

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.657 of 2008

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1. Sangeeta Devi, Widow of Late Pramod Kumar @ Rai
2. Birju Rai, Son of Late Bhailal Rai
3. Alok Kumar, (minor) Son of Late Pramod Kumar @ Rai
4. Trilok Kumar, (minor) Son of Late Pramod Kumar @ Rai
5. Nisha Kumari, (minor) Daughter of Late Pramod Kumar @ Rai
6. Ragani Kumari, (minor) Daughter of Late Pramod Kumar @ Rai
7. Alaka Kumari, (minor) Daughter of Late Pramod Kumar @ Rai Serial No.
3 to 7 are minor sons and daughters of Late Pramod Kumar @ Rai under the
guardianship of their mother – Sangeeta Devi.
All are resident of Village- Punaura, Yadaw Tola, P.O- Punaura, P.S. +
District- Sitamarhi.

... .. Appellants

Versus

1. Sri Pravin Chaudhary, son of Sri Ravindra Chaudhary, Resident of Village-
Laxmipur, P.S.- Benipatti, District- Madhubani. (Opposite Party No. 1)
2. The Divisional Manager, The Oriental Insurance Company Ltd. at
Motijheel, P.S. - Town, District- Muzaffarpur

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate
For the Respondent/s : Mr. Sanjay Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 11-01-2023

Learned counsel for the appellants submits that even though
the appeal has stood dismissed against the owner of the vehicle
(Respondent No. 1), since the Insurance Company has accepted its
liability and satisfied the award, this being a case for enhancement of
the award amount, the appeal would survive as against the Insurance
Company.

I.A. No. 2952 of 2010

2. This interlocutory application has been filed seeking
condonation of delay.



3. Earlier, notices were issued to the Insurance Company in the limitation matter, however, there is no opposition to the application. There is a delay of 30 days in filing of the appeal. Sufficient cause has been shown in the application seeking condonation of delay.

4. I.A. No. 2952 of 2010 is allowed.

5. Heard Mr. Mukesh Prasad Singh, learned counsel for the appellants and Mr. Sanjay Singh, learned counsel for the Oriental Insurance Company Limited (Respondent No. 2).

6. The claimants are in appeal before this Court for enhancement of the award rendered by the learned Additional District Judge -V-cum- Motor Accident Claim Tribunal (hereinafter referred to as the 'learned Tribunal') vide order dated 02.06.2008 in Claim Case no. 126 of 2006. By the impugned order/award, the learned Tribunal has allowed Claim Case No. 126 of 2006 and directed the Insurance Company (Respondent No. 2) to pay a sum of Rs. 1,39,500/- (One lakh thirty nine thousand five hundred rupees only) with interest at the rate of 6% per annum to the claimants.

Brief facts of the case:-

7. The facts of the case are not in dispute. In the accident which took place on 17.05.2006 near Punaura Pundrik Pokhar, a jeep bearing Registration No. WB-02C/2357 dashed two persons namely Athar Ansari @ Munna and Pramod Kumar @ Rai. Athar Ansari died on the spot whereas Pramod Kumar @ Rai died in course of his treatment. A police case giving rise to Sitamarhi P.S. Case No. 191 of



2006 was instituted on 18.05.2006 under Sections 279, 304A of the Indian Penal Code. In the present appeal, we are concerned with the case of the claimants of the deceased Pramod Kumar @ Rai which has been dealt with in Claim Case No. 126 of 2006. The case of the claimants was that the deceased Pramod Kumar @ Rai was aged about 26 years and he was a government teacher under Lok Shiksha Center. They claimed that the deceased was getting Rs.1,000/- from the government and was also earning through private tuitions. According to the claimants, the income of the deceased was Rs.3,500/- per month from which he was maintaining his father, wife and five minor children.

