

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.216 of 2016**

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The Branch Manager New India Assurance Co. Ltd., New Delhi, N.H. 31, Near  
Caltex Petrol Pump, Begusarai. .... Appellant.

Versus

1. Raj Kumari Devi, wife of Parma Nand Singh.
2. Parma Nand Singh, son of Late Bhullo Singh.
3. Both resident of village Mohanpur, Police Station Ballia, District Begusarai.
4. Maa Shakti Auto Service, C/o- Parma Nand Agrawal, at Bithan, Police Station  
Bithan Bazar, District Samastipur
5. Ashif Ali Khan, son of Jahangir Khan, resident of Gobindpur, Police Station  
Kalyanpur, District Samastipur.

.... Respondents.

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**Appearance :**

For the Appellant : Mr. Arun Kumar Singh, Advocate.

For the Respondent Nos.1 & 2 : Mr. Yogesh Kumar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**  
**ORAL JUDGMENT**

**Date: 27-09-2018**

Heard learned counsel for the appellant and  
learned counsel for the respondent nos.1 & 2 on this  
miscellaneous appeal.

**2.** This miscellaneous appeal has been preferred against the judgment dated 03.09.2015 and award dated 11.09.2015 passed by the Additional District Judge-VII-cum-M.V.A.C.T., Muzaffarpur (hereinafter in short as the 'Tribunal') in Claim Case No.30 of 2009, whereby the learned Tribunal allowing the claim case directed the appellant-New India Assurance Co. Ltd to pay compensation of Rs.18,19,450/- along with interest at the rate of 8% per annum from the date of filing of the claim case till its realization.



**3.** The factual matrix of the case is that claimants filed Claim Case bearing M.A.C.T.No.30 of 2009 under Section 166 of M.V. Act for awarding compensation on account of death of Subodh Kumar with the case in succinct that on 20.06.2009 a tanker lori, bearing registration no.BR-9C-7424, being rashly and negligently driven by its driver, hit said Subodh Kumar, who was driving Hero Honda motorcycle at Kankaul at 200 yards to North Begusarai-Manjhaul Pitch Road inflicting grievous injury to him. The nearby people rushed him to Sadar Hospital, Begusarai. The doctor attending referred him to Patna Medical College and Hospital for better treatment but in midway he succumbed to his injury. Regarding the said accident Begusarai Muffasil P.S. Case No.214 of 2009 was instituted. The deceased was aged about 26 years and 5 months at the time of accident. He was an Assistant Accountant in Jay Prakash Associate and used to earn Rs.9225/- per month from said vocation.

**4.** All the parties put their appearance in the case but only opposite party no.1-New India Assurance Co. Ltd and opposite party no.3 filed separate written statements. Claimants adduced ocular and documentary evidence in buttress of their case.



5. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the appellants have preferred this appeal.

7. It is submitted by learned counsel for the appellant that though the gross salary of the deceased was Rs.9225/- per month but his net salary was to the tune of Rs.8635/- and for computation of the loss of dependency the net salary of the deceased is to be considered but the learned Tribunal has wrongly considered the gross salary of the deceased. He has relied upon the verdict of the Hon'ble Apex Court rendered in the case of **Asha and others Vs. United India Insurance Company Limited** and another reported in **2004 ACJ 448** in buttress of his aforesaid submission. It is further submitted that the deceased was not permanent salaried person but simple salaried person. Hence the claimants are not entitled to get future prospect at rate of 50% of the income of the deceased rather at the rate of 40% his income, but the learned Tribunal has wrongly granted the future prospect at the rate of 50%. It is further submitted that as the deceased was aged about 26 years and



5 months at the time of accident, the multiplier of 17 ought to have been adopted to work out the amount of compensation but the learned Tribunal wrongly adopted the multiplier of 18. It is also submitted that in view of the decision of the Hon'ble Apex Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors** reported in **2017 (4) PLJR 261 (SC)**, only Rs.15,000/- in the head of funeral expenses and Rs.15,000/- in the head of loss of estate ought to have been awarded but the learned Tribunal has wrongly awarded Rs.25,000/- in the head of funeral expenses and Rs.1,00,000/- in the head of care for parents. Hon'ble Apex Court has not allowed any such allowances in the aforesaid head. It is also submitted that the deceased was a bachelor, hence the parents of the deceased are not entitled to get any consortium but the learned Tribunal has wrongly awarded Rs.1,00,000/- to the claimants under the said head.

