

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.855 of 2012

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1. Shankar Rai S/O Late Ram Chela Rai Resident Of Village Mirzapur, P.O. Mirzapur Khurd, P.S. Janta Bazar, District Saran.
 2. Dipu Kumar S/O Sri Shankar Rai Resident Of Village Mirzapur, P.O. Mirzapur Khurd, P.S. Janta Bazar, District Saran.
 3. Kumari Priya D/O Sri Shankar Rai Resident Of Village Mirzapur, P.O. Mirzapur Khurd, P.S. Janta Bazar, District Saran.
 4. Priyanka Kumari D/O Sri Shankar Rai Resident Of Village Mirzapur, P.O. Mirzapur Khurd, P.S. Janta Bazar, District Saran.

.... Appellant/s

Versus

1. United India Insurance Company Ltd., Plaza Complex, Municipal Chowk, At & P.O. Chapra, P.S. Chapra Town, District Saran.
2. Mintu Rai S/O Chandeshwar Rai Resident Of Village Lodipur, P.O. Chirand, P.S. Doriganj, District Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
 For the Respondent/s : Mr. Ashok Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 28-04-2016

Appellants/claimants, who are husband as well as children respectively of Late Indu Devi who died in a motor vehicle accident, have preferred the instant appeal against the judgment dated 15.09.2012 and award dated 27.09.2012 passed by District Judge-cum-Motor Vehicle Accident Claims Tribunal, Saran at Chapra in Claim Case No. 33/2011 allowing the claim petition and identifying Rs. 1,54,500/- as claim amount carrying interest @ 6% from the date of institution till final payment which the Respondent No.1/O.P., United India Insurance Company Limited has been directed to pay deducting amount of Rs. 50,000/- so paid in lieu of Section 140 of

Motor Vehicle Act, 1988.

2. Appellants/claimants filed claim petition disclosing the fact that on 22.02.2011 at about 3:30 p.m. while the deceased, Indu Devi was crossing the road in Mohalla-Bhagwan Bazar, Main Road, Near Clinic of Dr. Kalpana Sharma, a truck bearing registration no. UP52B 5275 being driven in rash and negligent manner crushed the deceased, Indu Singh and on account thereof, she died on the spot, for which Bhagwan Bazar PS Case No.19/2011 had been registered.

3. It has further been disclosed that the deceased was aged about 40 years and was engaged in domestic affairs. Furthermore, the deceased was engaged in dairy project and on account thereof, was earning Rs. 10,000/- per month. On account thereof, the claimant asked for a compensation of Rs.10 Lacs with a further interest @ 12%. Owner as well as Insurance Company were pleaded as the Opposite Parties.

4. Owner had appeared and filed WS wherein apart from raising ornamental objection, it has been pleaded that exorbitant amount has been shown as compensation without any substantive grounds. Furthermore, it has been pleaded that during course of accident, the vehicle in question was duly insured under United India Insurance Company Limited and on account thereof, it is the Insurance Company who would be liable to pay the compensation

amount.

5. The Insurance Company also appeared and filed WS. There happens to be specific plea in the WS that owner had not disclosed the name of the driver so much so, also failed to disclose whether the driver was possessing a valid driving license. It has also been pleaded that the same has purposely been withheld by the owner keeping in mind that had there been disclosure, then in that event, plying of the vehicle without proper driving license by the driver will indicate breach of policy and on account thereof, Insurance Company would not be liable to indemnify the owner relating to payment of compensation amount going to be granted by the Tribunal.

6. It has also been pleaded that the deceased died on account of her own negligence. Had the deceased taken proper care and caution while crossing the road, she would not have met with the accident. In likewise manner, it has also been pleaded that vehicle in question was not being rashly as well as negligently driven and so, neither the owner nor the Insurance Company could be held responsible for the death of the deceased. It has also been pleaded that applicants are under obligation to place before the Tribunal the relevant documents, that means to say, C.C. of First Information Report, C.C. of Charge-sheet, case diary, driving license, inquest report, postmortem report and further all documents relating to policy.

It has also been pleaded that exorbitant amount has been shown by the applicants which the applicants are bound to substantiate. Furthermore, it has also been pleaded that Insurance Company reserves its right to pray and seek permission in terms of Section 170 of the Motor Vehicle Act in case, the Insurance Company perceives collusion in between the owner and claimants.

