

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.263 of 2014

1. Shur Satiya Devi Wife of Late Budhan Yadav
2. Gita Kumari Daughter of Late Mahesh Yadav, minor Girl of Late Mahesh Yadav under guardian grand-mother Shursatiya Devi. All are resident of Village- Khedru Bihga, P.O- Anandpur, Police Station- Rampur Chauram, District- Arwal.

... .. Appellant/s

Versus

1. Janardan Singh Son of Lalan Singh at Shivasthan Station Road, Burnpur, District- Vardwan (W. Bengal) Driver of Mini Bus No. BR- IAP- 4150 Opposite Party No.1.Respondent No.1.
2. Sandeep Kumar Son of Manohar Prasad, At Janakdhari Lal Road, Danapur Cantt., Patna, Owner of BR-IAP 4150.
3. Divisional Manager D.O.II, the Oriental Insurance Company Ltd Jaintpur, Kothi, Bank Road, Patna Back to Biscoman Bhawan-Insurer of Mini Bus No.BR-IAP-4150. Opposite Party No.3. Respondent No.3

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar, Advocate.
For the Respondent No.3	:	Mr. Durgesh Kumar Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 11-02-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred, under Section 173 of the Motor Vehicle Act, against the judgment dated 15.05.2013 and award dated 24.01.2014, passed by the learned Additional District Judge-VII, Patna-cum-Motor Vehicle Accident Claim Tribunal, Patna in Claim Case No.577 of 2009.

3. Claimants are not satisfied with the award and they want its enhancement. Hence, this appeal.

4. The claimants are mother and daughter, respectively of the deceased, *Mahesh Yadav*. *Mahesh Yadav* died in a road



accident, when a mini bus on which he was travelling tumbled into water ditch due to rashness and negligence of the driver.

5. The Tribunal awarded $24000 \times 18 = \text{Rs.}432000/-$ plus $\text{Rs.}4500/-$ under conventional head. According to claim petition, the deceased was a student whose monthly income was $\text{Rs.}3000/-$ and he was able to save $\text{Rs.}2000/-$ and contribute it to his family. He was aged about 30 years.

6. The Tribunal in absence of any evidence of income of the deceased took $\text{Rs.}100/-$ as per day income and $\text{Rs.}3000/-$ as monthly income. Likewise, yearly income of the deceased was calculated as $\text{Rs.}36,000/-$. One third was deducted towards personal expenses of the deceased and contribution to the family was taken as $\text{Rs.}24,000/-$.

7. There is no reason to interfere with the aforesaid finding even if some contrary oral evidence is there against the pleading. The deceased was aged 30 years, which has been accepted by the Tribunal. Hence, the Tribunal wrongly implied multiplier of eighteen. Therefore, the same is corrected to seventeen in view of the judgment of the Hon'ble Supreme Court in *Sarla Verma and Others Vs. Delhi Transport Corporation and Another* reported in (2009) 6 SCC 121. Thus, the payable compensation comes to $24000 \times 17 = \text{Rs.}4,08,000/-$. Besides the



aforesaid, the claimants are entitled to be compensated for loss of estate and funeral expenses as well as for loss of consortium.

8. The Tribunal has awarded Rs.2500/- for loss of estate and Rs.2000/- for funeral expenses.

9. In *National Insurance Company Limited Vs. Pranay Setthi*, reported in 2017 (4) PLJR 261, the Constitution Bench of the Hon'ble Supreme Court held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amount should be enhanced at the rate of 10% in every three years.

10. Learned counsel for the Insurer submits that the amount fixed in *Pranay Setthi's* case cannot be applied retrospectively. In the present case, the accident had taken place in the year, 2008. However, *Sarla Verma's* case decided in the year, 2009 in respect of accident of the year, 2003. Rs. 5000/- was awarded for funeral expenses and loss of the estate each and Rs.10,000/- for loss of consortium. The same amount is payable in the present facts and circumstances of the case.

11. So far as compensation against loss of consortium is concerned, the Hon'ble Supreme Court in *Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram*



and Others reported in (2018) 4 ACJ 2782 considered the matter in para 8.7 as follows:-

“A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.”

12. In *Nanu Ram*’s case, the claimants were father, brother and sister of the deceased and compensation against consortium was also allowed.

13. Considering the entire facts, it is held that claimants are also entitled for Rs.15,000/- each against the funeral expenses and loss of estate as well as Rs.40,000/- for loss of consortium. Thus, the total payable compensation is calculated as Rs.4,78,000/- along with 7% interest awarded by the Tribunal from the date of filing of the claim.

14. Submission of learned counsel for the Insurer is that since the entire compensation amount awarded by the Tribunal has already been paid, hence, no interest is payable on the rest of the amount, which has been awarded against conventional head.



15. If, the insurer has already paid the compensation awarded by the Tribunal, the rest amount should be paid within two months from today, failing which 9% interest would be payable.

16. After aforesaid modification, this miscellaneous appeal stands disposed of without cost.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
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