

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.282 of 2014

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1. Anshu Devi W/o Late Vishwanath Baitha @ Vishwanath Rajak,
 2. Raj Kishore Rajak S/o Late Vishwanath Baitha @ Vishwanath Rajak
 3. Jatan Rajak S/o Late Vishwanath Baitha @ Vishwanath Rajak
 4. Ratan Rajak S/o Late Vishwanath Baitha @ Vishwanath Rajak All Resident of Village-Panapur Langa, P.S.-Mahua, District-Vaishali.

... .. Appellant/s

Versus

1. Ajay Kumar S/o Ram Balak Rai Village-Jaduha, P.S.-Hajipur Nagar, District-Vaishali.
2. Raj Kumar Singh S/o B.P. Prasad Resident of Village-Mayil Pakari, P.S.-Bidupur, District-Vaishali
3. Managar, Oriental Insurance Company Ltd. Station Road, Ramashish Chowk, Hajipur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Adv
For the Respondent/s	:	Mr. Barun Kumar Chaudhary, Adv
	:	Ms. Kumari Khusbu, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-02-2019

Heard learned counsel for the parties.

2. The claimants are not satisfied with the quantum of award allowed by the learned Adhoc Additional District & Sessions Judge-2nd-cum-Motor Vehicle Accident Claim Tribunal, Vaishali at Hajipur in Claim Case No.70 of 2006 by judgment and award dated 08.01.2014. Hence, this appeal under Section 173 of the Motor Vehicles Act, 1988. The Tribunal has allowed compensation of Rs.2,14,172/- against claim of Rs.Four Lacs.

3. Let Vishwanath Baitha was a retired military personnel. On 01.11.2003, he was going on a bicycle. On the way,



a rash and negligent bus dashed against him, resulting his death. Claimants are widow and grown up children of Vishwanath Baitha. The date of birth of Vishwanath Baitha was 09.05.1954. As such, on the date of accident dated 01.11.2003, he was below 50 years of age. His monthly pension was Rs.2,800/-.

4. Contention of learned counsel for the appellants is that the Tribunal has wrongly taken the age as 55 years on the basis of entry of that in the postmortem report, whereas Annexure-1, the pension papers would reveal his actual date of birth as 09.05.1954. Contention is that if the deceased was below 50 years of age, the appropriate multiplier would be of 13 and the Tribunal has wrongly applied multiplier of 8.

5. The parties do not controvert the aforesaid factual position of this case. Hence, the multiplicand would be of Rs.2800/- per month. The aforesaid amount requires to be added by 30% of the same considering the future prospect of the deceased as usually they get reemployment after retirement from military service. Out of the aforesaid amount, 1/3rd is deductible for personal expenses of the deceased as most of the children of the deceased were already grown up. The parties are in agreement regarding the well settled method of calculation of compensation already decided in *Sarla Verma & Ors Vs. Delhi Transport*



Corporation and Anr, reported in **2009(6) SCC 121** as well as by the Constitution Bench of the Hon’ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi*, reported in **(2017)16 S.C.C. 680**. It is evident that the Tribunal has not followed the correct law in the matter of calculation and award of just compensation. The Tribunal has rightly adopted Rs.2800/- per month which was pension of the deceased as multiplicand. However, the Tribunal wrongly did not add 30% of the same for future prospect of the deceased as usually military personnel retires in early age and they get reemployment after retirement very easily.

6. The Tribunal wrongly deducted 1/4th for personal expenses of the deceased. Since most of the children of the deceased were already grown up and they were not dependant on the deceased, hence, just deduction for personal expenses of the deceased would be of 1/3rd. The following tabular chart would show what the claimants are entitled to get as compensation.

Income	Rs.2800/-
Percentage increase towards future prospects	
30%	Rs.840/-
Total income	Rs.3640/=
One-third deduction	Rs.1213/-
Income after deduction	Rs.2427/-
Annual Income=2427x12=	Rs.29,124/-
Multiplier applied	13 (since age of deceased was 50



	years)
Loss of dependency: Rs.29,124x13=	Rs.3,78,612/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total compensation	Rs.4,48,612/-

7. The aforesaid calculation is consistent with the judgment of the Hon’ble Supreme Court in *Nutan Rani and Anr Vs. Gurmail Singh and Ors*, reported in *2018(3)T.A.C.690(S.C)*. The Tribunal has already allowed 8% interest from the date of filing of the claim petition till final payment which is affirmed.

8. In the result, it is directed that claimants are entitled for compensation of Rs.4,48,612/-alongwith 8% interest from the date of filing of the claim case till realization. Already paid amount shall be deducted from the aforesaid amount.

9. With the aforesaid modification in the impugned award, this appeal stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2019
Transmission Date	NA

