IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.66 of 2012

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1. PRIYANKA JHA Wife of late Ashutosh Kumar Jha, Resident of Ishakchak near Buriha Kali Ashthan P.S. Ishakchak, District- Bhagalpur.
2. Paritosh Jha(Minor), Son of late Ashutosh Kumar Jha, Resident of Ishakchak near Buriha Kali Ashthan P.S. Ishakchak, District- Bhagalpur.

…. …...(Claimants in the Suit) / Appellant/s

Versus

1. KARPURA DEVI Wife of Sri Yoganand Jha, Resident of Shiv Chandi Prasad Lane, Kajichak, P.S. Mojahidpur, District- Bhagalpur. (Mother of the deceased)
2. M/S R.K. Traders E-184 BETA-1 Gautam Budha Nagar, Greater Noida, U.P. Owner of Vehicle.
3. Farid Ahmad, Son of Gafoor Ahmad, Resident of Village and P.O. Rakhelpur District Itawa(U.P.).
4. M/S Reliance General Insurance Company Limited through the Manager, New Delhi, Plot No. 60 Okhla, Industrial Estate, Phase 3, Opposite State Bank of India, New Delhi.
5. The Reliance General Insurance Company Limited through its Manager, 570 Recififier House, Naigaun Cross Road, Wadala(W) Mumbai- 400031
6. The Reliance General Insurance Company of its Patna Branch through the Manager, Flat No. 301/302 IIIrd Floor, Kaushalaya Estate , Dak Bunglow Chauraha, Bandar Bagicha, Patna.

... ... (Opposite Parties in the Suit)/ Respondent/s

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with

Miscellaneous Appeal No. 73 of 2012

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Reliance General Insurance Co. Ltd. through its Manager, Himalaya House , 8th Floor, 38 B, J.L. Nehru Road, Kolkatta, West Bengal.

... ... Appellant/s / Opposite Party

Versus

1. PRIYANKA JHA W/o late Ashutosh Kumar Jha, Resident of Village- Ishakchak, Near Buriha Kali Ashtan, P.S. Ishakchak, District- Bhagalpur.
2. Paritosh Jha, son of late Ashutosh Kumar Jha, Minor Under Guardianship of Priyanka Jha,Resident of Village- Ishakchak, Near Buriha Kali Ashtan, P.S. Ishakchak, District- Bhagalpur.

….. Respondents / Claimants

3. Karpura Devi, W/o Sri Yoga Nand Jha, resident of Mohalla-Shiv Chandi Prasad Lane, Kajichak, P.S. Mojahidpur, District- Bhagalpur.

…. …. Respondent / Opposite Party no. 1

4. M/S R.K. Traders, Resident of E- 184 Beta-I, Gautam Budha Nagar, Gretar Nodia, Uttar Pradesh.

…. ….. Respondent / Opposite Party 2

5. Farid Ahmad, Son of Gafoor Ahmed, Resident of Village- Chalera, Sector-144, Distt. Noida, U.P.

... ... Respondent / Opposite Party 3

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Appearance :

(In Miscellaneous Appeal No. 66 of 2012)		
For the Appellant/s	:	Mr. Vivekanand Vivek, Advocate
For the Respondent no.1	:	Mr. Debesh Kumar Poddar, Advocate
For the Respondent nos. 2 and 3	:	M/s Madan Mohan Pallavi Pandey, Advocates
For Insurance Company	:	Mr. Alok Kumar Shahi, Advocate
(In Miscellaneous Appeal No. 73 of 2012)		
For the Appellant/s	:	Mr.Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent nos. 1 and 2	:	Mr. Vivekanand Vivek, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 30-09-2022

Heard learned counsel for the parties.

Both the appeals arise out of the judgment dated 24.8.2011 passed in Claim Case no. 17 of 2009 by the learned 2nd Additional Sessions Judge – cum – Motor Vehicle Accident Claim Tribunal, Bhagalpur whereby the claim application filed by the claimants was allowed on contest with cost against the opposite parties and the Reliance General Insurance Company Ltd. was directed to pay a total sum of Rs. 97,85,903/- with interest thereon @ 9% from the date of filing of the case till their realisation, in the manner as detailed in the said order.

M.A. no. 66 of 2012 has been preferred by the claimants whereby they are aggrieved by the illegal deduction made by the learned Tribunal and is mainly based on the quantum of compensation awarded. M.A. no. 73 of 2012 has been preferred by the Reliance General Insurance Company Ltd. (hereinafter referred to as 'the Insurance Company') which is also aggrieved with the manner of computation of compensation. Both the appeals having been preferred against the same impugned judgment dated 24.8.2011 are taken up together and are being disposed of by this common judgment.

