

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.141 of 2016

1. Manoj Kumar Sah @ Manoj Sah and Anr S/o Mahendra Sah
2. Sindhu Devi W/o Manoj Kumar Sah@Manoj Sah Both Resident of Village-
Chhatwara Chakshekh Nijam PS Mahua Distt Vaishali.

... .. Appellant/s

Versus

1. Lal Bahadur Singh and Ors S/o Hari Vance Narayan Singh Resident of
Village -12 Pathar Samastipur.
2. Nawal Kishore Jha S/o Surendra Jha Resident of Village- Kapan PS Bibhuti
Nagar District Samastipur.
3. National Insurance Company Ltd. Yadav, Chok, Cinema road, Hajipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Insurance Company : Mr. Abhay Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 04-07-2022

Heard learned counsel for the appellants and learned counsel
for the National Insurance Company Ltd (hereinafter referred to as
'the insurance company').

The instant appeal has been preferred against the judgment
dated 7.9.2015 passed in Claim Case no. 133 of 2012 by the learned
Additional District Judge I-cum-M.A.C.T, Vaishali, Hajipur whereby
the learned Tribunal was pleased to partly allow the claim application
of the claimant-appellants and directed the insurance company to pay
to the claimant a sum of Rs. 3,19,500/- within a period of two
months along with interest thereon.

The relevant facts in brief are that on 18.9.2012 at about 4.15



pm the deceased son of the appellants had proceeded to the shop on motorcycle for purchasing certain goods. As a result of rash and negligent driving by the driver of the bus bearing registration no. BR-07P-9507, the son of the appellants met with an accident and was seriously injured. He was taken to the Sub-Divisional Hospital, Mahua where he was declared dead. His postmortem examination was conducted and an FIR being Mahua P.S. Case no. 387 of 2012 was registered.

It is further case of the appellants that at the time of the accident, the vehicle in question i.e. the bus bearing no. BR-07P-9507 was holding a policy of the insurance company bearing policy no. 170605/31/11/6700013915 which was valid from 10.11.2011 to 9.11.2012. As a result of the sudden and shocking death of their son, the appellants as also the members of the family had to suffer irreparable damages, mental agony etc, which could not be compensated in monetary terms, however, as a result of the policy they would be compensated to a certain extent. As such Claim Case no. 133 of 2012 was filed by the appellants in the Court of the learned Additional District and Sessions Judge-cum-Motor Accident Claim Tribunal, Vaishali at Hajipur against the insurance company and others. After hearing the parties, the learned Tribunal was pleased to decide the said case vide judgment dated 7.9.2015



deciding the compensation to be paid to the appellants to be Rs. 3,69,500/-.

It is submitted by learned counsel for the appellants that although the claim of the appellants have been accepted by the learned Tribunal to a certain extent, however the learned Tribunal has committed an error in calculating the quantum of the claim. Referring to paragraph no. 17 of judgment, it is submitted that against the annual income of Rs. 36,000/- the learned Tribunal has deducted a sum of Rs. 12,000/- and the contribution of the deceased child toward the family has been taken to be Rs. 24,000/- only. It is submitted that the same is clearly an error which has been committed by the learned Tribunal and in support of his contention learned counsel for the appellants relies on the judgment in the case of Kishan Gopal vs LALA [(2014) 1 SCC 244], specially paragraph nos. 37 and 39 thereof. It is further submitted on behalf of the appellants that in the same paragraph in calculating the amount payable under the conventional head, a sum of only Rs. 9500/- has been given. Although in the case of Kishan Gopal (supra) which was also dealing with the case of a 10 year old minor deceased, a consolidated sum of Rs. 50,000/- under conventional head had been given towards loss of love, affection etc.

Relying on the case of Kerla SRTC v. Susamma Thomas



[(1994) 2 SCC 176], in reply it is submitted by learned counsel appearing for the insurance company that the learned Tribunal has correctly calculated the claim to be paid by the insurance company to the appellants and in fact the same may be said to be on the higher side. Learned counsel for the insurance company in support of his contention relies on the judgment in the case of Rajendra Singh and others vs. National Insurance Company and Ors (judgment dated 18.6.2020 in Civil Appeal no. 2624 of 2020) by the Hon'ble Supreme Court and on the order dated 19.2.2019 passed by this Court in M.A no. 324 of 2016 (Babloo Dubey vs Nagendra Thakur & Anr).