8. The insurance company (O.P.No.2) contested the claim.

9. In support of their claim, the claimant no. 1 who happened to be the wife of the deceased deposed as AW-1. She has stated that her husband was teaching the children in the Lok Shikshan Center and in lieu thereof, the government was paying Rs.1,000/- per month to her husband. He was also earning a sum of Rs.2,500/- per month from private tuition. In course of her cross-examination, she has admitted that she had not given any proof of appointment of her husband as Lok Shikshak and she had not given any account of his income and expenses.

10. Father of the deceased deposed as AW-2 who has claimed that he was dependent upon his deceased son. To support the case of the claimants on the point of income of the deceased, AW-7 namely Shambhu Kumar Yadav who was the ward member of Gram



Panchayat Punaure during the period 2001-06 has deposed. He has stated that the deceased was teaching in the Lok Shikshan Kendra from which he was getting Rs.1,000/- per month. He was also teaching about 20 children from which he was earning a sum of Rs.2,500/- per month. This witness has proved a certificate (Exhibit '2') written by the Panchayat Secretary Shivnath Ram and signed by Mukhiya Madan Rai. In Exhibit '2', the Mukhiya of the Gram Panchayat has certified that the deceased was getting a sum of Rs. 1,000/- per month and he was working as teacher in the Lok Shikshan Kendra. He died on 18.05.2006 in road accident. In course of his cross-examination, AW-7 has stated that the certificate (Exhibit '2') does not contain letter no. or memo no. and there is no seal of any office but he denied the suggestion that the certificate is wrong. The another witness who has deposed on the point of employment of the deceased is AW-8 Vinesh Rai who has stated that he knew the deceased as his co-villager and the deceased was teaching tuition to 18 children. He was also teaching two children of this witness and the deceased was charging Rs.125/- per month from each of the children. He has named the co-villagers whose children were being taught by the deceased. In his cross-examination, this witness has stated that he does not have any proof to show that he was paying tuition fee to the deceased. He denied the suggestion that the deceased was not doing any work.

11. The learned Tribunal framed as many as six issues which are being reproduced hereunder:-



“(1) Is the claim case as framed maintainable?

(2) Whether the accident in question took place due to rash and negligent driving of the driver of vehicle No. WB-02C/2357 on 17-5-2006 at 8.10 P.M. near Punaura Pundrik Pokhar, P.S. Sitamarhi, District Sitamarhi?

(3) Whether the deceased in Claim case no. 125/2006 Athar Ansari alias Munna S/O Md. Muslim Ansari and deceased in claim case no. 126/2006 Pramod Kumar alias Rai S/O Birju Rai died in the accident which arises Sitmarhi P.S. case no. 191/2006?

(4) Are the claimants entitled to the claim propounded, if so what would be the quantum of compensation, from whom?

(5) Are the claimants having right to sue and have any cause of action?

(6) Are the claimants entitled to award or awards as prayed for?”

Findings of the Tribunal:-

12. Learned Tribunal has decided issue nos. 1, 2 and 3 in favour of the claimants. While considering issue nos. 4, 5 and 6, the learned Tribunal took a view that because there is no documentary proof of income of the deceased, hence, notional income has to be considered for calculation of compensation. The learned Tribunal applied Schedule II of the Motor Vehicles Act, 1988 (hereinafter referred to as the “Act of 1988”), applied the multiplier of 18 for the age between 25 to 30 years and taking the notional income of the deceased as per Schedule II as Rs.15,000/- per year, the learned Tribunal proceeded to determine the total compensation amount payable to the claimants. The learned Tribunal did not add any future prospect and after taking one-third



as personal expense of the deceased, the learned Tribunal calculated the total loss of dependency as Rs. 10,000/- $\times$ 18 = Rs.1,80,000/-. The learned Tribunal further added Rs. 2,500/- as loss of estate, funeral expenses Rs.2,000/-, loss of consortium worth Rs.5,000/-. In this manner, the claimants were found entitled to get Rs.1,89,500/-.

Submissions on behalf of the Appellants:-

13. Learned counsel for the appellants submits that the Schedule II was inserted in the Act of 1988 with effect from 14.11.1994. At the relevant time, the price index of 1993 was taken into consideration and taking the daily wages of Delhi at Rs. 41.25/- at the relevant time, the notional income was provided in Schedule II.

