

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.750 of 2010

1. United India Insurance Company, Branch Office, Naya Parao Rohtak
(Hariyana), Main Office, 24 Whites Road, Chennai-600014
2. United India Insurance Company Ltd, Branch Office, Chapra
... .. Appellants

Versus

1. Most. Ramawati Devi W/o. Late Nagawali Rai,
2. Putul Kumari
3. Sangita Kumari,
Both daughters of late Nagawali Rai, respondent No.1 is mother and
respondent Nos.2 and 3 are minor sister of deceased Ajay Rai @ Abhay
Singh, respondent Nos.2 & 3 represented through their mother respondent
No.1. All are resident of village- Mairwa Karan, P.S. Kuchaikote, District-
Gopalganj.
... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ram Chandra Lal Das, Advocate
For the Respondent/s	:	Mr. Chandra Kant, Advocate Mr. Umesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 07-02-2019

Heard learned counsel for the parties.

2. The United India Insurance Company has challenged the judgment dated 30.03.2010 and award dated 30.03.2010 passed in Claim Case No.14 of 2005 by the learned District Judge-cum- Motor Accident Claim Tribunal, Gopalganj, made under Section 166 of the Motor Vehicles Act, 1988, in favour of respondent Nos.1 to 3.

3. This appeal has already been dismissed against respondent Nos.4 and 5 who were owner and driver of the vehicle for non-compliance of the Courts order.

4. A brief fact of this case is that one Ajay Singh @



Abhay Rai was going on a motorcycle on 16.06.2005. A rash and negligent tractor, bearing registration No. HR-12GA/0285, dashed against another motorcycle and motorcycle of Ajay Singh dashed against that motorcycle as a result whereof Ajay Sing sustained injury and died. The aforesaid fact would be evident from the FIR of the occurrence lodged by eyewitness Surat Singh. CH Bag P.S. Case No.23 of 2005 was registered for the accident. The appellant is insurer of the tractor.

5. The learned Tribunal while deciding the impugned compensation found that the deceased was getting a salary of Rs.6,000/- per month vide Annexure-6 and 6/1 from his employer M/s. Constructo Company. He was aged about 27 years and was a bachelor at the time of his death. The Tribunal calculated the yearly salary of the deceased as $6,000/- \times 12 = 72,000/-$ and deducted 1/3rd of that for personal expenses of the deceased. After deduction Rs. 48,000/- was there and the same was multiplied with multiplier of 18. The Tribunal further allowed Rs. 2000/- as funeral expenses and Rs. 2500/- as loss to the state of the deceased. No compensation was allowed for loss of consortium as deceased was a bachelor. The Tribunal awarded 12% per annum interest from the date of filing of the claim petition.



6. Learned counsel for the appellants submits that since the vehicle insured by the appellants dashed against another motorcycle and not against the motorcycle of the deceased. Hence, death was not direct result of the accident caused by the insured vehicle. Therefore, insurer is not liable.

7. In road accidents, it is common that when speedy vehicles dash against another vehicle sometimes the nearby moving vehicles also collides causing serious accident to the extent the vehicles going into the nearby ditch and passengers dying of that. Since the main accident was the result of rash and negligent driving of the vehicle insured by the appellant and accident of the vehicle of the deceased was off short of that accident, it cannot be said that the negligence of the vehicle insured by the appellant was a remote one so far death of the victim is concerned. Therefore, I do not find anything to interfere with the finding of the Tribunal that the death was result of accident caused by some other vehicle.

8. Next contention of the learned counsel for the appellant is that the subsequent judgment of the Hon'ble Supreme Court in **National Insurance Company Limited V. Pranay Setthi** reported in **2017 (4) PLJR 261** cannot be applied in the matter of accident of the year 2005.



