

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Miscellaneous Appellate Jurisdiction]

M.A. No. 278 of 2018

1.Niyati Devi
2.Gudiya Devi
3.Rina Kumari
4.Raju Kumar
5.Uttam Kumar
6.Ruby Kumari

.... .. Appellant(s)

Versus

1.Sri Bijay Prasad
2.M/s Oriental Insurance Company Limited, Dhanbad.

.. .. Respondent(s)

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

.....
For the Appellant(s) : Mr. Rajiv Kr. Karn, Advocate.
For the Respondent(s) :

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04 / 12.04.2021. Heard, Mr. Rajiv Kr. Karn, learned counsel appearing on the instruction of learned counsel for the claimants/appellants, Mr. M. B. Lal.

The appellants are the claimants [1.Niyati Devi, 2. Gudiya Devi, 3..Rina Kumari, 4.Raju Kumar, 5.Uttam Kumar and 6.Ruby Kumari] before this Court and they have preferred this Misc. Appeal for enhancement of the award dated 18.09.2017 passed by learned District Judge-VIII-cum- MACT, Dhanbad in Title (M.V.) Claim Case No.313 of 2014 whereby the Oriental Insurance Company Limited has been fastened with the liability to pay compensation to the tune of Rs.5,30,000/- along with simple interest @6% per annum from the date of filing of the claim application i.e. 03.11.2014 till the date of indemnifying the award with liberty to the Oriental Insurance Company to recover the same from owner of the offending v ehicle i.e. Sri Bijay Prasad.

Learned counsel for the appellants has submitted that income of the deceased who was manufacturer of hand made shoes and chappals at main bazar, Lodna by the side of road, was earning Rs.12,000/- per month, but in absence of any documentary evidence, the learned Tribunal has considered the same to be RS.4500/- per month.

Learned counsel for the appellants has further submitted that in view of the judgment passed by the Apex Court in the case of **Chameli Devi vs. Jivrail Mian, reported in 2019 (4) TAC 724 SC**, wherein the Apex Court has considered the income of a carpenter in absence of any documentary evidence for an occurrence of the year, 2001 to be Rs.5,000/- per month, as such, this Court may also consider the income of the deceased who list his life on 13.01.2012 to be Rs.12,000/- per month.

Learned counsel for the appellants has further submitted that Future Prospect of the deceased has not been considered by the learned Tribunal. Further the amount of Rs.70,000/- under the conventional head has not been paid to the claimants in view of the judgment passed by the Apex Court in the case of *National Insurance Company Limited vs. Pranay Sethi*, reported in (2017) 16 SCC 680 at Para 59.8.

Learned counsel for the appellants has further submitted that interest has also been awarded on the lower side which ought to have been @7.5% per annum in view of the judgment passed by the Apex Court in the case of *Dharmpal and Sons Vs. Up State Road Transport Corporation*, reported in 2008(4) JCR 79 SC.

Learned counsel for the appellants has further submitted that there is delay of 107 days in preferring the instant Misc. Appeal and for condonation of the same, I.A. No.5943 of 2018 has been preferred by the claimants.

It appears that M/s Oriental Insurance Company Limited has been saddled with the liability and to recover the same from the owner of the offending vehicle.

Considering the same, let notice be issued to the owner of the offending vehicle/respondent No.1 [**Sri Bjay Prasad, S/o Sri Ganesh Prasad, House No.155, Sabji Bagan, Jharia, P.O + P.S. Jharia, District, Dhanbad, owner of Tempo No.JH-10A 2342**] under both process i.e. Registered Cover with A/D and Ordinary Post for which, requisites etc., must be filed within two weeks.

Further, this Court directs the appellants to serve two copies of the memo of appeal and impugned award as well as interlocutory application and other documents to learned counsel, Mr. Manish Kumar, who generally appears for the M/s Oriental Insurance Company Limited by tomorrow.

Put up this case in the monthly cause list of May, 2021.

Let name of Mr. Manish Kumar, learned counsel for the respondent/M/s Oriental Insurance Company Limited appear in the Cause List.

(Kailash Prasad Deo, J.)

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Sandeep/