

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 162 of 2018

.....
Jhalwa Devi & Others **Appellants**
Versus
National Insurance Company Limited & Others
..... **Respondents**

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

.....
For the Appellants : Mr. Arvind Kr. Lall, Advocate.
For the Respondents :
.....

03/05.04.2021.

Learned counsel for the appellants, Mr. Arvind Kr. Lall has submitted that instant appeal has been preferred against the award dated 30.06.2017 in Motor Vehicle Accident Claim Case No.08/2007 passed by learned District Judge-II-cum- MACT, Bermo at Genughat, whereby the appellants namely, (1) Jhalwa Devi (2) Prakash Mahto (3) Indu Kumari and (4) Anjani Kumari (appellant nos.2 to 4 are minor as such they are being represented through their mother and natural guardian i.e. Jhalwa Devi, appellant no.1) have been awarded compensation to the tune of Rs.6,49,600/- out of which Rs.50,000/- has already been paid by the National Insurance Company Limited as ad-interim compensation, as such, total amount of Rs.5,99,600/- along with interest @ 7% per annum from the date of filing of this case till the date of realization of the compensation amount.

Learned counsel for the appellants has submitted that deceased Dilip Kumar Mahto was a mason and the claimants have claimed his earning to be Rs.5,000/- per month, but the learned Tribunal without any documentary evidence has considered the same to be Rs.3,000/- per month contrary to the judgment passed by the Apex Court in the case of *Chameli Devi Vs. Jivrail Mian* reported in *2019 (4) TAC 724 SC*, where in absence of documentary evidence for a carpenter, who lost his life in the year 2001, the Apex Court has considered the monthly income of the deceased to be Rs.5,000/- per month as the carpenter may not get the work every day.

Learned counsel for the appellants has thus submitted that the

mason is also not get work every day, but his income may be considered to be Rs.5,000/- per month.

Learned counsel for the appellants has further submitted that future prospect has not been granted in view of the judgment passed by the Apex Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* reported in (2017) 16 SCC 680 paragraph-59.4.

Learned counsel for the appellants has further submitted that interest has been granted @ 7% per annum instead of 7.5% per annum in view of the judgment passed by the Hon'ble Apex Court in the case of *Dharampal and Sons Vs. U.P. State Road Transport Corporation* reported in 2008 (4) JCR 79 (SC).

Learned counsel for the appellants has further submitted that there is delay of 144 days in preferring the appeal and for condonation of the same, I.A. No.2673/2018 has been preferred, as such, notice may be issued to the Insurance Company as Insurance Company has been saddled with liability to indemnify the claimants.

Learned counsel for the appellants has further submitted that no analogous appeal has been preferred by the Insurance Company to shift the burden upon owner of the offending vehicle, as such, owner is not a necessary party in the present appeal.

Under the aforesaid circumstances, learned counsel for the appellants is directed to serve two copies of memo appeal, impugned award, interlocutory application and other relevant documents to learned counsel, Mr. Alok Lal, who normally appears on behalf of National Insurance Company Ltd.

On the joint prayer of the parties, put up this case on 23.04.2021.

(Kailash Prasad Deo, J.)

Jay/-