

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.804 of 2017

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The Divisional Manager Oriental Insurance Company Ltd. Asst. Manager
Cum and Duly Constituted Attorney The Oriental Insurance Company Ltd.
Regional Office Pir Mohani Kadam Kuan Patna.

... .. Appellant/s

Versus

1. Manorma Sinha wife of Rabindra Kumar Sinha
2. Dheeraj Kumar son of Rabindra Kumar Sinha Both residents of Village and P.O. Neori P.S. Biraul District Darbhanga at present C/o Mahesh Prasad Srivastava Mohalla Anandpuri Ward No. 7, P.S. Sadar, District Muzaffarpur.
3. Jain Narain Singh Son of Hari Shankar Singh Resident of Jakhi P.O. Sitpura, District Satana Madhya Pradesh Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Adv.
For the Respondent/s : Mr. Jai Prakash Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 04-07-2022

Heard learned counsel for the appellant and learned
counsel for the respondent nos. 1 and 2.

The instant appeal has been preferred against the
judgment dated 9.5.2017 passed in Claim Case no. 196 of 2011
by the learned 11th Additional District and Sessions Judge- cum-
M.V.A Claim Tribunal, Muzaffarpur, whereby the claim petition
filed by the mother and brother of the deceased Neeraj Kumar
was decided by the learned Tribunal and the Oriental Insurance
Company Limited ('the Insurance Company' in short) was



directed to pay a total compensation to the tune of Rs. 88,20,454/ to the claimants within two months along with interest thereon at the rate of 6% per annum from the date of filing till the date of realization.

The relevant facts in brief are that on 7.2.2011 at about 11.30 pm the deceased Neeraj Kumar, an Engineer along with others was going on a Bolero vehicle bearing registration no. MP 19T 2654. On reaching the place of occurrence, as a result of the rash and negligent driving by the driver, the vehicle in question overturned as a result of which Neeraj Kumar was seriously injured. He died on way to the hospital. An FIR being Civil Lines P.S. Case no. 56 of 2011 was registered on 14.2.2011 under sections 239 and 337 of the Indian Penal Code.

It is the case of the appellants that the deceased was aged about 27 years at the time of the accident. He was an Engineer drawing a monthly salary of Rs. 76,821/-. As a result of the accident and premature death, applicants/claimants who are the mother and brother of the deceased suffered mental pain, agony and were in deep shock. They filed a claim for payment of Rs.1,66,43,264/ as compensation with interest thereon at the rate of 10%. On notice although the owner of vehicle did not appear, the insurance company appeared through its counsel.



The matter was heard by the learned tribunal who by judgment dated 9.5.2017 was pleased to order and direct the insurance company to pay a total compensation amount of Rs.88,20,454/- to the claimants within two months with interest thereon at the rate of 6% per annum. The Insurance Company has preferred this appeal against the said judgment and order dated 09.05.2017.

The claimants who are respondent nos. 1 and 2 in the instant appeal have appeared through their counsel and have opposed the instant appeal. It is submitted that the calculation of the amount of compensation which the Insurance Company is liable to pay has been done by the learned tribunal on page no. 9 of its judgment. From the details of the calculation it would transpire that in addition to the basic pay and D.A. of 43% the learned tribunal in calculating the salary of the deceased has added 'Local Allowance 10%' which comes to Rs.2642/ and other allowance which comes to Rs.12,945.80.

Learned counsel for the appellant relying on the judgment in the case of *Gestetner Duplicators (Pvt.) Ltd. versus Commissioner of Income Tax, West Bengal (AIR 1979 SC 607)* and *Sarita Rai vs. Ramayan Singh [2018(2)PLJR 462]* submits that it has been held therein that salary under Rule 2(h) of the



Income Tax Act includes dearness allowance if the terms of the employment so provided but excludes all other allowances and perquisites. It is thus submitted that the learned tribunal has committed an error in including local allowance of 10% to the tune of Rs.2642/ and other allowance to the tune of Rs. 12945.80 as part of the salary of the deceased. Learned counsel further submits that although the salary of the deceased is taxable, the tax payable has not been deducted which ought to have been deducted in calculating the annual income of the deceased. In support of his contention learned counsel for the appellant relies on the judgment in the case of *Rajana Prakash & Ors. vs. Divisional Manager and Another* [(2011)14 SCC 639]. It is lastly submitted on behalf of the appellant that in the case of *National Insurance Company Ltd. vs. Pranay Sethi* [(2017) 16 SCC 680], the Hon'ble Supreme Court has fixed the amount under the conventional head namely, loss of estate, loss of consortium and funeral expenses to the tune of Rs. 70,000/ to be enhanced at the rate of 10% in span of three years.

Learned counsel for the respondent nos. 1 and 2 submits that there is no illegality in the judgment dated 9.5.2017 which is a well considered and reasoned judgment delivered by the learned tribunal in accordance with law. It is submitted that so



far as the reliance placed by the learned counsel for the appellant on the judgment in the case of Pranay Sethi (supra) is concerned, the same would not be applicable in the present case as the judgment in the instant case was delivered on 9.5.2017 whereas the judgment in the case of Pranay Sethi came on 31.10.2017. It is submitted that there being no merit in the instant appeal, the same be dismissed.

