

**Chamni Devi and Anr Vs. The Manager the New India Assurance Company Limited and Ors**

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**Court :** Jharkhand

**Decided On :** May-03-2016

**Appellant :** Chamni Devi and Anr

**Respondent :** The Manager the New India Assurance Company Limited and Ors

**Advocate for Pet/Ap. :** Mr. K.L. Ojha

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI M.A. No. 35 of 2013 1. Chamni Devi, W/o Baijnath Yadav 2. Baijnath Yadav, S/o Late Bishun Yadav Both resident of village Tatijhari, PO and PS Bishnugarh, Distt. Hazaribagh Appellants Versus 1. The Manager, The New India Assurance Company Limited, Main Road, Ramgarh Cantt. PO and PS Ramgarh, Distt. Ramgarh 2. The Manager, National Insurance Co. Limited, Ranchi-Patna Road, Near Civil Court, Hazaribagh PO and PS Sadar, Distt. Hazaribagh 3. Beni Mistry, son of Baijnath Mistry, resident of Chenital, Jabalpur, M.P. at present Boddom Bazar, PO and PS Sadar, Dist. Hazaribagh 4. Md. Manuwar, son of Md. Gafar Mian, village Ghughuliya, PO Tetijharia, PS Bishnugarh, Dist. Hazaribagh Respondents ----- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- For the Appellants : Mr. Hemant Kr. Shikarwar, Advocate For the Respondent : M/s K.L.Ojha & S. Ojha, Advocates For the Respondent no. 2 : Mr. Alok Lal, Advocate For the Respondent no. 3 : Mr. Ashutosh Anand, Advocate ----- 12/Dated:03/05/2016 This appeal

has been directed for enhancement of the compensation amount of Rs. 99,712/- with interest @ 6 % per annum to be paid from 16.01.2007, in terms of the award/judgment passed by District Judge cum Presiding Officer Motor Vehicle Accident Claim Tribunal, Hazaribagh in Claim Case no. 76 of 2002.

2. Learned counsel has submitted that the compensation has been awarded by assessing that the deceased was earning Rs. 80/- per day whereas there is evidence on record that deceased earned Rs. 3000/- per month, by selling milk. It is urged that such assessment of income is contrary to the evidence on record however, even if, the income has been assessed on the basis of Rs. 80/- per day then, wages earned for 26 days should have been considered instead of 22 days. It is argued that the multiplier should have been made on the basis of age of the deceased who died when he was 22 years. That as per the ratio laid down in the case of Amrit Bhanu Shali & Ors. Vs. National Insurance Co. Ltd. reported in (2012) 4 SC116 the loss of dependency should have been calculated by applying the multiplier of 17. That the amount paid towards love and affection and funeral expenses should be enhanced by allowing a lump sum amount of Rs. 50,000/-. It is urged that the learned Tribunal has erred in holding that there was contributory negligence and such finding is not supported by any material evidence on record rather there is evidence to the effect that the offending vehicle i.e., Truck bearing registration no. PEM5321 was being driven rashly and negligently and it hit the right flank of the Trekker. In such fact situation -2- inference can be drawn that the Truck veered towards the wrong side of the road and dashed the right flank of the Trekker, which is indicative of the fact that there was negligence on the part of the truck driver and there was no contributory negligence on the part of the driver of the Trekker on which the deceased was travelling as a passenger. It is urged that awarding 80% of the total compensation to the deceased by observing that there was contributory negligence is against the evidence on record. It is urged that the interest should have been awarded from the date of filing of the application.

3. Mr. Hemant Kumar Chakarwarty, has submitted that Mr. K.L. Ojha, learned counsel for the appellant is unable to attend the court.

4. Mr. Alok Lal has submitted that it would be evident from impugned judgment and award that no liability has been fixed on National Insurance Company, however, it has been arrayed as a party in this appeal though the name of National Insurance Company was expunged as a party by the impugned judgment.

5. Heard. The finding of the learned Tribunal that there was contributory negligence of the driver of the trekker is not supported by any material evidence rather the witnesses examined by the claimants have stated that the Truck was being driven rashly and negligently. From the manner of occurrence as narrated, by the witnesses, it is evident that the Truck had hit the Trekker on the right flank which shows that it was the fault of the Truck driver, accordingly, it is held that there was no contributory negligence on the part of the Trekker. It is evident that the learned Tribunal has observed that since no document has been produced to show that the deceased had an income of Rs. 3000/- per month, hence, it would be justified to assess the income of the deceased at the rate of Rs. 80 per day which was the minimum wages prevalent during the year 2002. C.W. 1 Baijnath Yadav, father of the deceased, has stated that the deceased used to earn Rs. 100/- per day by selling milk and C.W.2, Premchand Gupta has stated that the deceased used to earn Rs. 100/- per day. In such circumstances, it is held that the deceased was earning Rs. 100/- per day and the income of the deceased is assessed at  $Rs. 100 \times 26 = Rs. 2600/$  per month considering the fact that the deceased would have at least got employment for 26 days. The deceased was a bachelor, hence, 50% of the income is deducted towards the expenses he would have incurred on himself, accordingly, the monthly income is assessed at Rs. 1300/- and the annual income at  $Rs. 1300 \times 12 = Rs. 15,600/-$ . In view of the ratio laid down in the case of Amrit Bhanu Shali (supra), the multiplier applicable is 17, since the deceased was 22 years old. Thus, the total income is assessed at  $Rs. 2,65,200/-$ . A lump sum amount of Rs. 50,000/- -3- is awarded towards loss of affection and love and the loss of dependency is computed at  $Rs. 2,65,200 + Rs. 50,000/- = Rs. 3,15,200/-$ . The respondent New India Assurance Company limited shall pay the aforesaid amount with interest from the date as mentioned in the impugned order till the date of payment, the amount, if any, paid under Section 140 shall be deducted.

6. The respondent-New India Assurance Company Limited shall pay the amount in the ensuing Lok Adalat, on 14.05.2016. (Amitav K. Gupta, J.) Tarun/-

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