9. Learned counsel for the claimant-respondent submits that in **Pranay Setthi's** case there is nothing to indicate prospective application of the method of calculation of just and fair compensation in motor accident cases. The constitution Bench of the Hon'ble Supreme Court simply laid down principles to settled down the conflicting judgments passed earlier. Therefore, the entire guidelines for deciding just and fair compensation would be applicable by the Court where the matter has been raised for consideration. There is no dispute that the Tribunal had decided claim case in the year 2010 when judgment of the Hon'ble Supreme Court in *Sarla Verma and Others Vs. Delhi Transport Corporation and Another* reported in (2009) 6 SCC 121 was already there and the Tribunal has deviated to some extent in following the judgment of **Sarla Verma's** case. Hence, the calculation reached by the Tribunal requires reconsideration. Likewise the judgment in **Pranay Sethi's case** is to be followed at every level including at the appellate stage when such issue is there for adjudication.

10. The Tribunal has wrongly deducted 1/3rd for personal expenses and it should have deducted 50% of the same as the deceased was a bachelor and for bachelor the Hon'ble Supreme Court in **Sarla Verma's** case decided that 50%



deduction should be there. Thus, the loss of dependency is of Rs. 36,000/- per year. The aforesaid amount requires addition of 40% as loss towards future prospects of the deceased. In **Pranay Sethi's** case the Hon'ble Supreme Court held that in case the deceased was a self-employed or on a fix salary, an addition of 40% of the established income should be awarded where the deceased was below the age of 40 years. In the present case the deceased was of 27 years. Hence, 40% of Rs. 72,000/- is also required to be added. Thus, the total multiplicand would be Rs. 64,800/-.

11. The appropriate multiplier would be of 17 as held in **Sarla Verma's** case and if the aforesaid amount is multiplied by 17, the payable compensation comes to Rs.11,01,600/-. In **Pranay Shethi's** case the Hon'ble Supreme Court said 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.

12. In the present case, the Tribunal has awarded Rs.2,000/- as funeral expenses and Rs.2,500/- as loss of estate. The aforesaid amount is enhanced to Rs.15,000/- plus



Rs.15,000/- respectively. Since the deceased was a bachelor no amount is payable for the loss of consortium nor the Tribunal has awarded.

13. Learned counsel for the appellant submits that the Tribunal has awarded interest of 12% per annum from the date of application which is excessive one. In **Smt. Kaushnuma Begum V. New India Assurance Co. Ltd and others** reported in **2001(1) PLJR 184 (SC)**, the Hon'ble Supreme Court reduced the interest rate to 9% instead of 12% awarded by the Tribunal in view of the change in economy and Reserve Bank Policy.

14. The interest rate has further been reduced as on date. Hence, the interest awarded by the Tribunal is reduced to 8% per annum. The interest shall be payable from the date of application till the date of realization.

15. Since the claimants are mother and two minor sisters, the compensation amount should be paid in the name of mother Most. Ramawati Devi, who is guardian of the two minor sisters as father of the minors is already dead. It has been informed that minors must have attained majority upto now. Hence, it may be left at the discretion of the mother to use the money for the purpose of marriage or for the purpose of



education whatever is appropriate for the sisters.

16. The following tabular chart would show what the Tribunal had allowed and what this Court has allowed.

Head	Awarded by MACT Amount (in Rs.)	Awarded by this Court Amount (in Rs.)
Against loss of dependency + 40% as loss of future prospects	Rs.8,64,000/-	Rs.11,01,600/-
Funeral expenses	Rs.2,000/-	Rs.15,000/-
Loss of Estate	Rs.2,500/-	Rs.15,000/-
Total	Rs.8,68,500/-	Rs.11,31,600/-

17. The appellant shall pay the decided amount minus the amount already paid by way of ad interim compensation or otherwise.

18. Let the statutory amount deposited at the time of filing of this appeal be remitted back through cheque in the name of respondent Most. Ramawati Devi, which shall be adjusted against the final payment.

19. With the aforesaid modification, this appeal stands partly allowed and partly dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.02.2019
Transmission Date	11.02.2019

