IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.652 of 2016

==

1. Meera Devi W/o Late Ganesh Singh @ Kunwar,
2. Kamali Devi, W/o Late Chandar Kunwar,
3. Sonu Kumar, S/o Late Ganesh Singh @ Kunwar,
4. Puja Kumari, S/o Late Ganesh Singh @ Kunwar,
5. Abhiraj Kumar, S/o Late Ganesh Singh Kunwar, SI No.4 and 5 are the minor daughter and son of Late Ganesh Singh @ Kunwar under the guardianship of their mother-appellant no. 1. All are resident of Village- Daha Chhapra, P.S.- Sahebganj, District- Muzaffarpur.

... ... Appellant/s

Versus

1. Sri Rajesh Tiwari S/o Late S.N. Tiwari, resident of 20 B, Congress Exhibition Road, Kolkata.
(O.P. No.1)
2. The Divisional Manager, National Insurance Company Ltd. P.N.T. Chowk, Mithanpura, Muzaffarpur.
(O.P. No.2)

... ... Respondent/s

==

Appearance :

For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate.
For the Respondent/s : Mr. Durgesh Kumar Singh with
Mr. Abhijeet Kumar Singh, Advocate

==

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

7 06-11-2023 Heard Mr. Mukesh Prasad Singh, learned counsel for the appellants as well as Mr. Durgesh Kumar Singh, learned counsel for the respondent No.2.

2. The instant Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') for enhancing of the amount of compensation awarded to the claimants- appellants by the learned Additional District Judge-4th-cum-Motor Vehicle

Accident Claim Tribunal, Muzaffarpur (hereinafter referred to as ‘the learned Tribunal’) in claim Case No. 193 of 2011. By impugned judgment dated 14.08.2015 and award dated 28-08-2015, the learned Tribunal has directed the Divisional Manager, National Insurance Company Ltd. P.N.T. Chowk, Mithanpura, Muzaffarpur (Respondent No. 2/ O.P. No.2) to pay the compensation amount of Rs. 1,67,500/- (One Lakh Sixty Seven Thousand and Five Hundred) with interest @ 3% per annum from the date of filing the claim petition i.e., 26-08-2011. Details of calculation made by the learned Tribunal is as under:-

(i)	Monthly income of deceased	Rs. 2,000/-
(ii)	Annual income of deceased	Rs. 2,000x 12= Rs. 24,000/-
(iii)	1/3rd personal expenses of deceased	Rs. 8000/-
(iv)	Rest early income of deceased	Rs. 16000/-
Age of the deceased was 50 years at the time of accident so multiplier as to age group becomes 13		
(v)	Total compensation	Rs. 16,000x 13= Rs. 2,08,000/-
(vi)	Loss of estate	Rs. 2,500/-
(vii)	Funeral expenses	Rs. 2,000/-
(viii)	Loss of consortium	Rs. 5,000/-
Total		Rs. 2,17,500/-
Amount paid under Section 140 of the Act		Rs. 50,000/-
Due amount		Rs. 2,17,500 – Rs. 50,000/- = Rs. 1,67,500/-

3. The learned counsel for the appellants submits that the Tribunal has decided the matter in the teeth of the decision in the case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***. The learned counsel for the appellants submits that insofar as the interest part is concerned, the learned Tribunal has not passed the order in accordance with law. The learned Tribunal has allowed interest at the rate of 3% *per annum* on the compensation amount, whereas it should be 9% on the compensation amount. Learned counsel for the appellants next submits that the learned Tribunal could not appreciate the admitted fact that the deceased had at least 5 dependents upon him and, in such circumstances, he could not have spent 1/3 of his income on his own. The correct approach would have been to deduct ¼ of his income as his personal expenses. The learned Tribunal has failed to follow the judgment of the Hon'ble Apex Court in the case of ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr***. reported in ***(2009) 6 SCC 121***, as regards the payment of claim under the conventional heads. Referring to the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited*** *(supra),* learned counsel for the appellants further submits that the appellants are entitled to get claim on account of funeral expenses of Rs.

15,000/- (Fifteen thousand), Estate loss at Rs. 15,000/- (Fifteen thousand), spousal consortium at Rs. 40,000/- (Forty thousand) to appellant No.1 (widow) and parental consortium to the appellant Nos. 3 to 5 @ Rs. 40,000/- (Forty thousand) to each of the three children. The learned counsel for the appellants accepts the multiplier as computed by the learned Tribunal. The learned counsel for the appellants further submits that the learned Tribunal had wrongly assessed the income of the deceased as Rs. 2,000/- (Two thousand) in spite of the fact that deceased, aged about 50 years, and was driver of the truck. The monthly income of the deceased was Rs. 4,500/- (Four thousand five hundred) per month along with Rs. 50/- (Fifty) per day for food allowance. It is also stated that the deceased was also earning Rs. 10,000/- (Ten thousand) per annum by cultivation. The learned tribunal has not considered the future prospect of the deceased (aged about 50 years) while computing compensation and ought to have added 25% of established income in view of the judgment of Apex Court in **Pranay Sethi** (Supra).

