IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.355 of 2016

==

Prabhawati Devi W/O Late Ghanshyam Mishra, Resident of Parshurampur, P.S.- Parasi, District- Arwal.

... ... Appellant/s

Versus

1. Upendra Kumar Singh S/O Laxman Singh Resident of AkilpurBarua, P.S.- Sonpur, District- Saran.
2. Singaswar Prasad Singh S/O Jaynarayan Singh, Resident of Village- Kachanpur Desari, District- Vaishali. At present c/o Upendra Kumar Singh, At Akhilpur Barua, P.S. Sonpur, District- Saran.
3. The New India Assurance Company Ltd.
   Through: Branch Manager, The New India Assurance Company Ltd.
   Cinema Road Hajipur.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Alok Kumar Shahi, Advocate Mr. A. Sinha, Advocate
For the Respondent/s	:	Mr. V.C. Srivastava, Advocate

==

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

7 10-08-2023 This Miscellaneous Appeal has been filed against the judgment and award dated 30.03.2015 for enhancement of compensation granted in Claim Case No. 87 of 2010 by the District Judge-cum-chairman, Motor Accident Claims Tribunal, Vaishali at Hajipur, whereby the claim petition has been allowed and respondent No. 3 has been directed to pay amount of compensation i.e., Rs. 20,76,301/- with 7% interest per annum from the date of filing of the claim case.

2. The facts of present claim case are that Ghanshaym Mishra (deceased) aged 54 year on the date of the accident i.e.

18.03.2010, while traveling from Chhapra to Hajipur on a motorbike met with an accident due to rash and negligent driving of the driver of Tractor bearing registration No BR 31G 1288. Ghanshyam Mishra fell on the road and the offending tractor crashed the head of the deceased and he succumbed to death on the spot. FIR has been lodged under Section 279, 304A, 337, 338 and 427 of Indian Penal Code as Hajipur Sadar PS case No. 86/2010. The claim petition has been filed by his wife namely, Prabhawati Devi, under Section 166 of Motor Vehicle Act.

3. Learned Tribunal has held that deceased was aged about 54 years 6 months old and was earning Rs. 23,564/- per month and hence, annual income of the deceased will come to 23,564 x 12 = Rs. 2,82,768/-. The annual income of the deceased for computation of quantum of the compensation shall be Rs. 2,81,836/- deducting Rs. 932/- (2,82,768 – 932) on account of income tax. Since the deceased was married and the claimant was dependent on deceased at the time of the accident, hence, out of total income, claimed compensation shall be reduced to one-third in consideration of expenses which victim would have incurred towards maintaining himself if he would have been alive. Therefore, the annual income of the deceased after deducting his personal expense to the extent of one-third would come to Rs. 1,87,891/- i.e., Rs. 2,81,836 - 93945 = Rs. 1,87,891/-.The

deceased was 54 years old and hence, the multiplier of 11 will be applied for multiplying the compensation amount of the deceased and it will come to Rs. 1,87,891/- x 11 = Rs. 20,66,801/-. It is further held that the claimants will also get Rs. 9,500/- as funeral expenses, for loss of estate and consortium and the total amount comes to Rs. 20,76,301/- with interest at the rate of 7% per annum from the date of filing of the claim case from the Insurance Company and directed the claimant to invest 50% of the amount in a fixed deposit of three years term in a nationalised bank.

4. The case of the claimant, in short, is that the deceased Ghanshyam Mishra aged 54 years 06 months died on 18/03/2010, when he was going on a bike from Chhapra to Hajipur, in vehicular accident at the east of Ramasish Chowk, Hajipur, caused by rash and negligent driving of the driver of unnumbered tractor and F.I.R. was registered under section 279,304A, 337, 338 and 427 of Indian Penal Code. The claim application was filed by his wife i.e. Prabhawati Devi. It is further contended that Ghanshyam Mishra was badly injured in the accident and died on the spot. It is contended that the deceased at the time of the accident was in the service of Forest Department, Govt. of Bihar, and his gross salary was Rs. 23,564/- per month.

5. On summons, respondent No. 1 i.e. Upendra Kumar Singh, who is the owner of the vehicle, and respondent No. 3 New India Assurance Co. Ltd. had filed written statement and submits that the driver of the vehicle had a valid license and that the offending vehicle was covered under the insurance with New India Assurance on the date of the accident i.e. 18/03/2010.

6. The Insurance company has not filed any appeal against the award dated 30.03.2015 passed in Claim Case No. 87 of 2010.

7. Learned counsel for the appellant has raised only two points in this appeal i.e. for enhancement of the awarded amount i.e. future prospect of the deceased by 15% and for loss of consortium, loss of estate and funeral expenses as per ***Pranay Sethi*** case.

