

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.698 of 2012

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1. RINA DEVI, W/O LATE ANUJ KUMAR, R/O VILLAGE - NEW GODAM, (PAHSI LANE), P.S. KOTWALI, DISTRICT - GAYA

2. SHYAMA DEVI, W/O LATE KRISHNA SINGH, R/O VILLAGE - NEW GODAM, (PAHSI LANE), P.S. KOTWALI, DISTRICT - GAYA

3. ASMIT PRAKHAR, S/O LATE ANUJ KUMAR, R/O VILLAGE - NEW GODAM, (PAHSI LANE), P.S. KOTWALI, DISTRICT - GAYA

4. ATUL PRAKHAR, S/O LATE ANUJ KUMAR, MINOR SON RESIDING UNDER HER NATURAL GUARDIAN I.E. HER MOTHER (APPELLANT NO.1) R/O VILLAGE - NEW GODAM, (PAHSI LANE), P.S. KOTWALI, DISTRICT - GAYA

.... APPELLANT/S

VERSUS

1. RELIANCE GENERAL INSURANCE COMPANY LIMITED, THROUGH MANAGER CLAIM, HIMALYA HOUSE, (NEXT TO AMERICAN CENTRE) 8TH FLOOR, 38 B, JAWAHAR LAL NEHRU ROAD, KOLKATA - 700071

2. SURENDRA YADAV, S/O JAGLAL YADAV, R/O ATI SINARI, P.O BELHARI, P.S. BELAGANJ, DISTRICT - GAYA

.... RESPONDENT/S

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Sinha-Advocate

For the Respondent/s : Mr. Alok Kumar Shahi-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 13-05-2016

With the consent of the parties, the matter has been heard and is being disposed of at the stage of admission itself.

2. Appellants, who are claimants of deceased, Anuj Kumar, who died in a motor vehicle accident, have assailed the judgment dated 19.06.2012 and award dated 13.07.2012 passed by Motor Vehicle Accident Claims Tribunal-Cum-Adhoc Additional District Judge-II, Gaya in Claim Case No.79 of 2010/ 205 of 2010 on account of being dissatisfied with the quantum of claim amount Rs.10,49,500/- with 6% interest per annum from the date of

presentation of application till final realization.

3. As pleaded, it is evident from the claim petition that deceased, Sunil Kumar was crushed by an offending vehicle, a truck on 16.05.2010 while he was returning to his house over motorcycle. Injured was taken to A.N.M. Medical College, Gaya and from there to Magadh Hospital, Patna where he died during course of treatment. On the basis thereof, Gaya Sadar Civil Line P. S. Case No.163 of 2010 was registered against unknown. However, during course of investigation, the offending vehicle was duly located bearing registration no.JH-10P-4962 and the driver thereof, was chargesheeted. It has further been disclosed that at the time of death, deceased was aged about 34 years. He was railway contractor and was engaged in collection of parking charges of three wheeler stand at Gaya Station. He was also looking after his fishery and dairy form and was an assessee of Income Tax. Accordingly, Rs.4513047/- along with an interest at the rate of 9% was claimed for.

4. Driver was not made party, however, owner of the truck as well as Insurance Company have been added as opposite party. Owner of the truck had appeared and filed written statement wherein virtually, there happens to be an admission relating to the vehicle in question having met with an accident on the fateful day. However, denied that there was any sort of negligence at the end of

the driver. Apart from this, it has also been pleaded that he has been unnecessarily pleaded in this case in the background of the fact that the vehicle in question happens to be duly insured under opposite party no.2, Reliance General Insurance Company Limited.