7. On the rival pleading, the learned Tribunal had framed the following issues:-

- I. Is the claim case as framed maintainable?
- II. Have the claimants got valid cause of action?
- III. Whether the deceased died in the alleged accident due to rash and negligent driving of the offending vehicle bearing no. UP52B-5275?
- IV. Whether the claimants are entitled to receive compensation, if so, to what extent and from whom?

and decided the same in a manner as indicated above.

Hence this appeal.

8. During course of conduction of trial, altogether three witnesses were examined on behalf of appellants/claimants, PW-1, Shankar Rai (husband as well as one of the claimants), PW-2, Dipu Kumar, one of the applicants and PW-3, Sanjay Rai, an eyewitness to occurrence as well as had also exhibited Ext-1, C.C. of FIR , Ext-2, photo copy of postmortem report, Ext-3, photo copy of Insurance Policy, Ext-4, Charge-sheet, Ext-5, TDS Form-16 relating to applicant, Shankar Rai, Ext-6, driving license, Ext-7, pay slip relating

to Shankar Rai. Neither any oral nor any kind of documentary evidence were adduced either on behalf of owner or Insurance Company.

9. From the judgment impugned, it is evident that learned Tribunal had dealt with the issue no. III and IV under para-9, 10 of the judgment wherein no specific finding has been given with regard to accident rather the manner wherein judgment impugned has been dealt with suggests that the learned Tribunal had found the same undisputed. In likewise manner, with regard to quantum of compensation, the learned Tribunal identified the deceased to be non earning member in absence of documentary evidence to substantiate the pleading and further, identified the notional income of Rs. 15,000/- per annum as well as allowed multiplier of 15 coming to Rs. 1, 50,000/- (deducting 1/3rd) as well as allowed funeral expanse of Rs. 2000/-, loss of estate of Rs. 2,500/- totalling Rs. 1,54,500/- out of which Rs. 50,000/- has already been paid under Section 140 of the M.V. Act on 17.02.2012 and so, United India Insurance Company has been directed to pay the remaining amount of Rs. 1,04,500/- (Rs. One Lac four thousand and five hundred only) with an interest of 6% per annum.

10. It has been submitted on behalf of appellants that for all the practical purpose, sticking for documentary evidence to

substantiate the plea of earning is not at all warranted nor the Act so requires. Furthermore, it has been submitted that two witnesses, PWs-1 and 2 have categorically stated that apart from giving her service to the family, the deceased was also engaged in dairy work from which she was earning Rs. 10,000/- per month and as the aforesaid factum has not been challenged during course of cross-examination, therefore, should not have been brushed aside in casual manner. It has further been submitted that the deceased was not falling above 40 years whereupon, the learned Tribunal wrongly allowed multiplier of 15.

11. On the other hand, there happens to be conclusive evidence that the deceased was aged about 40 years and so multiplier of 16 should have been allowed. Apart from this, it has also been submitted that the Hon'ble Apex Court times without number had considered the status of a house-wife regarding whose death claim petitions are being filed and in likewise manner, made detailed classification of the heads whereunder claims are to be properly identified as well as directed to be paid. The learned Tribunal failed to consider the aforesaid aspect and for that relied upon *(2009) 6 SCC 121*, *(2012) 6 SCC 421*, *(2013) 9 SCC 54* as well as *65*.

12. On the contrary, learned counsel for the Insurance Company resisted the submissions made on behalf of appellants and



submitted that the claim amount should not be calculated in hypothetical manner rather it should be calculated and awarded on the basis of concrete material brought up on record by the applicants to justify the claimed amount. So far this particular case is concerned, it has been submitted on behalf of learned counsel for the respondents that admittedly, the deceased was an illiterate person as, nowhere it has been pleaded by the appellants/claimants that she was literate. Furthermore, apart from claimants, none of independent witness has turned up to corroborate that the deceased was engaged in dairy project and was earning Rs. 10,000/- per month. Apart from this, it has also been submitted that appellant/claimant/ No.1, Shankar Rai himself happens to be in police service. He had not deposed nor there happens to be such kind of averment that deceased was not residing with him. It has also not been disclosed that deceased was living at her native place away from her family members and was engaged in a dairy project. Therefore, substantiating the plea of engagement of deceased under dairy project is not at all found above board.

13. With regard to finding recorded by the learned Tribunal on the score of the claimed amount, happens to be just, legal and proper and to substantiate the same, relied upon the case of *Ponnumany alias Krishnan and Anr. v. V.A. Mohanan and Ors* as reported in *AIR 2008 SC 2014* and in the case of *Laxmi Devi v.*

Mohammad Tabbar reported in (2008)12 SCC 165 and submitted that the appeal is fit to be dismissed.