14. Learned counsel submits that on the one hand, the learned Tribunal could not appreciate that the claimants had proved the fact that the deceased was employed as a teacher in the Lok Shikshan Sansthan and was also engaged in private tuition and for this purpose reliable evidences were brought on record, at the same time, the learned Tribunal committed grave error in applying Schedule II of the Act of 1988 in respect of a claim which arose in the year 2006. Learned counsel submits that there is no rationale behind applying the rate fixed in Schedule II which



was of the year 1994. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121** and **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680** to submit that the claimants are entitled to add future prospects to the income of the deceased in order to calculate the total dependency loss.

15. Learned counsel further submits that as regards the personal expenses, the learned Tribunal has erred in taking one-third of the income of the deceased as his personal expenses. In this case, the deceased had got at least seven dependents upon him, therefore, it could not have been possible for him to spend one-third of his income upon himself. It is his submission that only to the extent of one-fifth of the income is required to be deducted on account of personal expenses of the deceased.

16. Learned counsel further submits that on account of loss of estate, only Rs. 2,500/- has been allowed whereas it should have been Rs. 15,000/-, funeral expenses has been allowed at Rs. 2,000/- which should be Rs. 15,000/- and loss of consortium has been allowed at Rs. 5,000/- which should be enhanced to Rs. 44,000/- in terms of the judgment of the Hon'ble Supreme Court in



the case of **United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Others** reported in **(2021) 11 SCC 780** to each of the dependents.

17. Learned counsel submits that in view of **Pranay Sethi** (Supra), the multiplier applicable in the case of deceased would be 17 and not 18.

Submissions on behalf of the Insurance Company:-

18. Learned counsel for the respondent no. 2 has though opposed the appeal but no substantial opposition could be made to the submissions of learned counsel for the appellants as those are based on the materials available on the record and the judgments of the Hon'ble Supreme Court which are binding law of the land.

Consideration:-

19. Having regard to the submissions recorded hereinabove and upon perusal of the records, this Court finds substance in the submissions of learned counsel for the appellants. It is not disputed that the deceased had passed his matriculation examination, in fact it has been noticed by the learned Tribunal. The applicant witnesses are consistent on the point that he was engaged in tuition work in the village. The certificate of Mukhiya (Exhibit '2') which was prepared by Panchayat Secretary has been proved by an ex-member of the ward, therefore, those evidences



cannot be thrown out outrightly as has been done by the learned Tribunal.

20. This Court also finds substance in the submission of learned counsel for the appellants that the learned Tribunal has committed error in applying Schedule II of the Act of 1988 to derive notional income of the deceased.

21. Learned counsel for the respondent no. 2 does not dispute that Schedule II was inserted in the Act of 1988 with effect from 14.11.1994 and it contains notional income based on the daily wage of unskilled workers prevailing at Delhi at the rate of Rs. 41.25/- in the year 1993. It is well-settled by the Hon'ble Apex Court in the case of **Sarla Verma** (Supra) and the same has been reiterated in catena of judgments that the Act of 1988 is a welfare legislation and it has a concept of 'fair compensation'. To this Court, it appears that keeping in view Section 168 of the Act of 1988 it was the duty of the learned Tribunal to award fair compensation in the facts of the present case. On the concept of "Just Compensation" the Hon'ble Apex Court in **Pranay Sethi** (supra) observed in paragraph '55' as under:-

"55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on



acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied....”

22. This Court has been informed at the Bar that at the relevant time, in the year 2006, the daily wage rate of unskilled worker was Rs.89/- per day. Even as the deceased was a matriculate, his income cannot be calculated on an amount less than the rate prevailing for an unskilled worker. If Rs.89/- is multiplied by 26 days, it will come to Rs.2,314/- per month. The claim of the claimants was that the deceased was earning Rs.3,500/- per month.