5. Insurance Company has appeared and filed its written statement wherein apart from raising ornamental objections, also pleaded that instant claim petition happens to be bad on account of non-joinder of driver. Furthermore, it has also been pleaded that no accident took place by truck no.JH-10P-4962 as the F.I.R. was registered against unknown. Therefore, the claimant happens to be under stick obligation to substantiate over status of truck no.JH-10P-4962 offending vehicle. Furthermore, the Insurance Company also took protection in terms of Section 149 of the M.V. Act. It has further been pleaded that the claimant happens to be under obligation to substantiate their plea as, the Insurance Company controverted the age, source of income, status of the deceased and in the aforesaid background also submitted that applicant have shown exaggerated claim amount which they are not at all entitled for.

6. From the judgment impugned, it is evident that on the pleading of the rival parties, the learned Tribunal had framed following issues:-

1. Is the claim case maintainable?

2. *Did the accident take place near Raj Kashinath more under Civil line p.s on dated 16.05.10 at about 12.15 a.m. (night) due to rash and negligent driving of the truck driver bearing reg. no.JH-10p-4962?*

3. *Did the deceased Anuj Kumar died in the said accident or not?*

4. *Had the driver of the said truck valid driving license at the time of the accident?*

5. *Had the said truck insured with third party risk coverage at the time of accident?*

6. *Are the claimants entitled to get compensation? If so to what amount and against whom?*

7. *Had the deceased any monthly income?*

8. *To what relief or relieves if any the claimants entitled?*

And decided the issues against which no appeal has been filed on behalf of Insurance Company. However, having been dissatisfied with the quantum of compensation having been granted by the learned Tribunal, the claimants have preferred instant appeal for enhancement thereof.

7. It has submitted on behalf of appellant that from the judgment impugned, it is evident that learned Tribunal had not

properly exercised to ascertain the appropriate quantum of compensation and in likewise manner, failed to appreciate the rate of interest now being duly recognized by the Hon'ble Apex Court by prescribing 9% per annum.

8. To substantiate such plea, it has been submitted that learned lower Court had ignored that deceased at the time of death was 34 years old and at that very moment, was an Income Tax Assessee. Furthermore, the learned lower Court failed to appreciate that there was every possibility of having bright future prospect which should have been taken up by the learned Tribunal and as has been ignored, on account thereof, claimants have been deprived of just claim amount. To substantiate such plea, also relied upon 2013(9) SCC 54, 65, 2014(3) SCC 210.

9. Per contra, learned counsel for the respondent has submitted that the amount so determined by the learned Tribunal happens to be appropriate and in likewise manner, the rate of interest. Furthermore, it has been submitted that there could not be fixed income and so, it could not be ascertained in its conclusiveness in the background of status of deceased being a contractor as, it was not expected that at each and every Financial Year he would have succeeded in getting contract and further, there was any prospect of enhancement of income. It has also been submitted that whatever



source has been disclosed, happens to be temporary in nature. Consequent thereupon, identifying the notional income by the learned Tribunal happens to be in accordance with law. In likewise manner, the multiplier also happens to be. Furthermore, it has also been submitted that with regard to business of fishery as well as running and managing dairy farm, the claimants failed to substantiate the same by reliable evidence. So, submitted that the judgment and award impugned need not attract any kind of interference.

10. Because of the fact that instant appeal relates with enhancement at the end of claimants without having been challenged at the end of respondent. That being so, the matter is to be adjudicated upon only on the theme whether the appellants/ claimants would be entitled for enhancement of the claim amount.

11. From perusal of the judgment impugned, more particularly Para-17 thereof, it is evident that learned Tribunal happens to be confused over age of the deceased. At former part, it had incorporated the fact that witnesses have stated the age of the deceased to be 34 years, P.M. Report corroborates the same as 34 years but at latter part, had observed that age of 34 years of the deceased could not be relied upon and for that, based its finding on the evidence of PW-1, one of the applicants, who had stated that deceased was a Graduate and so, the learned Tribunal opined that as

matriculation certificate having date of birth has not been filed, therefore, age of 34 years should not be accepted. But, at the other end, failed to disclose as well as record its finding over age of the deceased and further, basis attracting/ justifying multiplier of 13.

