IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.611 of 2016

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Branch Manager, The New India Assurance Co. Ltd. Rohtas at Sasaram through its Chief Regional Manager, Regional Office, New India Assurance Co. Ltd., 6th Floor, B.S.F.C. Building, Fraser Road, Patna-I

... ... Appellant/s

Versus

1. Smt. Sarswati Devi and Ors. wife of Gopal Sharma
2. Gopal Sharma son of Late Mahesh Sharma, Both are residents of Village - Lalganj, P.O. Sasaram, P.S. - Sasaram M, Dist. - Rohtas.
3. Gupteshwar Singh son of Sheomukh Singh Resident of Village - Murhi, P.O. and P.S. - Derigaon, Dist - Rohtas, presently residing at Mohalla - Diliyan Near Rohtas Diesel Ward No. 27 New P.O. and P.S. Sasaram, Dist. - Rohtas.
4. Kashi Kabri @ Kashi Seth son of Jagdish Seth resident of Mohalla Takiya, P.O. Takiya, P.S. Sasaram Town, Dist. - Rohtas.
5. Sri Krishna Kumar Prasad son of Late Jai Narayan Ram Resident of Village and P.O. Karwandiyar, P.S. - Sasaram Muffasil, Dist. - Rohtas.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

12 08-08-2023 This Miscellaneous Appeal has been filed against the judgment and order dated 12.12.2015 passed by the learned Additional District Judge-II-cum-Motor Vehicle Accident Claims Tribunal, District- Rohtas at Sasaram in Motor Vehicle Claim Case No. 158 of 2010 whereby the claimants have been held to be entitled to get compensation for vehicular accidental death of their son and accordingly Insurance Company-appellant has been directed to pay Rs. 7,52,852/- to them along with

7% simple interest from the date of filing of the case within two months from the date of order.

2. Learned Tribunal has further held that deceased was unmarried aged about 21 years and there will be multiplier of 17 at his age. While the deceased was healthy, young person, it will be presumed that he may have earned Rs. 200/- per day as per the circular issued by the Government of Bihar, a young, energetic, labour class person works 26 days in a month and in such circumstances he would have earned Rs. 5200 per month and in future there would have been hike in wages. Hence, there must be a future prospects of 10% increase of labour class person and monthly income of the deceased after adding 10 per cent increase in future prospects will come to Rs. 5720/- out of which the claim compensation amount shall be reduced by one-third in consideration of expenses which the victim would have incurred towards maintaining himself if he would have been alive. Therefore, monthly income of the deceased after deducting his personal expenses to

the extent of one-third i.e. Rs. 5720 – Rs. 1907 = Rs. 3813/- (one-third of total income) and annual income of deceased would have been Rs. 3813 x 12 = Rs. 45, 756/-. It is further held that the multiplier of 17 will be calculated for multiplying the compensation amount of the deceased and it will come to Rs. 45, 756 x 17 = Rs. 7,77,852/-.

3. The claimants will also get Rs. 25000/- as funeral expenses and the total amount comes to Rs. 8,02,852/- out of which claimants have already received Rs. 50,000/- in lieu of no fault claim compensation amount. Hence, claimants will get Rs. 7,52,852/- from Insurance Company-appellant with 7% simple interest from the date of filing of the case.

4. Aggrieved by this judgment and award passed by the Claim Tribunal, the Insurance Company-appellant filed the present Miscellaneous Appeal and challenged the aforesaid judgment and award. Learned counsel for the appellant submits that until and unless authenticity of driving license, fitness, permit etc. is not

proved, the Insurance Company-appellant is not liable to pay any sum of compensation. It is further submitted that learned Tribunal while assessing the income of the deceased as Rs. 5200/- failed to consider that as per the admission of the claimants, the deceased was earning Rs. 3000/- per month. The Tribunal wrongly assumed the earning of the deceased as Rs. 5200/- per month. Learned counsel for the appellant further raised his objection on the point of deduction towards personal expenses which is one-third, the multiplier assessed on the age of the claimant. In view of the age of the parents, the multiplier should be 13 and assessing the multiplier 17 on the age of the deceased is illegal. It is further contended that learned Tribunal also granted future prospects in this case which is not permissible in the old cases.

5. The case of the claimants, in short, is that the deceased Santosh Sharma died on 04.04.2004, when he was going on bicycle to his village-Lalganj in vehicular accident caused by rash and negligent driving of the

driver of truck no. BR28-3952 and an F.I.R. was registered under Section 279 and 304 A of the Indian Penal Code. The claim application has been filed by parents i.e. Smt. Saraswati Devi and Gopal Sharma. During the pendency of claim case, Saraswati Devi claimant no. 1 died on 12.11.2012. It is further contended that Santosh Sharma had been badly injured. Thereafter, he was taken to Sasaram Sadar Hospital and died during treatment. C.W.-4, Sheomuni Singh, also an eye witness of the accident had said that Santosh Sharma was lying on road in injured condition and he was taken to hospital for his treatment where he died. It is also stated that Santosh Sharma was healthy and whole family was dependent upon the earnings of the deceased. It is further stated that Santosh Sharma died due to rash and negligent driving of driver of truck no. BR28-3952. The persons said to be an eye witness of the said occurrence are C.W.-2, Jang Bahadur Sharma, C.W.-3, Uday Kumar and they stated before the court that they have seen the occurrence while truck no.

