IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.296 of 2016

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Mostt. Neelam Devi w/o Late Rakesh Kumar Singh, Resident of K.P. Sharkar road, Mithapur, B-area, P.S.-Jakkanpur, Dist.-Patna

... ... Appellant/s

Versus

1. Chola Mandalam Ms General Insurance Company Ltd., Registered and H.O., "Dare House" 2nd floor, No.2, N.S.C., Bose road, Chennai-600001

2. Binod Kumar Tiwari s/o R. Tiwari, 11/12/1, Mokapara Lane Shibpur, Howrah, West Bengal

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For Insurance Company : Mr. Durgesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

8 03-11-2023 This Miscellaneous Appeal has been filed against the judgment and award dated 30.07.2015 (for enhancement of compensation) passed by the learned Additional District Judge-VIII cum Motor Accident Claims Tribunal, Patna in Claim Case No. 245 of 2011 whereby claim application was allowed and Insurance Company was directed to pay compensation of Rs. 15,09,500/- (Rupees fifteen lac nine thousand five hundred only) at the rate of 6% per annum from the date of institution of Claim Case. It is further held that the insurance company will be at liberty to recover the amount from the owner of the offending truck namely, Binod Kumar Tiwari, son of R. Tiwari through the process of the court.

2. The insurance Company has not filed any appeal against the said judgment and award dated 30.07.2015 passed in Claim Case No. 245 of 2011.

3. The appellant has filed this appeal only for two reliefs in view of the decision of the Hon'ble Supreme Court in case of ***National Insurance Company Limited Vs. Praney Sethi*** reported in ***2017 (16) SCC 680***, ***Sarla Verma Vs. DTC*** reported in ***2009 (6) SCC 121*** and ***Magma General Insurance Company Limited Vs. Nanu Ram*** reported in ***(2018) 18 SCC 130.***

4. Learned counsel for the appellants submits that the learned lower court did not consider the future prospect of the income of the deceased as the deceased was aged 45 years only. It is further submitted that learned lower court failed to award compensation in respect of conventional heads which is in the teeth ***National Insurance Company Limited Vs. Pranay Sethi (supra)***.

5. A Constitution Bench of this Court in ***Pranay Sethi (supra)*** dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

6. It is well settled by the judicial pronouncements that the widow of the deceased would be entitled for a spousal consortium and the minor children would get parental consortium. In case of the parents, if dependent on the deceased, they would be entitled for filial consortium. In the case of ***Janabai WD/O Dinkarrao Ghorpade & Ors. vs. ICICI Lombard Insurance Company Ltd.*** *reported in* ***2022 (10) SCC 512*** the Hon'ble Apex Court has awarded Rs. 40,000/- each on account of the spousal and parental consortium. In the present case, the widow of the appellant would be entitled for Rs. 40,000/- as spousal consortium. They would also be entitled for the claim on account of funeral expenses at Rs. 15,000/- and Estate loss at Rs. 15,000/-.

7. So far future prospect is concerned, learned Tribunal ought to have considered the future prospects of the deceased and while computing the compensation ought to have added additional 25 per cent on actual monthly income of the deceased which has been decided in case of ***Pranay Sethi (supra)*** in paragraph 59.4, which reads as under:-

> *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."

8. On the point of future prospect, if it is added as per the judgment of the Hon'ble Apex Court while calculating the total loss of dependency, in absence of there being any mandate of the Hon'ble Apex Court on this point, ratio has been applied in the present case where the deceased was aged between 40 to 50 years an additional 25% of the established income of the deceased should be awarded towards future prospect which has been elaborated in paragraph '59.4' of ***Pranay Sethi*** (*supra*) case.

9. The age of the deceased was 45 years at the time of accident, the learned tribunal has wrongly applied the multiplier as 15 instead of 14.

10. In the case of ***Sarla Verma (Smt) (Supra)*****,** a chart was prepared for fixing the applicable multiplier in accordance with the age of the deceased after considering the judgments in ***Kerela SRTC Vs. Susamma Thomas*** reported in ***(1994) 2 SCC 176*****,** ***U.P. SRTC Vs. Trilok Chandra*** reported in ***(1996) 4 SCC 362 and New India Assurance Company Limited Vs. Charlie*** reported in ***(2005) 10 SCC 720.***

11. The relevant extract from the said chart i.e.

Column 4 has been set out herein below for ready reference:-

Age of the deceased	Multiplier (Column 4)
Up to 15 years	-
15 to 20 years	18
21 to 25 years	18
26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	9
61 to 65 years	7
Above 65 years	5

12. The claimant-appellant is found to be entitled for the following amount:-

1.	***Name***	***Rakesh Kumar Singh***
2.	***Age***	***45 years***
3.	***Annual Income***	***Rs. 1,50,000/-***
4.	***Additional to income to future prospect @25% deceased being less than 50 years***	***Rs. 37,500/-***
5.	***Annual Income+future prospect @25%***	***Rs. 1,50,000+Rs. 37,500=Rs. 1,87,500/-***
6.	***Deduction towards personal and living expenses (1/3)***	***Rs. 1,87,500-Rs. 62,500=Rs. 1,25,000/-***
7.	***Multiplier based on age group of 40 to 50 years***	***14XRs. 1,25,000=Rs. 17,50,000/-***
8.	***Amount of Compensation***	***Rs. 17,50,000/-***
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. 18,20,000/-***

13. The amount of compensation as awarded by the learned Tribunal is enhanced from Rs.15,09,000/- to Rs. 18,20,000/-. The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of filing of claim petition till realization. The due amount is to be paid by respondent no.1 within a period of three months from today to the claimants. The Insurance Company is at liberty to realize the said amount from the owner of the offending truck.

14. The claimant no. 1 has already received the Award amount. The amount to be payable after deduction of Award amount already paid shall be paid by the Insurance Company within a period of three months which shall carry interest of 6 per cent per annum.

15. In the result, the appeal is allowed.

(Khatim Reza, J)

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