IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.759 of 2018

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1. Ruth Murmu, Wife of Sri Antoni Hansda, resident of Village- Asanthar, P.S.- Jama, District- Dumka at present at Mohalla- Aliganj, P.S.- Mojahidpur, District- Bhagalpur.
2. Antoni Hansda, Son of Late Jaikab Hansda, resident of Village- Asanthar, P.S.- Jama, District- Dumka at present at Mohalla- Aliganj, P.S.- Mojahidpur, District- Bhagalpur.

... ... Appellant/s

Versus

1. Md. Jamal Uddin, Son of Md. Umar, resident of Dudhani, Near BSNL, Afice, Dumka (Jharkhand) 814102 (Owner of Vehicle Truck No. - UP - 30A-9785).
2. Julfikar Ansari, Son of Islam Ansari, resident at Basamsoli, P.S.- Palajori, District- Dumar (Driver of Vehicle Truck No. UP-30A- 9785)
3. Branch Manager, HDFC, ERGO General Insurance Company Ltd., Ranchi, (Insurer of Truck No.- UP-30A-9785).
4. Branch Manager, HDFC, ERGO General Insurance Company Ltd., Metro Towers, Kolkata (W.B)

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vivekanand Vivek, Adv.
For the Respondent/s	:	Mr. Durgesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

7 03-11-2023 **<u>I.A. No. 6703 of 2018</u>**

1. This Interlocutory Application has been filed for condoning the delay of 8 months 29 days in filing the present appeal.

2. Learned counsel for the appellants submits that after passing of the Award the *pairvikar* of the appellants filed requisition for certified copy of the Judgment and Award on 08.01.2018 and it was supplied on 13.02.2018. Thereafter, the appellants came to Patna on 22.08.2018 and handed over the papers to the learned counsel for filing of appeal. The appeal

was drafted on 23.08.2018 and the same could be filed on 25.08.2018.

3. It is submitted that the instant appeal could not be filed within the statutory period of limitation due to the fact that *Gotani* (co-sister-in-law) of the appellant was suffering from Cancer and the appellants had to take care of her and lastly she died on 07.08.2018. Thereafter, after performing her *shradh* the appellants took steps to file the appeal. Therefore, the delay has been caused in filing the appeal.

4. On the other hand, learned counsel for the Insurance Company has appeared but did not file any counter affidavit with regard to limitation.

5. Considering the facts and circumstances and averments made in the Interlocutory Application, the delay in filing the appeal is condoned. Accordingly, the Interlocutory Application is allowed.

6. Both the parties have agreed to decide this appeal on merits at this stage itself.

Re: Miscellaneous Appeal No. 759 of 2018

7. Learned counsel for the Insurance Company has not filed any appeal against the said Award.

8. This Miscellaneous Appeal has been filed for

enhancement of compensation against Judgment and Award dated 30.08.2017, passed by learned Additional District Judge-V-cum-Motor Accident Claims Tribunal, Bhagalpur in Claim Case No. 09 of 2011.

9. Learned counsel for the appellants submits that the learned Tribunal has not correctly considered the point of conventional head as well as future prospect of the deceased. The deceased was aged 19 years when the accident took place.

10. Learned counsel for the appellant submits that the deceased was fruits seller.

11. Learned counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in case of ***National Insurance Company Vs Pranay Sethi & ors.*** reported in ***(2017) 16 SCC 680*** wherein the Apex Court has evaluated all judicial proceedings on the issue of future prospects including ***Sarla Verma (Smt.) & Ors. Vs Delhi Transport Corporration & Anr.*** reported in ***(2009) 6 SCC 121*** and reasonable figure for conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and 15,000/- respectively and also issued direction for the enhancement on percentage basis in every 3 years and the enhancement should be at the rate of 10 per cent in a span of

three years.

12. In the case of **Magma General Insurance Company Ltd. Vs Nanu Ram @ Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130,** the Hon'ble Supreme Court interpreted the word "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, filial consortium and further held that filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime.

13. So far future prospect is concerned, the learned Trial Court has not considered the future prospect of the deceased. It is the case of claimant that the deceased aged about 19 years was the fruit vendor.

14. On adding the future prospect, in view of the judgment of the Hon'ble Apex Court in ***Pranay Sethi (supra)***, this Court has no doubt that in this case 40% of the salary amount of the deceased would be entitled to be added while calculating total loss of dependency. Paragraph '59.4' of the Judgment of ***Pranay Sethi (supra)*** of the Hon'ble Supreme

Court reads as under:-

> *59.4. In case the deceased was selfemployed 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."*

15. After analyzing all aspects of the matter, the details of the compensation amount under different heads in the light of the aforesaid decisions of the Hon'ble Supreme Court, the claimants are awarded compensation in the manner indicated in chart mentioned below and the judgment and Award passed by the Claim Tribunal is modified to the extent indicated below:-

1.	***Name***	***Kristopher Hansda***
2.	***Age***	***19 years***
3.	***Monthly Income***	***Rs. 3000/-***
4.	***Additional to income to future prospect @40% deceased being less than 40 years***	***Rs. 4200/- = (Rs. 3000/- + Rs. 1200/)***
5.	***Annual Income***	***Rs. 4200/- X 12 = Rs. 50,400/-***

6.	***Deduction towards personal and living expenses (50%)***	***Rs. 50,400/2= Rs. 25, 200/-***
7.	***Multiplier based on age of 19 years***	***18***
8.	***Amount of Compensation***	***Rs. 25, 200/- X 18= Rs. 4, 53, 600/-***
9.	***Loss of Estate***	***Rs. 15,000/-***
10.	***Loss of Consortium***	***Rs. 40,000/-***
11.	***Funeral Expenses***	***Rs. 15,000/-***
12.	***Total Amount of Compensation***	***Rs. 5, 23, 600/-***

16. The amount of compensation as awarded by the learned Tribunal is enhanced from Rs. 3,28,500/- to Rs. 5,23,600/-. The total amount of compensation would be Rs. 5,23,600 minus Rs. 50,000, which was granted under Section 140 of the Motor Vehicle Act *vide* order dated 13.09.2013 and the enhanced amount shall carry interest at the rate of 6% per annum from the date of filing of claim petition till realization. The due amount is to be paid by Insurance Company-respondent no. 3 and 4 to the claimants within a period of three months.

17. The claimant no. 1 has already received Rs. 3,28,500/-. The amount payable i.e. Rs. 1,95,100/- after deduction of Rs. 3,28,500/- from the total compensation i.e. Rs.5,23,600/- shall be paid within a period of three months which shall carry interest at the rate of 6 per cent per annum.

18. Accordingly, this appeal is allowed.

(Khatim Reza, J)

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