The case in brief is that the deceased Ashutosh Kumar Jha who was an Engineer in Samsung Engineering Ltd. was posted in his office situated at Mathura Road, New Delhi. On 18.9.2008 while he was going to his office by motorcycle, on reaching near Kalindi Kunj Lane of Sarita Vihar his motorcycle met with an accident with a dumper bearing registration no. HR 55F – 2700 which dashed against his motorcycle as a result of which he received serious injuries and was brought to the Appolo Hospital by the police. At the hospital, he was declared dead by the doctor.

It is the case of the claimants that the accident took place as a result of rash and negligent driving of the driver of the vehicle in question. On the basis of the statement of the Havaldar of the Delhi Police, Jamiya Nagar P.S. Case no. 207 of

2008 was registered under sections 279 and 304A of the Indian Penal Code against the driver of the vehicle. The postmortem examination of the deceased was conducted at the All India Institute of Medical Sciences, New Delhi which confirms the cause of death to be shock and haemorhage due to the injury mentioned in the postmortem report which states that it could be caused in a road traffic accident.

It is the case of the claimants that the deceased died leaving behind his wife, son and old parents. The father of the deceased having retired from service in Barauni Refinery in the year 2001 and having received his post retiral benefits was not dependent upon the deceased. The deceased who was aged 29 years at the time of his death had a good career and had started his career with the Reliance Petroleum Chemical Limited at Baroda in Gujarat. After having worked for a few month, he got another job and joined the company Samsung Engineering Limited on a package of Rs. 4,37,360/- which was soon enhanced to Rs. 5,19,597/- and subsequently to Rs. 8,64,454/-. The deceased was working on a permanent job as Senior Engineer in the Company. It is the case of the claimants that the cause of action arose on the date when the accident took place. As such a claim case was filed by the claimants in the MVCAT at Bhagalpur which was registered as Claim Case no. 17 of 2009.

It was submitted by Sri Vivekanand Vivek, learned counsel appearing for the claimants that with respect to the salary of the deceased, not only the salary slip but the package of total amount being received by the deceased, his promotion letter etc. were all exhibited and proved by the claimant witness no. 5 who categorically stated in paragraph no. 2 of his deposition that it is on the direction of the Company that he has appeared in the Court and submitted the documents in the case. Referring to the deposition of the said witness it was submitted that no objection was raised in the learned court below and the Tribunal was satisfied. Thus the salary figures mentioned in the statement of the deceased should have been accepted. It was further submitted that the learned court below in calculating the salary of the deceased committed an error in deducting the amount under the heads of special allowance, other reimbursable benefits and provident fund. It is submitted that the deceased had a bright career. Having been appointed on 19.3.2007, he was soon given promotion by order dated 31.8.2007 (Ext. -9) and his salary was revised once again by order dated 24.4.2008 (Ext-10). Thus he was in a permanent job with a bright career. In support of his submission learned counsel for the claimants relied on the judgment dated 5.1.2021 passed in **Civil Appeal Nos. 19-20 of 2021 (Kirti & Anr. Etc. vs. Oriental Insurance Company Ltd.)**, judgment dated 18.8.2021 in **Civil Appeal No. 7033 of 2009 National Insurance Company Ltd. vs. M/s. Hareshwar Enterprises (P) Ltd.**, **Union of India vs. Rina Devi [2018(2) PLJR 447 (SC)]**, judgment in the case of **National Insurance Co. Ltd. vs. Indira Srivastava [2008(2) BBCJ 159(SC)]** & in the case of **Sunil Sharma & Ors. v. Bachitar Singh & Ors. [2011 AIR SCW 2811]**.

Notices were issued to the opposite parties. Pursuant to service of notice the Insurance Company appeared and filed their written statement. Although initially not made parties in the Tribunal, subsequently the mother and the father of the deceased were impleaded as opposite parties and a written statement was also filed by the mother of the deceased.

It is the case of the Insurance Company that though the vehicle in question was ensured for the period 2.4.2008 to 1.4.2009, however, the driver of the vehicle did not have a valid driving licence at the time of the accident. The owner of the vehicle having permitted the driver to drive the vehicle, committed breach of the terms and conditions of the policy. The Insurer is not liable to pay any compensation for the reason of the vehicle not having followed the provisions of section 134 of the M.V. Act as also for non joinder of the father of the deceased. It is further case of the Insurance Company that the claimants have given an exaggerated figure with respect to income of the deceased. There being chance of re-marriage of the claimant no. 1, the same should have been taken into consideration. The claims made are exorbitant and exaggerated.