Heard Sri Ashok Priyadarshi, learned counsel for the appellant and Sri Jai Prakash Verma, learned counsel appearing for the respondent nos. 1 and 2.

The facts not in controversy in the instant case are that the deceased Neeraj Kumar who was in the Bolero vehicle bearing Registration No. MP 19T 2654 which met with an accident as a result of the rash and negligent driving by its driver as a result of which he was seriously injured and died on way to the hospital. The first contention raised on behalf of the appellant is that in computing the total salary of the deceased the judgment under appeal it would transpire that besides the basic pay and D.A. of 43%, the learned tribunal included therein local allowance to the tune of 10% amounting to Rs. 2642/ and other allowance to the tune to Rs.12,945.80.

The Hon'ble Supreme Court in the case of Gestetner



Duplicators (Pvt.) Ltd.(supra) in paragraph no.7 has held as follows:

“7.....In Part A of the Fourth Schedule to the Act, which contains rules relating to Recognised Provident Funds the word 'salary' has been defined in R.2(h) thus :

"Salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites....."

The judgment in the case of Gestetner Duplicators (Pvt.) Ltd. (supra) was followed in the case of Sarita Rai (supra) wherein the learned Single Judge proceeded to hold in paragraph no. 12 thereof as follows:

*“12.....But Bench of five judges of Hon'ble Apex Court in **National Insurance Company Ltd.** (supra) has been pleased to hold that it is the actual salary which should be basis of computation of the income of the salaried employee. The actual salary should be read as actual salary less tax. Hon'ble Apex Court in **Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal** reported (1979) 2 SCC 354 has been pleased to hold that definition of salary under Rule 2(h) of the Income Tax Act includes dearness allowance, if the terms of the employment so provide, but excludes all other allowances and perquisites....."*

Thus the Court finds force in the submission made by learned counsel for the appellant when it is submitted that the learned tribunal committed an error in including local allowance and other allowances as part of total salary of the deceased.



It is further submitted on behalf of the appellant that the calculation of total income has been given in paragraph no 10 of the judgment from which it would transpire that the total income as per the calculation done therein comes to around Rs.63,636/ which is undoubtedly a taxable income. It may be stated here that in so far as judgments including the judgment in the case of Rajana Prakash (supra) the Hon'ble Supreme Court in the case of Sarla Verma vs. DTC [(2009) 6 SCC 121] has held that where the income of the deceased were in taxable range, the annual income for the purpose of computation of compensation should be the annual income less income tax. Further in absence of any evidence as to the actual income tax paid, the tribunal ought to have deducted 30% from the income towards income tax and calculated the loss of dependency with reference to the net income. Learned Tribunal not having deducted the aforesaid sum of 30% in absence of any evidence with respect to the actual income tax paid and incoming to the net income, clearly committed an error in its computation.

With respect to the third contention made by learned counsel for the appellant is that in paragraph no. 11 of the judgment the learned tribunal has erroneously held the claimant entitled to get a sum of Rs. 1 lac under the head of loss of estate,



Rs. 1 lac toward loss of love and affection and Rs. 25,000/ as funeral expenses. It would be relevant to refer to judgment in the case of Pranay Sethi (supra) wherein in paragraph no. 52 the Hon'ble Supreme Court held as follows:

“52.The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact- centric or quantum- centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.....”

Thus the Court finds merit in the submission made on behalf of the appellant on this aspect also in view of the judgment quoted herein above wherein the Hon'ble Supreme Court has clearly quantified the amount payable under the head



of conventional heads which includes Rs.15000/- for loss of estate , Rs.40000/- for loss of consortium and Rs.15,000/- funeral expenses. So far as instant case is concerned, the deceased Engineer being unmarried would be entitled for a total amount of Rs.30,000/- under conventional head.

In view of the above, the computation of the claim of the appellant would be as follows:

1	Monthly basic salary	Rs. 26,420/-
2	D.A.(43%)	Rs. 11,360/-
3	Future prospect @ 40%	Rs. <u>15,892/-</u> 52,892/-
4	Yearly income (52,892 X 12)	Rs.6,34,704/-
5.	Loss of 30% income tax	- <u>1,90,411/-</u> Rs. 4,44,293/-
6.	Loss of 50% personal expense (unmarried)	- <u>2,22,146/-</u> 2,22,147
7.	Multiplier (17X2,22,147)	Rs.37,76,499/-
8.	Conventional head (unmarried) (30,000+3,000 each in 2014, 2017 and 2020)	+ <u>39,000/-</u> 38,15,499/-

The aforesaid total amount of Rs.38,15,499/- shall be paid by the Insurance Company to the respondent/claimants 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.

It is directed that the statutory amount deposited by the appellant shall be paid to respondents/claimants and adjusted



from the total amount payable to the claimants.

The appeal stands disposed off.

(Partha Sarthy, J)

Bibhash/-

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CAV DATE	
Uploading Date	8.7.2022
Transmission Date	

