IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.642 of 2016

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1. Sadhna Ambastha W/o Late Mahesh Kumar Ambast
2. Richa Kumari Ambast
3. Shreya Shruti
4. M.S. Supriya

Appellant No. 2 to 4 daughters of Late Mahesh Kumar Ambast and are minors represented through their mother as natural guardian and next friend. All residents of Kurmanghat, P.O. Devbandha, District Godda, at present residing at C/o Vinod Kr. Verma Son of Late Bindeshwari Prasad, Jhaua Kothi, near Q.No. 78, Khanjarpur, P.S. Barari and District-Bhagalpur.

... ... Claimants/Appellant/s

Versus

1. Krishna Devi, Wife of Late Narsingh Prasad, R/o C/o Vinay Ku Ambast, Mohalla Dudhani, in front of Durga Rice Mill, Dumka…...Mother of the Deceased………..Opposite party…….Respondent.
2. Sudarshan Pandit, Son of Sri Krishna Pandit, at new GualaBasti, Near Adarsh Nagar, North Jamshedpur, East Singhbhum.
3. National Insurance Co. Ltd through Branch Manager, Kanti Tower, 2nd Floor, New Kala Moti Road, Jamshedpur.
4. National Insurance Co. Ltd through Divisional Manager, Central Jail Road, Tilkamanjhi, Bhagalpur.

... ...Opposite Parties/ Respondent/s

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with

Miscellaneous Appeal No. 13 of 2017

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1. National Insurance Company Jamshedpur.
2. National Insurance Company Bhagalpur both through Sri Rajesh Ranjan, AM Cum and Duly constituted Attorney National Insurance Company Ltd. Regional Office 4th Floor, Sone Bhawan, B.C. Patel Road, P.O. G.P.O. , P.S. Sachiwalaya Patna District Patna.

... ... Appellant/s

Versus

1. Sadhna Ambast, Wife of Late Mahesh Kumar Ambast
2. Richa Kumari Ambast daughter of Late Mahesh Kumar Ambast

3. Shreya Shruti daughter of Late Mahesh Kumar Ambast.
4. M.S. Supriya daughter of Late Mahesh Kumar Ambast, (Claimant No. 4) Appellant No. 2 to 4 Minors under the guardianship Respondent no. 1 All residents of Kurmanghat P.O. Devbandhu District Godda at present residing at C/o Vinod Kumar Verma Son of Late Bindeshwari Prasad Jhaua Kothi near Q. No. 78 Khanjarpur P.S. Barari, District Bhagalpur.
5. Krishna Devi Wife of Late Narsingh Prasad Resident of C/o Vinay Kumar Ambast Mohalla Dudhani in front of Durga Rice Mill Dumka.
6. Sudarshan Pandit Son of Sri Krishna Pandit at New Gowala Basti near Adarsh Nagar Sonari North Jamshedpur East Singhbhum.

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 642 of 2016)

For the Appellant/s	:	Mr. Madan Mohan, Advocate
For Res. No.1		Ms. Pallavi Pandey, Advocate
For the Respondent/s	:	Mr. Durgesh Kumar Singh, Advocate

(In Miscellaneous Appeal No. 13 of 2017)

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Advocate
For Res. No.1-4	:	Mr. Madan Mohan, Advocate
For Res. No.5		Ms. Pallavi Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 10-11-2022

I.A. No.4950 of 2016 in M.A. No.642 of 2016

The aforesaid petition has been preferred by the appellants for condoning the delay of 74 days in filing the present Miscellaneous Appeal.

In view of the averments made in the interlocutory petition, the delay is condoned and the I.A. No.4950 of 2016 is allowed.

I.A. No.83 of 2017 in M.A. No.13 of 2017

The said Interlocutory Application has been preferred by the appellants for condoning the delay of one year and five days.

In view of the averments that has been incorporated in the said petition, the delay is condoned and the I.A. No.83 of 2017 is also allowed.

M.A. No.642 of 2016 with M.A. No.13 of 2017

Heard Mr. Madan Mohan who represent the appellants in **M.A. No.642 of 2016,** Mrs. Pallavi Pandey who represents the respondent no.1 while Mr. Durgesh Kumar Singh who appears on behalf of the respondent nos.3 and 4, National Insurance Company Limited (henceforth for short 'the Insurance Company')

2. Similarly in **M.A. No.13 of 2017** Mr. Durgesh Kumar Singh represents the appellant, 'the Insurance Company' while Mr. Madan Mohan has filed 'Vakalatnama' on behalf of respondent nos.1-4 and Mrs. Pallavi Pandey represents the respondent no.5.

