

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.23 of 2015

1. Rita Kumari and Ors wife of Late Balmukund Kumar
 2. Ramjee Prasad Son of Bhagwat Prasad
 3. Raj Kumar Devi wife of Ramjee Prasad All resident of village- Salempur Post- Chanaura, P.S.- Rahui Bena, District- Nalanda at present resident at B/57, Kankarbagh Colony, P.O. P.S.- Kankarbagh, District- Patna
- Appellant/s
- Versus
1. Braj Kishore Choubey and Ors son of Sri Gopal Choubey Resident of Radha Krishna Mandir, Muradpur, P.S.- Pirbahore, P.O.- Bankipore, District- Patna owner of Bus No. BR-P/7170
 2. Jogi Sharma Son of Ram Swarath Sharma, Resident of Chhoti Pahadi, P.S.- Alamganj Agamkuan, Post- Pahari Patna City, District- Patna
 3. The Oriental Insurance Company Limited, City Branch Office VI, South Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna Pin 800 002
- Respondent/s
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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary, Adv.
For the Respondent/s : Mr. Ashok Priyadarshi, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

7 07-07-2022 Heard learned counsel for the appellants and learned counsel for the Insurance Company Ltd.-respondent no.3.

The appeal having been preferred by the claimants/appellants on the limited point of enhancement of the quantum of compensation, no notice needs to be issued to respondent nos. 1 and 2 who are the owner and driver of the bus in question.

The instant appeal under section 173(1) of the Motor Vehicles Act, 1988 has been preferred against the judgment dated 15.11.2014 passed in Claim Case no.188 of 2002 by the



learned Additional District and Sessions Judge-III, Patna whereby it was held and ordered that the claimants were entitled to get compensation amount of Rs.8,28,500/- within 45 days failing which they would be entitled to interest on the awarded amount at the rate of 10% from 26.5.2014 till actual date of payment.

The facts in brief are that on 8.7.2002 at about 8.15 pm the deceased along with his friend was going on a motorcycle when they meet with an accident with the bus bearing registration no. BR 01P 7170 coming from the opposite side. As a result of the bus dashing against the motorcycle, Bal Mukund Kumar died on the spot. The injured were taken to the hospital where post mortem examination was conducted. A case being Chauk P.S. Case no.120 of 2002 dated 8.7.2002 was registered under sections 279 and 304A of the Indian Penal Code against the driver. It is further submitted that the claim case was filed by the claimants which was registered as Claim Case no.188 of 2002. After issuance of notice, evidence was led on behalf of the applicants/claimants which was both oral as well as documentary. By judgment dated 15.11.2014 the learned Additional District Judge-III was pleased to allow the claim case and granted compensation as stated above. It is against the said judgment that the instant appeal has been preferred praying for



increase in the quantum of compensation .

It is submitted by learned counsel for the appellants that the monthly income of the deceased was Rs.8500/-, however erroneously the learned Court below has quantified his monthly income to be around Rs.6000/ per month. It is further submitted that future prospects has also not been taken into account in calculating the quantum of compensation.

The appeal is opposed by learned counsel appearing for the Oriental Insurance Company Limited ('Insurance Company' in short). It is submitted that the learned Court below has rightly calculated the monthly income of the deceased which was done taking into account the average of the income shown in the income tax return. It is submitted that in fact on detailed calculation, the amount of monthly income may go even lower than what has been taken in calculating the compensation. It is further submitted that in the compensation, the multiplier has wrongly been taken as 18, and the same should be 17 taking into consideration the chart given in paragraph no.40 in the judgment of *Sarla Verma versus DTC and another [(2009) 6 SCC121]* and the age of the deceased being 30 years. On query by the Court, it is further submitted by learned counsel for the Insurance Company that the instant case was decided in the year 2014 wherein the future prospect had



rightly not been added in calculating the annual salary of the deceased.

Having heard learned counsel for the appellant and learned counsel for the Insurance Company, so far as the question of calculation of taking Rs.6000/- per month as monthly income of the deceased is concerned, the Court is in agreement with the submission made by learned counsel for the Insurance Company. Further in calculating the average monthly income taking into account the income tax return for the last three years, the monthly income may go down even further. However not going into the details thereof, the monthly income with respect to the deceased is taken as Rs.6000/-. Further in view of the judgment in the case of National Insurance Ltd. versus Pranay Sethi [(2017) 16 SCC 680], in case the deceased was self employed or on fixed salary an addition of 40% of the established income has been given as future prospects. The Court holds the deceased in the instant case also to be entitled to the same. Further on the question of multiplier, the Court once again finds substance in the submission made on behalf of Insurance Company that from the chart given in the case of *Sarla Verma* (surpa) for ascertaining the multiplier the relevant age would be the age of the deceased which is 30 years in the instant case and as such the correct multiplier would be 17 and



not 18.

Taking into account the above, the calculation of the compensation payable to the claimants/appellants would come as follows:

1. Monthly income of the deceased	Rs. 6000/
2. Future prospects at the rate of 40%	<u>Rs. 2400/</u>
Total	Rs. 8400/
3. Annual income of the deceased	Rs.1,00,800/
(Rs.8400/ X 12)	-
4. Less of personal expense (1/3)	<u>Rs. 33,600/</u>
	Rs. 67,200/
5. Compensation (X17)	Rs.11,42,400/
6. Other conventional head+18000/	
at the rate of Rs.3000 for 2005, 2008,	
2011, 2014, 2017 and 2020	<u>Rs. 70,000/</u>
	Rs.12,12,400/

The aforesaid total amount of Rs.12,12,400/ shall be paid by the Insurance Company to the respondent/claimants after deducting the amount already paid within a period of three months with interest thereon at the rate of 6% per annum from the date of petition till the date of realization.

The appeal stands disposed off.

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(Partha Sarthy, J)

