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**(2008) 09 PAT CK 0150**

**Patna High Court**

**Case No:** MA No. 542 of 2001

Durga Devi and Others

APPELLANT

Vs

Smt. Suman Devi and Another

RESPONDENT

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**Date of Decision:** Sept. 16, 2008

**Hon'ble Judges:** S.C. Jha, J

**Bench:** Single Bench

**Advocate:** Ajay Kumar and Mukesh Pd. Singh, for the Appellant; S. Qaisar Hasan, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.C. Jha, J.

Heard. The order under challenge is dated 31.8.2001 and Award signed on 13.9.2001 passed by 7th Additional District Judge-cum-Motor Vehicle Accident Clams Tribunal VII, Muzaffarpur, in Claim Case No. 129/1999, wherein the respondent-United India Insurance Co. Ltd. was directed to make payment of Rs. 1,17,000/- (One lac seventeen thousand) alongwith 9% interest per annum to the applicants Durga Devi from the date of filing of the claim till realisation within one month of the order through account payee cheque.

2. The claimant Durga Devi has filed this appeal for enhancement of the awarded amount on the ground that income of her husband late Beni Mahto who was a Machine operator in Usha Telehoist Company Limited at Faridabad was not considered in right perspective.

3. As per Annexure-1, the deceased Beni Mahto who met accident and died on 13.10.1998, was in receipt of monthly wages in gross @ Rs. 6126.05, the details of which has been given in the Annexure-1 itself.

4. Heard learned counsel for the appellants and learned counsel for the respondents-United India Insurance Co. Ltd.

5. From the impugned order, it appears that the notional income @ Rs. 15,000/- (Fifteen thousand) and multiplier of 16 was considered for the purpose of quantum of award in view of the fact that the deceased at the time of his death was aged about 35 years of age and as such after deducting one third of the same, it comes to Rs. 10,000/-(ten thousand) which multiplied by 16 comes to Rs. 1,60,000/-(One lac sixty thousand) and adding Rs. 2,000/- as funeral expenses and Rs. 5,000/- as loss of consortium, in all it comes to Rs. 1,67,000/-(One lac sixty-seven thousand) out of which Rs. 50,000/-(Fifty thousand) has already been paid by the United Insurance Company earlier and so there was direction for payment of Rs. 1,17,000/- (One lac seventeen thousand) to the applicants.

6. As per submission of the learned counsel for the Insurance Company, the applicants-appellants have already been paid this remaining amount of Rs. 1,17,000/- (One lac seventeen thousand) and so, nothing is now due in terms of the orders of the learned Tribunal.

7. The learned counsel for the appellants has referred to the evidence of the claimant Durga Devi and one Raja Ram Baitha (A.W. 2) so as to show that the deceased Beni Mahto was an employee of Usha Telehoist Company Limited at Faridabad who happened to be a Machine operator there. Other witnesses are A.W. 3 Kaushal Baitha and A.W. 4 Sobhan Baitha on the point of accident, which is not under challenge here.

8. The only thing just to be considered is the quantum of compensation on the basis of materials brought on the record before the learned Tribunal.

9. The document in the form of Pay slip granted by the Factory Manager has also been brought on record so as to show that the deceased Beni Mahto was earning his livelihood by way of employment as Machine Operator in Usha Telehoist Co.Ltd. at Faridabad.

10. Of course, the basic pay and D.A. approximately comes to 47-48% of his gross salary, but that also comes to Rs. 34,000/- (Thirty-four thousand) per annum i.e. Rs. 2833 and odd per month.

11. The learned counsel for the appellants in all fairness has submitted that the claimant Durga Devi being a poor lady, now can not afford a period of litigation in case the case is being sent back to the Tribunal for deciding the matter afresh calling upon the claimant Durga Devi to bring some witnesses of the said factory, where the deceased Beni Mahto was employed. Rather, the claimant-appellant Durga Devi will console herself, in case there is quick and early payment of compensation even @ 30,000/- (Thirty thousand) per annum i.e. Rs. 2500/-(Two thousand five hundred) per month i.e. Rs. 83.33/- per day which may be said to be a

minimum amount which a skilled worker is expected to draw by way of his composite salary in course of his employment in a factory.

12. in the facts and circumstances, taking composite and practical view so as to enable the applicant-appellant Durga Devi to receive timely and early enhanced payment, this appeal is decided in favour of the claimants-appellants by directing the United Insurance Co. Ltd. to make payment at the rate treating the income of the deceased @ Rs. 30,000/- (Thirty thousand) per annum and deduction of one third of the same it comes to Rs. 20,000/- (twenty thousand) per annum and multiplying by 16 it comes to Rs. 3,20,000/- (Three lac twenty thousand) and adding 7,000/- (seven thousand) as stated above by way of funeral expenses and loss of consortium, it comes to Rs. 3,27,000/- (Three lac twenty seven) and deducting Rs. 1,67,000/- (one lac sixty seven thousand) it comes to Rs. 1,60,000/- (One lac sixty thousand) which amount shall be paid by the Insurance Company to the claimants-appellants by an account payee cheque within two months from the date of communication of a copy of this order, failing which interest @ 5% per annum shall be payable by the Insurance Company from the date of filing of this appeal till realisation of the amount.

13. So, taking the aforesaid facts into consideration and also keeping in mind the fact that the learned Tribunal has not considered the aforesaid submission in right perspective, so far oral and documentary evidence is concerned, the order impugned is set aside. In the result, the impugned order is set aside and the appeal is allowed with the aforesaid modification in the compensation amount.