

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.648 of 2014

1. Usha Devi W/o Late Bindeshwari Bhagat
2. Sweety Bhagat @ Sweety D/o Late Bindeshwari Bhagat
3. Beauty Bhagat D/o Late Bindeshwari Bhagat
4. Lusy Bhagat D/o Late Bindeshwari Bhagat Respondent Nos. 2 to 4 sisters of deceased Vikash Kumar Bhagat. All Residents of Sakinan Panchmukhi Bazar, P.S. Shahkund, District Bhagalpur.

... .. Appellant/s

Versus

1. Sujeet Kumar S/o Basudev Prasad Yadav Resident of Sreirampur, P.S. Akbarnagar, District Bhagalpur.
2. Brejesh Kumar Mandal S/o Budhu Mandal Resident of Village Babupur, P.S. Sabaur, District Bhagalpur.
3. Branch Manager, the Oriental Insurance Company Limited, G.O.B. VI Patna South Gandhi Maidan, Patna
4. Divisional Manager, The Oriental Insurance Company Limited, R.B.S.S. Road, Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Madan Mohan, Advocate Ms. Pallavi Pandey, Advocate
For the Respondent/s	:	Mr. Bimlesh Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the parties.

2. The appellants are not satisfied with the quantum of award made on 24.01.2014 by Ad hoc Additional District Judge-III-cum-Motor Vehicles Accident Claim Tribunal, Bhagalpur, in M.A.C. No. 13 of 2011/43 of 2011. Hence this appeal.

3. The appellants had claimed Rs. 12,72,500/- for



death of Vikash Kumar in a motor accident, whereas the Tribunal awarded Rs. 8,11,200/- by the impugned award.

4. The case and claim of the appellants is that appellant No. 1 Usha Devi is widow mother of Vikash Kumar and other three appellants are unmarried sisters of Vikash Kumar. At the time of his death Vikash Kumar was aged about 30 years. He was a self-employed person inasmuch as doing business of Jewellery and had taken contract from the department of Mining for mining purpose. From both the sources, the deceased was earning Rs. 12,000/- per month. On 20.06.2010, a Tata Magic vehicle bearing registration No. BR10P-3290 caused accident to Vikash Kumar, as a result whereof he died. For the occurrence aforesaid, Shahkund P.S. Case No.108 of 2010 was registered. The post mortem examination on the dead body was performed by Dr. Amitabh Singh. The said vehicle was insured with the Oriental Insurance Company Ltd.

5. The challenge is only to the extent of the faulty calculation of the award against the settled principle of law.

6. Learned counsel for the insurance company contends that in absence of any documentary evidence to support the income of the deceased, the Tribunal has taken



income from the jewellery business of Rs.6000/- per month and has added 30 % of that considering the future prospect of the deceased.

7. His next contention is that the sisters and brothers are not dependent on the deceased. Reliance has been place on the judgment of the Hon'ble Supreme Court in **Radha Krishna & Another Vs. Gokul & Others** reported in **2017(2) PLJR SC 141**.

8. It appears from the judgment of **Radhakrishna** case that the victim of accident was aged about 18 years and was a student of engineering. Parents were claimants there at. In that circumstance, the Hon'ble Supreme Court allowed normal deduction of 50% applicable in the case of the bachelor. The Hon'ble Supreme Court considered earlier judgment in **Sarla Verma & Others Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121**, para 32 thereof has been reproduced which reads as follows:-

“32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent



on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

9. In this case the widow mother of the victim of accident, namely, Usha Devi was examined as claimant-witness No. 1 and she has deposed that the deceased was her only son. Other claimants are her unmarried daughters. She further deposed that from the income of Vikash Kumar the expenses of the family was being borne. The witness has not been cross-examined on the aforesaid assertion. There is evidence on the record that the family of the deceased bachelor was large one and was dependent on the income of the deceased. In the circumstance, one-third deduction was permissible, which has been made by the Tribunal. Therefore, there is no merit in the submission of the learned counsel for the insurer that 50% should have been deducted.