23. While dealing with the need to award conventional sum, the Hon’ble Supreme Court in **Pranay Sethi** (supra) clarified in paragraph ‘48’ in the following words:-

“**48.** 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 the Court in *Trilok Chandra*¹¹. Recently, in *Puttamma v. K.L. Narayana Reddy*⁴⁸ it has been reiterated by stating : (SCC p. 80, para 54)

11. [UP SRTC v. *Trilok Chandra*, (1996) 4 SCC 362]

48. (2013) 15 SCC 45 : (2014) 4 SCC (Civ) 384 : (2014) 3 SCC (Cri) 574



“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.””

24. Further in paragraph ‘50’, their Lordships observed

as under:-

“50. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in *Trilok Chandra*¹¹ and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs 1,00,000 was granted towards consortium in *Rajesh*². The justification for grant of consortium, as we find from *Rajesh*², is founded on the observation as we have reproduced hereinbefore.”

25. Taking a cue from the aforesaid views of the Hon’ble Supreme Court, this Court would have no hesitation in saying that the learned Tribunal has erred in taking notional income of the deceased as per Schedule II of the Act of 1988.

26. In the kind of materials available on the record, keeping in view the rate of daily wagers in the year 2006, this Court deems it just and proper to take a view that the income of the deceased is liable to be calculated at least at the rate of Rs.89/- per day. His monthly income would, therefore, come to Rs.2,314/- (Rs.89/-×26 days).

11. [UP SRTC v. *Trilok Chandra*, (1996) 4 SCC 362]

2. [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]



27. In the case of **Pranay Sethi** (Supra), as regards future prospects, the Hon'ble Supreme Court has held in paragraph '57' as under:-

“**57.** Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act.....”

28. Further the Hon'ble Apex Court concluded in paragraph '59.4' 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.”

29. So far as deductions on account of personal expenses are concerned, this Court finds that the deceased had his wife, five minor children and his father dependant upon him. Thus, it would



be appropriate to deduct only one-fifth of his income as personal expenses. This Court would thus accept the submissions of learned counsel for the appellants on this aspect.

30. As regards the consortium loss and conventional heads, again the Hon'ble Apex Court in Pranay Sethi has held in paragraph '59.8' in following terms:-

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

31. In the case of **Satinder Kaur @ Satwinder Kaur** (Supra), while allowing the spousal consortium and parental consortium to the three children, the Hon'ble Supreme Court has held in paragraph '37.12' as under:-

"37.12. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi⁴ and Magma General¹⁴, the following amounts are awarded under the conventional heads:

- (i) Loss of estate: Rs 15,000
- (ii) Loss of consortium:
 - (a) Spousal consortium: Rs 40,000
 - (b) Parental consortium: $40,000 \times 3 = \text{Rs } 1,20,000$
- (iii) Funeral expenses : Rs 15,000"

32. Keeping in view the aforesaid judgments of the Hon'ble Supreme Court, when the claim of the claimants is calculated, it will come as under:-



(i)	Monthly Income	Rs.2314.00
(ii)	Add: Future Prospect @40%	Rs.925.60
	Total	Rs.3239.60
(iii)	Less: Personal Expenses 1/5th of Rs.3239.60	Rs.647.92
(iv)	Loss of Dependency: Rs.2591.68 X 12 X17	Rs.5,28,702.72
(v)	Funeral Expenses	Rs.15,000.00
(vi)	Loss of Estate	Rs.15,000.00
(vii)	Loss of Spousal Consortium	Rs.40,000.00
(viii)	Loss of Parental Consortium to each of the five children	Rs.2,00,000.00
(ix)	Loss of filial consortium to father	Rs.40,000.00
	Total compensation to be paid	Rs.8,38,702.72
	Less: amount already paid	Rs.1,89,500.00
	Balance payable with interest @ 9% per annum from the date of filing of the claim till payment	Rs.6,49,202.72

33. The remaining amount be paid to the claimants within a period of two months with interest at the rate of 9% per annum from the date of filing of the application till the date of payment.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	12.01.2023
Transmission Date	