12. In this regard, it is suffice to say that the steps taken up by the learned Tribunal happens to be inconsistent with the settle norms, as is found without any basis and foundation. Furthermore, the learned Tribunal failed to observe whether the material having been adduced on behalf of appellants/ claimants happens to be sufficient to substantiate the conclusive finding. As per claim petition, age of deceased has been shown as 34 years. PW-1, Reena Devi, one of the claimants/ wife at Para-4 of her examination-in-chief has stated his age as 34 years. During course of cross-examination, it is evident that aforesaid part has not been challenged nor controverted. PW-2 is Sunil Kumar, who also in Para-5 has stated age of deceased to be 34 year and who, also not been cross-examined on that very score. PW-3 is Ram Uday Yadav, who in Para-5 of his examination-in-chief had stated the age of deceased as 34 years and was cross-examined on that very score, who disclosed that he had estimated the age as 34 years on expectation. PW-4 is not at all relevant on that very score as he had not deposed relating to the same. Exhibit-4 is the post mortem report wherefrom the age of the deceased has been estimated 35 years,

approximately.

13. In the aforesaid facts and circumstances of the case, there was no material available on the record whereupon the learned Tribunal would have discredited the version of the witnesses relating to age of the deceased to be that of 34 years and on account thereof, multiplier of 13, as allowed by the learned Tribunal, is not at all found duly appreciable.

14. Now, with regard to assessment of the income, admittedly, though pleaded, but not at all properly substantiated during course of trial relating to earning from fishery as well as dairy form and in likewise manner, from the three wheeler stand. However, from the return of the Year 2007-08, it is evident that total gross income has been shown as Rs.1,87,958/-. The aforesaid return was filed and received at the end of Income Tax Department on 31.07.2008. The return of the Assessment Year 2008-09 was received by the Department on 31.03.2010 wherein gross income has been shown as Rs.2,64,870/- which happen to be an exhibit of the record. Neither the respondent has been able to challenge the same nor any kind of evidences have been adduced to defeat the same.

15. There happens to be basic principle while granting quantum of compensation to the effect that amount of compensation should be just and reasonable. It should not be a bonanza nor a source



of profit, but at the same time, it should not be a pittance. Furthermore, there should be an endeavour at the end of the Tribunal to put the dependants/ claimants in the pre-accidental position. Compensation is being paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the claimant, who has suffered, in the same position if the claimant had not suffered on account of the wrong and that happens to be reason behind that in ***R. K. Malik vs. Kiran Pal reported in (2009) 14 SCC 1***, it has been held under:-

“9. In cases of motor accidents the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

10. To put it simply-pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non pecuniary losses on account of, loss of happiness, pain, suffering and

expectancy of life etc. The Act provides for payment of "just compensation" vide section 166 and 168. It is left to the courts to decide what would be "just compensation" in facts of a case."

16. In ***Chanderi Devi and another vs. Jaspal Singh and others reported in (2015)11 SCC 703***, it has been held:-

"10. We have heard the learned counsel for the parties & perused the record. The courts below have considered the evidence produced on record by the appellants, particularly the passport, salary certificate, income-tax certificates and whether or not the deceased was employed in Germany at the time of the accident to ascertain the annual income of the deceased at the time of his death and the courts below found that the same cannot be assessed on the basis of the documents referred to above. The High Court found it to be just and reasonable to take the income of the deceased at the time of his death at Rs.8,333/- per month, which in our considered view is definitely on the lower side keeping in view that the deceased was employed as a cook in an Indian restaurant in Germany. At the same time, to consider the income of the deceased at Rs.62,975/- per

