

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.209 of 2012**

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1. Laxmi Pariyar, W/o Late Rajesh Nepali
2. Saru Nepali, Minor Son Under Guardianship of her mother  
Appellant No.1 R/o Vill-Demanal, P.S.-Hethauda, Distt-  
Makwarpur(Nepal)
3. Rahul Nepali Minor Son Under Guardianship Of Her Mother  
Appellant No.1 R/O Vill-Demanal, P.S.-Hethauda, Distt-  
Makwarpur(Nepal)
4. Sheetal Nepali Minor Daughter Under Guardianship Of Her  
Mother Appellant No. R/O Vill-Demanal, P.S.-Hethauda, Distt-  
Makwarpur(Nepal)

... .. Appellant/s

Versus

1. Shree Rama Road Ways Mathura Road Road Faridabad (Tanker Owner)
2. Reyaz Ahmad S/o Md. Raza At + P.O.-Ujjain Tola, P.S.-Bettiah, Distt-West  
Champaran
3. IFFCO-TOKIO General Distribution Ltd Reg. Office-34, Neharu Place, Delhi  
(Tankar)
4. Divisional Manager The Oriental Insurance Co.Ltd Motijheel, Muzaffarpur,  
Bihar
5. Gomal Ram S/o Manish Ram R/O Vill-Murgiya Tola, P.S.-Bettiah, Distt-East  
Champaran

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Sunil Kumar Pandey             |
| For Respondent no.2 | : | Mr. Sanjay Singh, Advocate.        |
| For Respondent no.3 | : | Mr. Durgesh Kumar Singh, Advocate. |
| For Respondent no.4 | : | Mr. Bimlesh Kumar Jha, Advocate.   |

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA  
JAISWAL**  
**ORAL JUDGMENT**  
**Date : 04-12-2018**

Heard learned counsel for the appellants and  
  
learned counsel for the respondents on this miscellaneous  
  
appeal.

2. This miscellaneous appeal has been preferred  
  
against the judgment dated 30.11.2011 and award dated  
  
16.12.2011 passed by Fast Track Court-V cum Additional



Motor Accident Claim Tribunal, Muzaffarpur in Claim Case No. 28 of 2008 whereby the learned Tribunal allowing the claim petition directed the respondent nos.3 & 4 to pay final compensation to the tune of Rs. 1,29,500/- along with the interest at the rate of 6% per annum from the date of filing claim case till its realization to the claimants in equal proportion.

**3.** Factual matrix of the case is that claimants filed Claim Case No. 28 of 2008 under Section 166 of the M.V. Act for awarding compensation on account of death of Rajesh Nepali @ Rajesh Pariyar @ Ganesh Bhai in Motor Vehicle Accident with the case in succinct that said Rajesh Nepali @ Rajesh Pariyar @ Ganesh Bhai was the driver of the tanker bearing registration no. HR-38L-3014. On 22.12.2007 at around 1:00 A.M. while he was on the way to Balagu (Nepal) from Barauni (India) through N.H.-28, he met an accident near Village – Nariyar, P.S.- Motipur, District - Muzaffarpur by truck bearing registration no. BR-06G-2676 coming from Motihari Side in rash and negligent manner resultantly both the vehicles collided with each other and the said driver died on the spot in the said accident. The aforesaid accident took place due to rash and negligent driving of the offending truck by its



driver at the relevant time of accident. The deceased used to earn Rs. 3000/- per month as salary and Rs.100/- per day as khuraki from the said vocation. He was aged about 32 years at the time of accident.

4. Opposite parties put their appearance in the case and filed their separate written statements. Claimants also adduced ocular as well as 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 the earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award, the claimants have preferred the present miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the deceased was the driver of the tanker and used to earn Rs.3000/- per month as salary and Rs.100/- per day as khuraki and the appellants have substantiated the aforesaid income of the deceased by adducing ocular and documentary evidence in buttress of their case, but the learned lower court ignoring the aforesaid evidence of the appellants has wrongly assessed the income of the deceased Rs.15000/-



per annum as notional income. It is also submitted that the deceased was a fixed salaried person, hence 40% of the aforesaid income of the deceased ought to have been awarded as future prospect but learned Tribunal has wrongly ignored the same. It is further submitted that the deceased has died leaving behind him his four legal representatives and dependents, hence 1/4th of the income of the deceased ought to have been deducted as personal expense of the deceased but the learned Tribunal has wrongly deducted 1/3rd of the income of the deceased. It is further submitted that learned Tribunal has wrongly awarded Rs.9500/- only under other traditional heads which is very paltry and meager. It should be Rs. 70000/- in view of the verdict of the Hon'ble Supreme Court rendered in National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (4) 261 PLJR.