3. The two appeals arises out of judgment and award dated 01.08.2015 passed in Claim Case No.154 of 2012 and 21.09.2015 by First Additional District Judge cum Motor Accident Claim Tribunal, Bhagalpur (henceforth for short 'the Tribunal') by which the learned court had awarded Rs.32,21,769/- with 6% interest from the date of filing of the case till its realization.

4. The matrix of facts giving rise to the present appeal is/are as follows:

5. Mahesh Kumar Ambasta (deceased) was a Stenographer with the D.R.D.A., Dumka. On the fateful day, 26.12.2011, he got down from the Bus along with his brother, Mukesh Kumar Ambasta and as he was crossing the road, at Kanta Toli Chowk, Ranchi the truck bearing Registration No.JH-055-5896 dashed him causing his immediate death. Accordingly, the Lower Bazar P.S. Case No.372 of 2011 was instituted. The police investigated the matter and found that the deceased got hit by said Truck No.JH 055 5896 and accordingly the charge sheet was submitted against the truck driver Sudarshan Pandit who was also the owner of the vehicle. The Truck was insured with 'the Insurance Company'.

6. The mother of the deceased (respondent no.1) in M.A. No.642 of 2016 was separated and being wife of an ex-employee, she was receiving pension and thus had sufficient means to cater to her needs.

7. The wife of the deceased namely Sadhana Ambast and her children thereafter preferred Claim Case No.154

of 2012 before 'the Tribunal'. Both the truck owner/driver as well as 'the Insurance Company' appeared and contested the appeal.

8. The issues amongst other that were framed by 'the Tribunal' was /were:

(i) whether the death was due to the rash and negligent driving ? and

(ii) whether the claimant are entitled to the compensation or not ?

9. In support of the claim, the witnesses were examined. AW-1 was the claimant/wife of the deceased. AW-2 was the brother, Mukesh Kumar Ambast who was an eyewitness to the occurrence and he narrated the fact. He was examined and cross-examined.

10. The claimant also produced photocopies of the following exhibits:

(i) Exhibit No.1- Pay slip of the deceased;

(ii) Exhibit No.2- the Certified copy of the FIR;

(iii) Exhibit No.3- the Postmortem Report;

(iv) Exhibit No.4- the heirship certificate;

(v) Exhibit No.5- Owner Book of the concerned Truck;

(vi) Exhibit No.6- the Insurance Policy;

(vii) Exhibit No.7- the Income-Tax Return of the deceased; and

(viii) Exhibit No.8-the Charge sheet.

11. 'The learned Tribunal' after going through the evidences as also the documents on record decided the issue that the deceased was hit by the said Truck No.JH 055 5896. It also held that the Truck was insured with 'the Insurance Company' having valid policy.

12. So far as the second issue of grant of compensation is concerned, 'the learned Tribunal' held that:

(i) the deceased was an employee with the D.R.D.A., Dumka having monthly income of Rs.37,815/- and the Exhibit-1 was a testimony to the said fact;

(ii) the deceased appellant was 54 years of age on the date of accident/death (D.O.B. 24.02.1958);

(iii) the deceased was having a proper PAN Card with the number ABZPA5384 and thus was an Income-Tax payee which is supported by Exhibit-7.

13. 'The Insurance Company' on the point of compensation submitted that the truck driver was not having any valid driving license at the material time of accident and thus the terms and conditions of the insurance policy was violated. As such 'the Company' is not liable to indemnify the amount.

14. ‘The Insurance Company’ however was not in denial of the fact that the Truck was having a valid Insurance policy at the time of accident.

15. The Truck was insured with ‘the Insurance Company’ for the period 30.03.2011 to 29.03.2012 having Policy No.170103/-31/10/6300008157 and thus it was clear that the Truck was having a valid policy at the time of accident. Accordingly, on the compensation point also the answer of ‘the learned Tribunal’ was in affirmative.

16. Accordingly, direction was issued by ‘the Tribunal’ vide an order dated 01.08.2015 to pay Rs.32,21,769/- within a period of three months with 6% interest from the date of filing till the date of realization.