14. Instant appeal is for enhancement of claim amount along with interest whatever been awarded by the learned Tribunal. Death of a house wife is taken up in casual manner, though her status happens to be that of a home-maker. She is the person who nourishes the family, gives service to the family, always happens to be available round the clock whenever there happens to be her need and the aforesaid activities has been perceived by the Hon'ble Apex Court while taking into account while adjudicating of grant of compensation relating to death of a house wife in a motor vehicle accident. Though it happens to be a new jurisprudential invention at the end of Hon'ble Supreme Court but gradually, it has been taken note of and recently in the case of *Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar* as reported in (2015) 4 SCC 237, it has been elaborately dealt with in following way:-

11. Recognizing the services of the home maker and that domestic services have to be recognized in terms of money, in *Arun Kumar Agrawal & Anr. vs. National Insurance Company Ltd.* [(2010) 9 SCC 218], this Court has held as under: (SCC p. 246, paras 62-63)

"62. The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain

a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

63. Household work performed by women throughout India is more than US \$612.8 billion per year (Evangelical Social Action Forum and Health Bridge, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation".

15. The facts of the aforesaid case discloses that against the deceased, apart from a home-maker, it was also pleaded that she was earning from local traditional embroidery work which the learned Tribunal disbelieved on account of absence of document substantiating the same. In para-10, it has been held as follows:-

10. Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the

family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the home maker, it is reasonable to fix her income at Rs.3,000/- per month.

16. Then the calculation has been done in following manner as is incorporated under para-13 thereof,

13. In order to award just and reasonable compensation income of the deceased is taken as Rs.3000/- per month. Deducting 1/3rd for personal expenses contribution of the deceased and the family is calculated at Rs.2,000/- per month. At the time of her death deceased Jayvantiben was aged about 22 years, proper multiplier to be adopted is 18. Adopting multiplier of 18, total loss of dependency is calculated at Rs.4,32,000/- (Rs.2000 x 12 x 18). With respect to the award of compensation under conventional heads, tribunal has awarded Rs.5,000/- towards loss of estate and Rs.3,000/- towards funeral expenses totaling Rs.8,000/-. The High Court has awarded conventional damages of Rs.15,000/- i.e. Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The courts below have not awarded any compensation towards loss of consortium and towards love and affection. In *Rajesh vs. Rajbir Singh*. [(2013) 9 SCC 54], and *Jiju Kuruvila vs. Kunjamma Mohan*. [(2013) 9 SCC 166], this Court has awarded substantial amount of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection. Following the same, in the case in hand, Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children. Towards loss of estate and funeral expenses, award of compensation of Rs.15,000/- awarded by the High Court is maintained. Thus, the claimants are entitled to a total compensation of Rs.6,47,000/-.

17. Thus, adopting the same way of calculation as held and concluded in *Jitendra Khimshankar Trivedi (supra)*, it is held that the income of deceased Indu Devi should be assessed 3000/- and further deducting 1/3rd, so identified under personal expenses, the contribution to the family by the deceased is calculated as Rs. 2000/- per month. At the time of accident, deceased was aged about 40 years and so multiplier so admissible happens to be 15 and on account thereof, it comes to Rs. 2000 x 12 x 15 = 3,60,000/-. The learned Tribunal had awarded Rs. 2000/- as funeral expense and Rs. 2500/- against loss of estate which is being enhanced as loss of estate, Rs. 10,000/- and Rs. 5000/- towards funeral expense, that means to say totality Rs. 15,000/- on that very score. The learned Tribunal had not awarded any compensation towards loss of consortium as well as towards love and affection. Accordingly, Rs. 1 Lac is awarded towards loss of consortium and Rs. 1 Lac towards loss of love and affection to the minor children. Thus, appellant is entitled for a total sum of Rs. 5,75,000/- with an interest @ 9% per annum as identified thereunder. The amount, whatever been paid at an earlier count will be subject to deduction with a direction to the Insurance Company to pay the residuary along with interest as indicated above. The amount shall be paid within three months. Citation whatever been made on behalf of respondent Insurance Company is not applicable in the facts

and circumstances of the case.

18. In the result, the instant appeal is allowed in the above terms. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Patna High Court
April 28th 2016
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