Having heard learned counsel for the parties and taking into consideration the submissions made together with the ratio of the judgments relied on, the Court finds that the case of Kishan Gopal (supra) was also with respect to death of a 10 year old child. The age of the deceased son of the appellants in the instant case is 12 years. In the case of Kishan Gopal (supra) the Hon'ble Supreme Court held as follows:

“37. Further, in Lata Wadhwa case⁶ it was observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000 p.a. appears to be on the lower side



and held that the contribution of such children should be Rs 24,000 p.a.

38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa case⁶ with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs 15,000. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs 30,000 and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in Sarla Verma v. DTC⁷, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerla SRTC v. Susamma Thomas⁸ which is referred to in Lata Wadhwa case⁶ and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs 50,000 under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.”

It may be noted here that in the judgment of Kishan Gopal



(supra) quoted herein above the Hon'ble Supreme Court took note of the fact of the value of rupee coming down drastically since the year 1994 when the notional income of the non-earning member prior to the date of accident was fixed at Rs. 15,000/-. The notional income in the case of Kishan Gopal (supra) was taken as Rs. 30,000/-. It may be noted that even the said judgment in the case of Kishan Gopal (supra) was delivered on 26.8.2013 and more than 8 years have passed since then. Thus, the notional annual income having been taken as Rs. 36000/- in case of the 12 year old deceased son of the appellants can in no way be said to be unreasonable.

Further, in its judgment in the case of Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65] the Hon'ble Supreme Court approving the table in the case of Sarla Verma (supra) proceeded to conclude in the following paragraphs, as follows ;

“43.2 In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma¹⁹ should be followed.*

43.3 As a result of the above, while



considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.”*

Here itself it would be appropriate to quote the table in the case of Sarla Verma (supra) which has been reproduced in paragraph no. 28 in the case of Reshma Kumari (supra) and the same reads as follows :

“6. In Sarla Verma¹⁹, this Court undertook the exercise of comparing the multiplier indicated in Susamma Thomas², Trilok Chandra⁴ and Charlie²⁰, for claims under Section 166 of the 1988 Act with the multiplier mentioned in the Second Schedule for claims under Section 163-A (with appropriate deceleration after 50 years) as follows:

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas ²	Multiplier scale as adopted by Trilok Chandra ⁴	Multiplier scale in Trilok Chandra ⁴ as clarified in Charlie ²⁰	Multiplier specified in second column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Up to 15 yrs	-	-	-	15	20
15 to 20 yrs	16	18	18	16	19
21 to 25 yrs	15	17	18	17	18
26 to 30 yrs	14	16	17	18	17
31 to 35 yrs	13	15	16	17	16
36 to 40 yrs	12	14	15	16	15



41 to 45 yrs	11	13	14	15	14
46 to 50 yrs	10	12	13	13	12
51 to 55 yrs	9	11	11	11	10
56 to 60 yrs	8	10	09	8	8
61 to 65 yrs	6	08	07	5	6
Above 65 yrs	5	05	05	5	5

(emphasis in original)”

From the table in the case of Sarla Verma, reproduced herein above it would be evident that the multiplier actually used in second schedule to the M.V Act for deceased below 15 years of age would be 20.

It would further be relevant to point out that in paragraph no. 39 of the judgment in the case of Kishan Gopal (supra) quoted herein above, the Court awarded Rs. 50,000/- under conventional head in relation to death of children between 10-15 years old. So far as the instant case is concerned, the Court finds merit in the submission made on behalf of the appellants that under the conventional head, in the calculation in paragraph no. 17 of the judgment, the learned Tribunal has awarded a sum of only Rs. 9500/- (2500+2000+5000). In the opinion of the Court in light of the judgment in the case of Kishan Gopal (supra) the amount awarded under conventional head should be Rs. 50,000/-, and it is so awarded.

Thus, the computation of the compensation in case of appellants will be as follows :



Monthly income of the deceased	:-	Rs. 3,000/-
Annual Income of the deceased (Rs. 3,000 x 12)	:-	Rs. 36,000/-
Deceased aged 12 years. Thus, multiplier of 20.		
Total compensation amount Rs. 36,000 x 20	:-	Rs. 7,20,000/-
Conventional heads		<u>Rs. 50,000/-</u>
Total		Rs. 7,70,000/-

It is held that the appellants are entitled to a total compensation amount of Rs. 7,70,000/- along with 6 % per annum interest from the date of claim till the date of its actual payment, after deducting the amount already paid.

The appeal stands disposed off.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

