant- Insurance Company in M.A. No.330 of 2014 undertakes to remove the defect no. 5 by filing certificate and defect no.3 is ignore for the present.

Put up these cases after three weeks.

(Kailash Prasad Deo, J.)

Sandeep/