**8.** On the other hand, learned counsel for the respondent nos.1 & 2 submitted that the deceased was aged about 26 years 5 months at the time of accident and was an Assistant Accountant working in Jai Prakash Associates Limited and was in regular cadre, hence he was a permanent



employee and for computation of the loss of dependency 50% of the income of the deceased is to be awarded as future prospect and the aforesaid future prospect awarded by the learned Tribunal is just and proper. It is further submitted that the deceased used to get gross salary of Rs.9225/- which ought to have been taken into account for computation of the loss of dependency and not the net salary. It is further submitted that the compensation awarded in another heads by the learned Tribunal is proper, reasonable and adequate.

9. From perusal of the record, it appears that the deceased was an Assistant Accountant in Jai Prakash Associates in regular cadre, and was posted at Srisailam Tunneling Project, Nalgonda District, Andhra Pradesh. From perusal of the salary certificate Ext.15/A, it appears that the deceased used to earn Rs.9225/- as gross salary while his net salary was Rs. 8635/-. Hon'ble Apex Court in the case of **Asha and others (supra)** has been pleased to rule that net salary of the deceased, after making deductions, has to be taken into consideration while computing loss of dependency of the claimants. Hence, in view of the aforesaid verdict of Hon'ble Apex Court net salary of the



deceased to the tune of Rs.8635 per month and Rs. 1,03,620/- per annum is taken into consideration as income of the deceased. As the deceased was aged about 26 years 5 months at the time of accident, hence as per the verdict of the Hon'ble Apex Court rendered in the case of **Pranay Sethi (supra)** 50% of the income of the deceased i.e. Rs.51,810/- is awarded towards the future prospect. On addition of the aforesaid heads, the loss of income comes to tune of Rs.1,55,430/- per annum. Admittedly, the deceased was bachelor at the time of accident, hence half of the income of the deceased i.e. Rs. 77,715/- is deducted towards personal expenses of the deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to the Rs.77,715/ per annum-. As the deceased was aged about 26 years and 5 months at the time of his death, hence multiplier of 17 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the Rs.13,21,155/-. Besides the aforesaid amount of compensation, in view of the judgment of Hon'ble Apex Court rendered in the case of **Pranay Sethi (supra)**, as the deceased was bachelor hence Rs.15,000/- is awarded towards funeral expenses and Rs.15,000/- is awarded



towards loss of estate and as per verdict of Hon'ble Apex Court rendered in **Magma General Insurance Co. Limited Vs. Nanu Ram @ Chuhru Ram and others** reported in **(2017) 16 SCC 680** as the deceased was Bachelor and claimants happen to be parents of deceased hence Rs. 80,000/- (Rs. 40,000/-) payable to each of the respondent no. 1 and 2 is awarded as filial consortium. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the Rs.14,31,155/-. Besides the aforesaid amount of compensation, interest at the rate of 8% per annum is awarded on the aforesaid compensation from the date of filing of the claim case till its realization.

**10.** In the facts and circumstances, the appellant-New India Assurance Company Limited is directed to pay the aforesaid amount of compensation along with interest within two months from the date of this judgment after deducting the amount, if any already paid by it to the claimants as per the direction given in the award.

**11.** Accordingly, this appeal is disposed of with the aforesaid modification in the judgment and award. Let the statutory amount deposited by the appellant be sent down to the learned Tribunal through cheque in equal



amounts in favour of the claimants towards adjustment in the awarded amount. It is informed by learned counsel for the appellant that the account of the appellant has been freezed vide order dated 13.04.2018 passed in Execution Case No.4 of 2016 which is hereby defreezed.

**(Prakash Chandra Jaiswal, J.)**

Trivedi/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 04.10.2018 |
| Transmission Date | 04.10.2018 |

