

**(2000) 06 PAT CK 0019**

**In the Patna High Court**

**Case No : M.A. No. 259/99**

Oriental Insurance Company

APPELLANT

Vs

Malti Kuer and Others

RESPONDENT

**Date of Decision :** 22-06-2000

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 173

**Citation :** (2001) 3 PLJR 234

**Hon'ble Judges :** Gurusharan Sharma, J

**Bench :** Single Bench

**Advocate :** Ajay Kumar, for the Appellant; Shyam Sunder Sinha, for the Respondent

## Judgement

Gurusharan Sharma, J.—Heard the parties. In a motor accident, on 26.7.1993, one Birendra Pratap Singh @ Sita Ram Singh, aged about 43 years lost his life. He was dashed by a Bus (BR-3H-4791), while standing on the flank of road. His widow and five minor children filed Motor vehicles Claim Case No. 23 of 1993, u/s 166 of Motor Vehicles Act, 1988. It was claimed that the deceased possessed about 50-55 bighas agricultural land and was also doing contract work and thus he used to earn about Rs. 10,000/- per month. It was proved that bus was being driven rashly and negligently and, therefore, the accident in which Birendra Pratap Singh lost his life was caused on account of fault of driver thereof. The Tribunal assessed monthly income of the deceased at Rs. 8000/- and after deducting 1/3rd for his personal expenses, calculated annual dependency at Rs. 64,000/- and considering age of the deceased (43 years) 12 multiplier was applied and it was calculated at Rs. 7,68,000/-. Further Rs. 15,000/- was added for loss of consortium and Rs. 15,000/- for loss of estate and thus total amount of compensation was worked out at Rs. 8,00,000/-, payable to the claimants with 12% interest per annum from the date of filing of claim application till payment.

2. It appears that in support of the case that the deceased was also doing contract work, no documentary evidence was brought on record, except oral

evidence of C.W. 3, Rabindra Prasad, who claimed to be partner of the deceased in Sand Mines contract in the year 1987-88, whereas the accident took place 5 years thereafter in July, 1993. There was no evidence that in 1993 also deceased was doing any contract work. In my opinion, Tribunal erred in holding that the deceased was earning from contract work also. Even if deceased possessed 50-56 bighas agricultural lands, those lands are still available to the claimants and they are utilising usufructus thereof. However, it can not be denied that after death of Birendra Pratap Singh, his widow and minor children must be facing difficulties in Cultivating those lands properly and must have been forced to employ an experienced agriculturist to look after cultivation.

3. In the facts and circumstances of the present case, only a lump sum amount could have been awarded as compensation to the claimants. In my view a sum of Rs. 2,00,000/- is appropriate amount of compensation under the Act. Accordingly, impugned judgment and award are modified to the extent that instead of Rs. 8,00,000/-, claimants shall get Rs. 2,00,000/- only as compensation with 12% interest per annum thereon from the date of filing of claim application till payment.

4. The Appellant has deposited statutory amount under proviso to Section 173 of the Act for the purpose of this appeal. The claimants-Respondent 1 to 6 are permitted to withdraw the said amount, deposited by Challan No. 124 Related 28.4.1999, on proper verification and in accordance with law.