4. Having heard learned counsel for the appellants as well as learned counsel for the respondents and perusal of the records as also the judgments of the Hon'ble Apex Court, this

Court finds that there is no dispute on applying multiplier of '13' in the instant case (age of deceased-50 years). With regard to living expenses to be calculated as 1/4th of the income of the deceased and whether the claimants are entitled for spousal consortium and parental consortium at the enhanced amount is concerned, the monthly income of the deceased in the instant case is not in dispute. The deceased was aged about 50 years working as driver of the offending truck and was earning Rs. 4500/- per month along with Rs 50 per day as food allowances. The said claim is reduced by the tribunal to a sum of Rs. 2000/- only per month without any legal basis. There was no reason for the tribunal to reduce the claim of the claimants and determine monthly income to be a sum of Rs. 2000/- per month. Secondly, the deceased was driver and therefore, this court cannot accept from the claimant to produce any documentary evidence to substantiate their claim. In the absence of any other evidence contrary to the claim made by the claimant, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. The learned Tribunal in its judgment in paragraph 6 has stated that the claimant witness nos. 1 and 2, Mira Devi wife of Late Ganeh Singh (PW-1) and Sonu Kumar son of Late Ganesh Singh @ Ganesh Kunwar have supported the case and earning of the deceased in their evidence. The claim of the appellants with regard to monthly salary including Rs. 50/- for food allowances per day comes to Rs. 6000/- [(Rs.4500 + (Rs. 50 X 30=Rs. 1500)] which should have been accepted by the Tribunal.

5. 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 25% of the salary amount of the deceased would be entitled to be added while calculating total loss of dependency. Paragraph '59.4' of the Hon'ble Apex Court Judgment in ***Pranay Sethi*** *(supra)* 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."*

6. Considering the number of dependents,, it cannot be said that he would have been in a position to spend 1/3rd of his income upon himself. I am of the opinion that the deduction of 1/4th of the income on account of personal expenses would be appropriate. With regard to conventional heads, in ***Pranay Sethi*** (*supra*), the Hon'ble Apex Court has held in paragraph '48', has held as under:-

> *"This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule to the Act. The said Schedule has been found to be defective as stated by Court in Trilok Chandra Recently, in Puttamma vs. K.L. Narayana Reddy it has been reiterated by stating: (SCC p. 80, para54) "54.... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."*

7. In ***Pranay Sethi*** (*supra*), the Hon'ble Apex Court has recognised three categories of conventional heads- (i) funeral expenses at 15,000/-, (ii) Estate loss at 15,000/- (iii) loss of consortium at Rs. 40,000/-. While discussing the meaning of word 'consortium', the Hon'ble Supreme court in the case of ***Pranay Sethi*** (*supra*) though did not approve the principles laid down in ***Rajesh vs. Rajbir Singh (2013) 9 SCC 54*** but revisited the principles on fixation of conventional heads, after quoting paragraph 17 of *Rajesh vs. Rajbir Singh*, which reads as under:-

> *"17... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non- pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."*

8. 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 would be entitled for Rs. 40,000/- as spousal consortium whereas appellant no. 2 (mother of the deceased) would be entitled for Rs. 40,000/- on account of filial consortium whereas appellant nos. 3 and 5, who are minor daughter and sons respectively would also be entitled for Rs. 40,000/- each on account of parental consortium. They would also be entitled for claim on account of funeral expenses at Rs. 15,000/- and Estate loss at Rs. 15,000/-.

9. In the result this appeal is allowed. The claimants are found to be entitled for following amounts:-

NAME	***Ganesh Singh @ Ganesh Kunwar***
AGE	***50 years (as per postmortem report)***
MONTHLY INCOME	***Rs. 6,000/-***
ADDITION TO INCOME TO FUTURE PROSPECT(@25% DECEASED WAS BETWEEN THE AGE OF 40-50 YEARS	***Rs. 7,500/- (6000+25% of 6000) (6000 x 25/100) =1500 6000+1500= 7,500/-***
ANNUAL INCOME(7500X12)	***Rs. 90,000/-***
DEDUCTION TOWARDS PERSONAL & LIVING EXPENSES(1/4)	***Rs. 67,500/- (Rs. 90,000- Rs. 22,500)***

MULTIPLIER BASED ON AGE OF 50 YEARS	***13X67,500= Rs. 8,77,500/-***
AMOUNT OF COMPENSATION	***Rs. 8,77,500/-***
LOSS OF ESTATE	***Rs. 15,000/-***
LOSS OF SPOUSAL CONSORTIUM	***Rs. 40,000/-***
LOSS OF PARENTAL CONSORTIUM FOR THREE MINOR CHILDREN	***3X40,000=Rs. 120,000/-***
LOSS OF FILIAL CONSORTIUM (MOTHER)	***Rs. 40,000/-***
FUNERAL EXPENSES	***Rs. 15,000/-***
TOTAL AMOUNT OF COMPENSATION	***Rs. 11,07,500/-***
AMOUNT PAID	***Rs. 50,000/-***
PAYABLE AMOUNT	***Rs. 10,57,500/-***

10. The amount of compensation as awarded by the learned Tribunal is modified from Rs. 2,17,500/- to Rs. 10,57,500/-, the modified amount shall carry the interest at the rate of 6% per annum from the date of claim petition till realization, the due amount be paid by the Insurance Company within a period of three months from today.

11. Accordingly, this Miscellaneous Appeal is allowed with aforesaid modification.

(Khatim Reza, J)

shyambihari/prabhat

U			