8. Learned counsel for the appellant submits that the claim was partly allowed. Aggrieved by this judgment and award passed by the Claims Tribunal, the claimant filed the present Miscellaneous Appeal and challenged the aforesaid judgment and award. Learned counsel for the appellant submits that the learned Tribunal failed to consider calculation of the compensation in terms of the settled principle laid down in the case of ***Sarla Verma Vs. DTC*** reported in ***2009 (6) SCC 121*** and ***National Insurance Company Limited Vs. Pranay Sethi*** reported in ***2017***

(16) SCC 680 which was affirmed in ***Laxmidhar Nayak and Ors. Vs Jugal Kishore Behera and others*** reported in ***(2018) 1 SCC 746.***

9. Learned counsel for the appellant submits that the Tribunal failed to consider future prospect in calculating the quantum of the compensation as per ***National Insurance Company Limited Vs. Pranay Sethi*** **(**Supra). It is further submitted that the Tribunal erroneously failed to add compensation for the loss of consortium as per latest judgment of Hon’ble Apex Court.

10. The learned counsel for the appellants has placed reliance on several decisions passed by the Hon'ble Supreme Court, wherein, the determination of age, income of the deceased, addition of income to future prospects, deduction towards personal and living expenses, multiplier based on age, loss of estate, loss of consortium and funeral expenses have been considered. The details of the judgments are as follows:-

(i). ***Sarla Verma Vs. D.T.C.*** *reported in* ***2009 (6) SCC 121,***

(ii). ***National Insurance Company Ltd. Vs. Pranay Sethi*** reported in ***2017 (16) SCC 680,***

(iii). ***Magma General Insurance Company Ltd. Vs. Nanuram*** reported in ***2018 (18) SCC 130.***

11. In the case of ***Magma General Insurance Company Ltd.*** (supra), 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.

12. With respect to Future Prospect, the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi*, (**Supra**)** has held as follows:-

> *"59.4. 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."*

13. On the point of future prospect if it is added as per the judgment of Hon'ble Apex Court while calculating total loss of the dependency in absence of their being any mandate of the Hon'ble Apex Court on this point, ratio has been applied in the present case where the deceased was between the age of 50 to 60

years an additional 15% of the established income of this deceased should be awarded towards future prospect which has been elaborated in paragraph 59.4 of ***Pranay Sethi*** (Supra) case.

14. After analyzing all aspects of the matter as well as the details of the compensation amount granted under different heads in the light of the aforesaid decisions of the Hon'ble Supreme Court, the claimant is awarded compensation in the manner indicated in chart mentioned below and the judgment and award passed by the Claim Tribunal is enhanced to the aforesaid extent:-

15. In the result this appeal is allowed. The claimant is entitled to the following amounts:-

S. No.	**PARTICULARS**	**Details**
1.	NAME:-	Ghanshyam Mishra
2.	AGE:-	54 years
3.	MONTHLY INCOME:-	Rs. 23,564/- (perma- nent job with incre- ments)
4.	ADDITION TO INCOME TO FU- TURE PROSPECT(@10% DECEASED BEING GREAT THAN THAN 50 YEARS AND LESS THAN 60 YEARS):-	Rs. 2356.40
5.	ANNUAL INCOME	(23564+2356.4 x12)= 311044.80
6.	DEDUCTION TOWARDS PER- SONAL & LIVING EXPENSES(1/3):-	311044.8-103681.6 =207363.20
7.	MULTIPLIER BASED ON AGE OF 54 YEARS:-	11 x 207363.20
8.	AMOUNT OF COMPENSATION:-	Rs.22,80,995.20
9.	LOSS OF ESTATE:-	Rs. 15,000/-

10.	LOSS OF CONSORTIUM (SPOUSAL)	Rs. 40,000/-
11.	FUNERAL EXPENSES:-	Rs. 15,000 /-
12.	**TOTAL AMOUNT OF COMPENSATION:-**	**Rs. 23,50,995.20**

16. Accordingly, this Miscellaneous Appeal filed by the appellants is hereby allowed with modification in quantum of compensation as aforesaid.

17. The amount of compensation as awarded by the learned tribunal is enhanced from Rs. 20,76,301/- to Rs. 23,50,995.2/-, the enhanced amount shall carry the interest at the rate of 7% per annum from the date of claim petition till its realization. The due amount be paid by the Branch Manager, New India Assurance Company limited within a period of three months from today. Further the claimant is directed that she shall invest 50% of the awarded amount in a nationalized bank and shall submit a compliance report to learned Tribunal.

(Khatim Reza, J)

Sankalp/-

U			