10. The witnesses examined on behalf of the claimants consistently stated that the deceased had income of Rs.6,000/- from Jewellery and Rs.6,000/- from the business of mining. The agreement between the deceased and the Mining Department, Government of Bihar, allowing mining for five



years is on the records. Since no contrary was on the record, it was not unbelievable that the deceased was earning Rs.200/- per day from mining business. At this stage, a question was raised that how one person was doing business at two places. However, the assistant of the deceased in mining business was examined in the case as PW 2 Md. Alam. Therefore, in my view, the Tribunal should have taken the income of the deceased as Rs.12,000/- per month. The aforesaid amount should have been added with 40% for future prospect of the deceased as held in the case of **National Insurance Company Limited Vs. Pranay Sethi** reported in **2017(4) PLJR 261** which the Tribunal has not properly added. Hence, the multiplicand would be Rs.12,000/- plus 40% i.e., Rs.4800/- equal to Rs.16,800/- x 12 years = 2,01,800/-. Out of the aforesaid amount one-third i.e., 67,200/- would be deductible for personal expenses of the deceased. After deduction the amount comes to Rs.1,34,400/-. Considering the age of the deceased the appropriate multiplier would be of 16 as held in **Sarla Verma's case**. The Tribunal has wrongly taken the age of mother for choosing the multiplier. If the aforesaid amount is multiplied with 16 the loss of dependency comes Rs.21,50,400/-. Besides the aforesaid, each of the claimants would be entitled for Rs.40,000/- for loss of



filial consortium as held by the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & Others** reported in **2018 (4) PLJR 229**.

11. I do not find any merit in the submission of the learned counsel for the Insurance Company that there is conflict between the judgment of Hon'ble Supreme Court in **Pranay Sethi case** (supra) and in **Magma General Insurance Co. Ltd.** aforesaid. In my view, there is no such conflict. In **Pranay Sethi case** the Supreme Court specifically stated that Rs.40,000/- would be payable for loss of consortium. In **Magma General Insurance Company Case** the Hon'ble Supreme Court accepted the aforesaid amount of Rs.40,000/- to be paid for loss of consortium. However, the Hon'ble Supreme Court further examined as to what is consortium and held that 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. The claim shall also be entitled to Rs.15,000/- each for loss to the estate and for funeral expenses. Thus, the total payable compensation comes Rs.23,40,400/-.



13. The total compensation payable to the claimants in terms of the judgment in **Pranay Sethi** (supra) and **Magma General Insurance Company Case** (Supra) is computed below:

- Income: Rs.12,000/- per month
- Percentage increase towards future prospects: 40%
- $\text{Rs.12,000/-} \times 40\% = \text{Rs. 4,800/-}$
- Total income = Rs. 16,800/-
- one-third deduction: Rs.5,600/-
- Income after deduction: Rs.11,200/-
- Annual Income = $\text{Rs.11,200/-} \times 12 = \text{Rs.1,34,400/-}$
- Multiplier Applied: 16 (since age of the deceased was 30 years)
- Loss of dependency: $\text{Rs.1,34,400/-} \times 16 = \text{Rs.21,50,400/-}$
- Loss of consortium: $\text{Rs.40,000/-} \times 4 = \text{Rs.1,60,000/-}$
- Loss of estate: Rs.15,000/-
- Funeral expenses: Rs.15,000/-
- Total compensation: Rs.23,40,400/-

14. The Tribunal has awarded interest of Rs.6% per annum from the date of filing of application till realisation. This Court is not inclined to interfere with that in the facts and circumstances of the case.

15. The insurance company shall pay the aforesaid



amount after deducting already paid amount, if any, to the claimants within two months.

16. With the aforesaid modification, the appeal is partly allowed.

17. Let the Lower Courts Record be sent back immediately.

Mkr./-

(Birendra Kumar, J)

AFR/NAFR	NA
CAV DATE	NA
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