BR28-3952 was driven rashly and negligently by the driver and dashed against Santosh Sharma near Mahavir Asthan in Kuraich in the evening and he died during the treatment. It is also stated that Santosh Sharma was healthy, laborious aged about 21 years and was mechanic of diesel engine. It appears from the impugned award that there was two claimants, namely, Smt. Saraswati Devi wife of Gopal Sharma and Gopal Sharma but during the pendency of claim case mother of the deceased, namely, Saraswati Devi had died and death certificate of Saraswati Devi filed by the claimant.

6. On summons, respondent nos. 1, 2 and 3, who are the owners of the vehicle and the appellant-The New India Assurance Company Ltd., i.e., the Insurer of the vehicle, opposite party-appellant had filed written statement and pleaded in paragraph no. 12 of the written statement that vehicle was insured from The New India Assurance Company Pvt. Limited at the time of accident and the Insurance was valid and effective from 15.10.2003 to 14.10.2004 and accident happened on

04.04.2004. Opposite Party-Gupteshwar Singh appeared and filed his written statement that vehicle was insured from 15.11.2003 to 14.12.2004 from The New India Assurance Company Ltd..

7. The Insurance company contended that driving license was not filed with the record by the claimants. Hence, Insurance Company is not liable to make payment.

8. It is vicarious liability of the Insurance Company to compensate for the fault committed by the driver or owner of the vehicle. Hence, Insurance Company is liable to make payment or compensation amount to the claimants for the vehicular accident of late Santosh Sharma and he may realize the amount if so found later on in the default of non depositing of driving license. The Insurance Company will be entitled to receive compensation amount from the owner.

9. The learned Tribunal after analyzing evidences adduced by the parties, materials on record and submissions of the parties has held that the

deceased died in vehicular accident caused by rash and negligent driving of the truck no. BR28-3952 resulting into the death of Santosh Sharma on 04.04.2004 and further held that insurance was valid and effective on the date of accident which fact the Insurance Company has admitted. It is further held that it is vicarious liability of the Insurance Company to compensate the claimants for the vehicular accident of Santosh Sharma. So, The New India Assurance Company is responsible for making payment of compensation amount to the claimants. On the basis of evidence adduced by the claimants, it was held that Santosh Sharma was aged about 21 years and he was diesel engine mechanic and on the basis of Government Circular Rs. 200/- per day was assessed for 26 days in a month. In such circumstances, he could have earned Rs. 5200/- per month and considering the family background and status of parents, the future prospects of 10 per cent of labour class person has to be assessed. Hence, income including the future prospect comes to Rs. 5720/- per month. The claim compensation amount shall be reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself i.e. Rs. 1907/- out of Rs. 5720/-. The learned Tribunal also held that deceased was aged about 21 years, the post-mortem report also shows that the deceased was aged about 21 years.

10. The materials on record, judgment and order passed by the learned Tribunal as well as submissions of the appellant, who 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.***

In the case of **Magma General Insurance Company** (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. 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.

11. As held in ***Ramla & others vs National Insurance Company Ltd. & others*** reported in ***2019 (2) SCC 192*** the apex court held that:-

> *"There is no restriction that the court cannot award compensation exceeding the claimed amount, since the function*

of the tribunal or court under Section 168 of the Motor Vehicle Act, 1988 is to award 'just compensation'"

12. In the case of ***Ranjana Prakash and others vs Divisional Manager and another*** reported in ***2011 (14) SCC 639*** wherein it was held that:-

> *"The principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by trial court and to make such further or other order as the case may require, even if respondent had not filed any appeal or cross-objection."*

13. 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 aforesaid extent:-

1.	*Name*	*Santosh Sharma*

2.	*Age*	*21 years*
3.	*Monthly Income*	*Rs. 5,200/-(self employed/fixed salaried)*
4.	*Addition to income to future prospect @40% deceased being less than 40 years*	*Rs. 7,280/- (Rs. 5200 + Rs. 2080)*
5.	*Annual Income (Rs. 7280 x 12)*	*Rs. 87,360/-*
6.	*Deduction towards personal and living expenses(50%)*	*Rs. 43,680/- (Rs. 87,360 - Rs. 43,680)*
7.	*Multiplier based on age of 21 years*	*18*
8.	*Amount of compensation*	*Rs. 7,86,240/- (Rs.43680 x 18)*
9.	*Loss of Estate*	*Rs. 15,000/-*
10.	*Loss of Consortium*	*Rs. 40,000 x 1*
11.	*Funeral Expenses*	*Rs. 15,000/-*
12.	*Total Amount of Compensation*	*Rs. 8,56,240/-*

14. Accordingly, this Miscellaneous Appeal filed by the Insurance Company is hereby dismissed with modification in the quantum of compensation as aforesaid.

15. The amount of compensation as awarded by the learned Tribunal is modified from Rs. 8,02,852/- to Rs. 8,56,240/-, the modified amount shall carry interest at the rate of 7% per annum from the date of claim

petition till realization, the due amount be paid by the appellant-the Branch Manager, The New India Assurance Company Limited within a period of three months.

16. The Office is directed to return the statutory amount to the Insurance company-appellant which was deposited at the time of filling of this appeal.

(Khatim Reza, J)

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