month(i.e. 1145 Euros) as contended by the appellants to calculate the loss of dependency of the appellants would definitely be on the higher side. Hence, on considering the facts, circumstances of the case and plausibly estimating as to how much a cook of similar nature as the deceased would have earned in India in the year 2006, we are of the view that it would be just and reasonable for us to ascertain the income of the deceased at the time of his death at Rs.15,000/- per month. By adding 50% of the actual salary as provision for future prospects, the income of the deceased to be considered for calculation of loss of dependency is Rs.22,500/- per month i.e. Rs.2,70,000/- per annum. Deducting 10% towards income tax the net income comes to Rs.2,43,000/- per annum. Further, deducting 1/3rd towards personal expenses and applying the correct multiplier as per the legal principles laid down by this Court in the case of Sarla Verma (2009)6 SCC 121, the loss of dependency would come to Rs.25,92,000/- [(Rs.2,43,000/- (-) 1/3rd of Rs.2,43,000/-) x 16].

11. *Further, we award Rs.1,00,000/- towards*

loss of estate to the appellant- wife as per the legal principles laid down by this Court in the case of Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation (2015)2 SCC 764, Rs.25,000/-towards funeral expenses and Rs.1,00,000/- towards loss of consortium to the appellant-wife as per the principles laid down by this Court in the case of Rajesh & Ors. v. Rajbir Singh & Ors. (2013)9 SCC 54. Further, an amount of Rs.1,00,000/- is awarded to the appellant-minor towards loss of love and affection of her father(deceased) as per the decision of this Court in the case of Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.[(2013)9 SCC 166)].

17. In ***Kalpanaraj and others vs. Tamil Nadu State Transport Corporation reported in (2015) 2 SCC 764***, it has been held:-

“8. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However,



the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid down by this Court in the case of National Insurance Company Ltd. v. Indira Srivastava and Ors. [(2008) 2 SCC 763]. The relevant paragraphs of the case read as under: (SCC pp. 768-70, paras 14-15)

“14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathy and Ors. 2007 AIHC 1921 (Mad) wherein it was held: (AIHC pp. 1927-28, para 7)

‘7.....Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they



are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during

his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.'

15. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma and Ors. v. Secretary to Government of India 2002 AIHC 2633, Ministry of Telecommunications and Ors. holding (AIHC p. 2636, para 12).

12....In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of



his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased was getting Rs.1,401/- as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case ((1999)1 SCC 90). The Supreme Court in Concord of India Insurance Co. v. Nirmaladevi and Ors. 1980 ACJ 55 (SC) held that determination of quantum must be liberal and not niggardly

since law values life and limb in a free country 'in generous scales'." (Emphasis supplied)

9. *In the light of the principle of law laid down by this Court in the Indira Srivastava case mentioned supra, we are of the opinion that the High Court erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased out of the annual income earned from his occupation mentioned in the income tax return submitted for the relevant financial year 1994-1995.*

10. *As per the Income Tax return of the financial year 1994-1995 produced on record, the deceased was earning [pic]88,660/- per annum or [pic]7330/-per month. Further, the deceased being 46 years of age at the time of death, he is entitled to 30% increase in the future prospects of income as per the legal principle laid down by this Court in Santosh Devi v. National Insurance Company Ltd. and Ors.[(2012) 6 SCC 421]"*

18. Thus, identifying the income of the deceased on the basis of the return submitted at his end, the same is found Rs.2,64,870/- per annum, which should be deducted to the extent of

10% towards income tax, as well as 1/3rd, over personal expenses. The net resultant comes to Rs.1,58,922. Considering the age of the deceased to be that of 34 years, multiplier of 16 is permissible, whereupon total amount goes to Rs.25,42,752/-.

19. The aforesaid amount will carry an interest at the rate of 9% per annum from the date of presentation of the petition till final payment as has been conclusively held and followed after *Uphar Case*. Apart from this, claimants would be entitled to get Rs.1,00,000/- towards loss of estate, Rs.25,000/- as funeral expenses and Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- in favour of minor daughter towards love and affection of her father. The amount so paid, if any, shall be deducted there from. Consequently, Appeal is allowed. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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