17. Both the claimants as well as ‘the Insurance Company’ were aggrieved by the decision. The appellants in M.A. No.642 of 2016 were aggrieved that while calculating the amount, the future prospects in the income was not added in view of decision of the Hon’ble Supreme Court in **National Insurance Company Vs. Pranay Sethi reported in 2017 (4) PLJR (SC) 261**. The Insurance Company was aggrieved that the driver was without any valid driving license and as such the owner of the Truck was to make the payment.

18. Heard learned counsel for the parties.

19. Mr. Madan Mohan, learned counsel for the appellants in M.A. No.642 of 2016 submitted that 'the Tribunal' should have calculated the future prospects on the income of the deceased while granting compensation. It was further contended by him that even on conventional head, the amount was not properly calculated.

20. Per contra, Mr. Durgesh Kumar Singh, learned counsel appearing for 'the Insurance Company' in M.A. No.13/2017, despite the fact that the truck owner/driver was not having a valid driving license, he was absolved of the responsibility forcing 'the Company' to file the present appeal.

21. This Court has first taken up the contention put forward by Mr. Durgesh Kumar Singh, learned counsel appearing in M.A. No.13 of 2017. The case of 'the Insurance Company' is based on a certificate of the Licensing Authority, Gumla which vide certificate no.221 dated 21.08.2013 stated that the period of validity of the driving license was between 30.12.2006 to 29.12.2009. Based on the said certificate, 'the Insurance Company' made out a case that the driver was not having a valid driving license.

22. However, the said contention of ‘the Insurance Company’ is fit to be rejected inasmuch as the accident took place on 26.11.2011 whereas the certificate talks about the period of validity between 30.12.2006 to 29.12.2009. Whether on the date of accident, the driver/owner of the Truck No.JH 055 5896 was having a valid driving license or not cannot be ascertained from the said certificate. ‘The Insurance Company’ did not took any steps to have any such certificate to support its case and/or to satisfy ‘the learned Tribunal’ on this point.

23. On the point of future prospects and payment on conventional head, learned counsel appearing for ‘the Insurance Company’ conceded that in view of the judgment and order passed by the Hon’ble Apex Court in National Insurance Company Limited vs. Pranay Sethi (supra) the future prospect has to be added in the amount that is to be granted minus tax which need to be deducted. He was further in agreement on the payments on conventional head.

24. Further, both the parties were agreed on the point of 6% interest on the compensation amount.

25. Having heard the rival contention, this Court would like to bring on record the judgment and order passed by the Hon’ble Apex Court in National Insurance Company Limited vs.

Pranay Sethi (supra) on future prospects and conventional heads. Para-61 of the said order read as follows:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An*

addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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 amounts should be enhanced at the rate of 10% in every three years."

26. The Pranay Sethi (supra) case refers to another order of **Hon'ble Supreme Court** in **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another** reported in **2009(6) SCC 121** wherein paras -30 to 32 read as follows:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (¼) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent of family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother *alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.*

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

27. As stated in earlier paragraph, the date of birth of the deceased was 24.02.1958. As such, he was 54 years of age on the fateful day, 26.12.2011. Admitted fact is that he was Stenographer with the D.R.D.A., Dumka having monthly salary of Rs.35,815/-.

28. It would thus be appropriate to bring on record a chart of the amount that the appellants are entitled to taking into account the future prospects and conventional heads as observed in National Insurance Company Limited vs. Pranay Sethi and others (supra):

CHART

Headings	Amount	Calculation
Salary	35815	
Annual Income		429780
Income Tax	12353	
Annual Income Less Tax		417427
Deduction	1/4	104356
Annual Income after deduction		313071
Multiplier	11	3443781
Further prospects	15%	516567
Conventional Headings	77000	
Final Compensation		40,37,348
Interest	6%	

29. The aforesaid compensation also includes the amount under the conventional headings as observed in **National Insurance Company Limited vs. Pranay Sethi** (supra) [paragraph 61(viii)] according to which on conventional heads i.e. on loss of estate, loss of consortium and funeral expenses, the amount should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively with 10% enhancement every three years. Thus, under conventional head, Rs.77,000/- has been shown in the chart.

30. This Court as such holds that the appellants in M.A. No.642 of 2016 are entitled to Rs.40,37,348/- with 6% interest per annum from the date of the filing of the petition till its realization. The said amount shall be released to the appellants directly in their Bank Account through RTGS process within a period of three months.

31. The M.A. No.642 of 2016 is hereby allowed.

32. In the result, the M.A. No.13 of 2017 preferred by 'the Insurance Company' fails and is accordingly dismissed.

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.11.2022
Transmission Date	NA