The owner and the driver of the vehicle neither appeared in the claim case before the learned Tribunal nor did they appear in this Court.

Heard Sri Vivekanand Vivek, learned counsel for the claimants and Sri Alok Kumar Shahi, learned counsel for the Insurance Company. Also heard Sri Madan Mohan, learned counsel for respondent nos. 2 and 3 in Miscellaneous Appeal no. 66 of 2012.

The relevant facts in brief are that on 18.9.2008, Ashutosh Kumar Jha an Engineer in Samsung Engineering Ltd. who was travelling on his motorcycle met with an accident in Kalindi Kunj Lane of Sarita Vihar in New Delhi. The accident was caused by a dumper bearing registration no. HR 55F 2700 as a result of which he sustained serious injuries and was brought to the Appolo Hospital by the police where he was declared dead by the doctor. The accident took place as a result of rash and negligent driving by the driver of the vehicle in question which was ensured with the Insurance Company for the period from 2.4.2008 to 1.4.2009.

In the claim case filed by the claimants, witnesses were examined and one of the witnesses on behalf of the claimant ie claimant witness no. 5 Tajindar Singh in his deposition stated that the deceased had been appointed in the Company on 19.3.2007. On 31.8.2007 he was promoted to the post of Senior Engineer and he produced the letter dated 24.4.2008 issued under the signature of the Managing Director of the Company with respect to the revised salary and other dues being drawn by the deceased in April, 2008 which was to the tune of Rs. 8,64,454/-. The said letter dated 24.4.2008 was marked as Ext. - 10 and the amount of revised salary which the deceased was receiving as on 1.4.2008 and as mentioned therein is being reproduced herein below.

Name - Ashutosh Kumar Jha Emp. No. 200730147

Designation - Sr. Engineer Job. Grade 42

Particulars	Revised Salary Structure effective 1st April, 2008 (per annum INR)
Basic Salary	2,65,200
H R A	1,59,120
Special Allowance	1,65,360
Other reimbursable benefits	1,50,000
Provident Fund	31,824
Festival Bonus	8,400
Medical Insurance	6,000
Gratuity	12,750
Performance Linked Bonus	65,800
Total	8,64,454

On perusal of the judgment impugned it transpires that the learned Tribunal in the order impugned while calculating the annual income of the deceased, deducted the amount of Rs. 1,65,360/- under the head of special allowance, Rs, 1,50,000/- under the head of other reimbursable benefits and Rs. 31,824 under the head of provident fund.

It may be stated here that the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. (supra) held as follows:

> *"8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee*

carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

13. The question came for consideration before a learned Single Judge of the Madras High Court in ***The Manager,***

National Insurance Co. Ltd. Vs. Padmavathy & Ors. [CMA No.114 of 2006 *decided on 29.1.2007], wherein it was held : "Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only* *statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation."*

Further in the case of Sunil Sharma (supra) the Hon'ble Supreme Court referring to the judgment in the case of **Raghuvir Singh Matolya & Ors. v. Hari Singh Malviya & Ors. [(2009) 15 SCC 363]** held that this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased. In the case of Rina Devi (supra) the Hon'ble Supreme Court has held that the rate of interest has to be reasonable rate at par with accident claim cases.

Having heard learned counsel for the parties and taking into consideration the submissions made and the judgments cited, in the opinion of the Court the compensation payable to the claimants would be as follows:

Total annual salary	= Rs. 8,64,454/-
Future prospect @ 50%	= Rs. 4,32,227/-

		Rs. 12,96,681/-
Less Tax (30%)		(-) Rs. 3,89,004/-
		Rs. 9,07,677/-
Personal Expense (Less 1/3)	=	(-) Rs. 3,02,559/-
		Rs. 6,05,118/-
Multiplier applied (x 17)	=	Rs. 1,02,87,006/-
Other conventional heads		Rs. 70,000/-
Total	=	Rs. 1,03,57,006/-

The claimants are held entitled to a total sum of Rs. 1,03,57,006 by way of compensation.

The above amount after deducting the amount already paid shall be paid to the claimants along with 9% per annum interest from the date of their application till the date of the actual payment.

The total amount will be paid within a period of four months from today.

Both the appeal stand disposed of with the above observations and directions.

(Partha Sarthy, J)

Spd/-