8. On the other hand, learned counsel for the respondent nos.3 and 4 submitted that the accident took place due to negligence of the drivers of the truck and the tanker both as there was head on collision and both the vehicles were found on the mid of the road in the accident, hence drivers of both the vehicles were liable for the said accident. It is further submitted by learned counsel for the respondents that the



deceased had contributed towards accident as there was head on collusion between the aforesaid two vehicles and both the vehicles were found on mid of the road. Witnesses have also stated so. But the learned Tribunal instead of framing the issue of contributory negligence did not decide the same rather wrongly held it to be a case of composite negligence. It is not the case of composite negligence because composite negligence comes into play only when there is accident of third party due to negligence of the driver of both the vehicles but in the case under hand deceased himself happens to be driver of the tanker and the accident happened due to negligence of the deceased as well. It is further submitted that the multiplier of 17 has been adopted by the learned Tribunal to work out the amount of compensation which is on higher side instead it should be 16.

9. From perusal of the record, it appears that the deceased was the driver of the tanker bearing registration no. HR-38L-3014 and he has died in the accident during the course of driving the said vehicle. From perusal of the ocular evidence of the claimants, it appears that AW-1 has stated in para-5 of his cross-examination that he found both the truck and the tanker on the mid of the road in damaged condition. AW-2 has



stated in Para-1 of his examination-in-chief that there was head on collision between two vehicles out of which one was truck and another was tanker. In Para-4 of his cross-examination, he has also stated that both the vehicles were standing on the mid of the road. Aforesaid evidence of the appellants indicates that there was head on collision between the tanker and the truck and both the vehicles were standing in damaged condition on the mid of the road after meeting accident. Thus, the deceased who happens to be driver of the tanker also appears to have contributed to the said accident. As there was head on collision and both the vehicles were found on the mid of the road in damaged condition, hence I find the contributory negligence of the deceased in the accident to the extent of 50%.

**10.** It is the case of the appellants that the deceased used to get Rs. 3000/- per month as salary and Rs.100/- per day as khuraki and in substantiation of the aforesaid case appellants have filed certificate furnished by Sri Rama Roadways marked as Exhibit-1. Said certificate has been proved by AW-5 who happens to be manager of the aforesaid firm. He has deposed that the deceased used to get Rs.3000/- per month as salary and Rs.100/- per day as khuraki and in corroboration of the aforesaid case of the claimants, AW-3 has



also stated that the deceased used to get Rs. 3000/- per month as salary and Rs.100/- per day as khuraki and AW-4 has stated that the deceased used to get Rs.6000/- per month. In the facts and circumstances of the case and in view of aforesaid evidence of the claimants, I find that the deceased used to get Rs.3000/- per month as salary and Rs.100/- per day as khuraki i.e. altogether Rs.6000/- per month i.e. Rs.72000/- per annum.

**11.** As the deceased has died leaving behind him his four legal representatives and dependents, hence  $\frac{1}{4}$ <sup>th</sup> of the aforesaid income i.e. Rs. 18000/- is deducted as personal expenses of the deceased which he would have made had he been alive. On deduction of the aforesaid personal expense of the deceased, the loss of dependency comes to the tune of Rs. 54000/- per annum.

**12.** Though as per the case of the claimants, deceased was a salaried person, but from perusal of the ocular and documentary evidence of the claimants, I find that nowhere it is adverted that the deceased was a permanent employee of the aforesaid firm, hence he cannot be said to be permanent salaried person. Hence in my considered opinion, the appellants are not entitled to any future prospect on the aforesaid income of the deceased.



13. As the deceased was aged about 34 years at the time of accident as found by the learned Tribunal and not assailed by the respondents, the multiplier of 16 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 8,64,000/-. Besides the aforesaid amount of compensation, Rs. 70,000/- is awarded towards other traditional heads such as loss of consortium, funeral expense, loss of estate, etc. in view of the verdict of the Hon'ble Supreme Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** (supra). On addition of the aforesaid heads of compensation, total amount of compensation comes to the tune of Rs. 9,34,000/-. As there was contributory negligence of the deceased towards the aforesaid accident to the extent of 50%, hence appellants are entitled to get 50% of the aforesaid amount of compensation i.e. Rs. 4,67,000/-. Besides the aforesaid amount of compensation, appellants are also entitled to get interest at the rate of 6% per annum from the date of filing claim petition. As there was head on collusion between the two vehicles, hence insurer of both the vehicles i.e. respondent nos. 3 & 4 are liable to pay the aforesaid amount of compensation to the claimants in equal proportion i.e. Rs.



2,33,500/- each along with the aforesaid interest.

**14.** In the facts and circumstances of the case, respondent nos.3 and 4 are directed to pay Rs.2,33,500/- each along with the interest at the rate of 6% per annum after deducting the amount, if any paid by it to the claimants within two months from the date of this judgment.

**15.** Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and award.

**(Prakash Chandra Jaiswal, J)**

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| <b>AFR/NAFR</b>          | A.F.R.     |
| <b>CAV DATE</b>          | N.A.       |
| <b>Uploading Date</b>    | 08.12.2018 |
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