IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.75 of 2012

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1. Most. Sakuntla Devi W/o Late Sachitanand Prasad,
2. Parmanand Kumar S/o Late Sachitanand Prasad
3. Binod Kumar S/o Late Sachitanand Prasad
4. Alok Kumar S/o Late Sachitanand Prasad
   All are resident of mohalla- Baulia, P.S- Sasaram Town, District- Rohtas.

.... Appellant/s

Versus

1. Sri Harnaik Singh S/o Shri Jarnail Singh, resident of village- Dobem, P.S and District- Ambala, (Hariyana).
2. Oriental Insurance Company Limited through Branch Manager, Sasaram, District- Rohtas (Bihar).

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Bajarangi Lal, Adv.
For the Respondent/s : Mr. Ashok Priyadarsi

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 08-07-2015

Heard learned counsel for the appellants and learned counsel for the respondents.

In the present case, appellants are claimants making a prayer for enhancement of the compensation amount on the heading of salary, future prospects, funeral expenses and loss of consortium.

It appears from the record that the deceased Sachitanand Prasad was returning by cycle from the village Dilia and was going to his house at Baulia Road Sasaram, at about 7.00 P.M. when he reached in front of Nishant Cinema, a truck bearing registration no. PB-65-E-6788 came from his behind and dashed him, as the driver was plying the truck in rash and negligent manner, deceased Sachitanand Prasad fell down and received serious injuries on both of his legs, thigh and waist. After the accident, driver of the vehicle fled away from the place of accident and people of the locality assembled there, carried the injured to Sadar Hospital, Sasaram for his treatment where the statement of Sachitanand Prasad was recorded by the Sub-Inspector of Town Police Station and accordingly, Sasaram (Town) P.S. Case No. 77 of 2007 was registered against the driver of the vehicle. The deceased Sachitanand Prasad was admitted in the Sadar Hospital, Sasaram which advised to other hospital for his better treatment and on 16.2.2007, he was brought to the Nursing Home of Doctor Anil Kumar who referred to Varanasi for his better treatment and accordingly, deceased Sachitanand Prasad was bought to B.H.U., Varanasi in the night of 16.2.2007, under the compelling circumstances, he was admitted in the hospital of Doctor K.P. Agrawal at Varanasi and he remained under the treatment of Dr. Agrawal from 17.2.2007 to 6.3.2007 and thereafter, on 7.3.2007 the injured was brought to P.M.C.H., Patna and remained there till 12.5.2007 i.e. upto 67 days, thereafter from 13.5.2007 to 31.5.2007, i.e. for 19 days, he remained in Plastic Surgery Department of P.M.C.H., Patna but gradually the condition of deceased Sachitanand Prasad deteriorated and ultimately he died on 11.6.2007.

The Police submitted the charge sheet for offences under Sections 279, 337 and 338 of the Indian Penal Code, accordingly, an application was filed claiming that husband of appellant no. 1 was earning Rs. 10,000/- per month, the parties led their evidence before the Tribunal and the Tribunal framed altogether four issues, one of the issue is with regard to the entitlement of the compensation. The court recorded finding that due to negligence of the driver of the vehicle, the husband of appellant no. 1 received serious injury and that was the cause for his death and the court considered all aspects of the matter and assessed his income of Rs. 5,000/- per month and on that income, the calculation was made and the court arrived a finding to entitled Rs. 5,42,778/- including 7% interest.

Counsel for the appellants is not satisfied with the amount that has been calculated by the Tribunal, in turn the appellants have claimed that the Tribunal has wrongly treated the income of the husband of appellant no. 1 Rs. 5,000/- whereas the husband of appellant no. 1 was earning at least Rs. 10,000/- per month as he was engaged in the business of iron and cement. Further claim has been made that though earlier the Hon'ble Supreme Court is of the view that those who are engaged in self employment, will not be entitled to any compensation for future prospects but later on, the Hon'ble Supreme Court changed the policy, even those who are earning through self employment or engaged in private profession or business will also be entitled to compensation for future prospect. Further claim has been made that the amount that has been given under the heading of funeral expenses of Rs. 2,000/- is very lower side, it should be at least Rs. 5,000/- and also claimed that the amount given under the heading of loss of consortium and loss of Estate as Rs.5,000/-and Rs. 2,500/- in total Rs. 7,500/- is very lower side, but it should be as per Sarla Verma Case, not less than Rs. 25,000/.

In support of his submission, he has placed reliance on the judgments reported in (2009) 12 SCC 648 (Aparna Goyal v. Rakesh Goyal), (2009) 6 SCC 121 (Sarla Verma v. DTC), (2012) 6 SCC 421 (Santosh Devi vs. National Insurance Company Ltd.) and (2013) 9 SCC 54 (Rajesh v. Ranbir Singh).

Counsel for the Insurance Company has submitted that as he was not a salaried person in terms of Sarla Verma case, he is not entitled to any compensation for future prospects.

The subsequent judgments, Santosh Devi (supra) and Rajesh (supra) again came for consideration on future prospect in the case of Shashikala vs. Gangalakshmamma, reported in (2015) 0 Supreme(SC)280, the case has been referred as the Court found views taken in the aforesaid judgments is inflict with Sarla Verma (supra) as entitlement of compensation for future prospects is not available to those who are not salaried persons rather they are engaged themselves in independent profession and business, as the matter has been referred, will not stop this Court relying on the judgments dealing with the entitlement of compensation for future prospects.

In Sarla Verma case, the Hon'ble Supreme Court has considered the scope of entitlement of compensation under the heading of future prospects and held that those who are the salaried persons, have been fixed salary, they will be entitled to the compensation for future prospects but refused to grant compensation to those who are self employed having no fix salary but later on, in the judgment of Santosh Devi case, the issue came again for consideration about the entitlement for future prospects, in para 14 to 19. The Court in paragraph 18, has said that even though the person is self- employed or employed in unorganized sector earning would will be increased by 30% in course of time in total income and that view has been approved in the Rajesh vs. Rajbir Singh, reported in (2013) 9 SCC 54, in paragraph 8 will be relevant dealing with the entitlement of compensation for future prospects, is as follows:-

> **Para 8** "Since, the Court in Santosh Devi case actually intended to follow the principle in the

case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

As per the Rajesh case(supra), the deceased victim below 40 years will be entitled to 50% of the actual income of the deceased and the person who is between 40 to 50 years, will be entitled to 30% and in between 50–60 years, 15% will be additional amount of compensation for future prospects.

In this view of the matter, admittedly the age of the victim was about 50 years and as such, he will be entitled to compensation for future prospects 30% so much so, the counsel for the Insurance Company has not disputed the compensation for future prospects, is in a very lower side so it should be enhanced Rs. 5,000/- whereas for loss of consortium and loss of Estate, the enhancement is made of Rs. 25,000/-.

The court below is directed to make necessary amendment in the compensation amount in terms of order aforesaid and the Insurance Company is directed to pay the compensation in terms of amended compensation amount, within three months from the date of recalculation made by the Tribunal.

Accordingly, this petition is partly allowed.

(Shivaji Pandey, J)

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