IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.141 of 2014

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1. Usha Devi, widow of Late Kumod Prasad Yadav @ Kumod Yadav
2. Pawan Kumar Yadav Son Of Late Kumod Prasad Yadav @ Kumod Yadav Both Residents Of Village Baija, P.O Chitra P.S Hansdiha, District Dumka Jharkhand, At Present Residing At Brahman Tola Sabour, P.S. Sabour, District Bhagalpur

... ... Appellant/s

Versus

1. Divisional Manager, The New India Insurance Co. Ltd. Bhagalpur and Ors.
2. Branch Manager, The New India Insurance Co. Ltd., Chandralok Complex, Ghantaghar Chowk, P.S Kotwali
3. Pappu Kumar Son Of Mahesh Prasad Resident Of Lalganj, P.S Dipnagar Govt. Hospital, P.O Dumraw, District Nalanda Bihar
4. Mukesh Kumar Son Of Tapeshwar Kumar Resident Of Badamni, P.S. Parwalpur, District Nalanda
5. Meera Devi Widow Of Late Jaldhar Yadav
6. Niwas Kumar Yadav Son Of Late Kumod Prasad Yadav @ Kumod Yadav Both Residents Of Village Baija, P.S.Hansdiha, District Dumka Jharkhand

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Madan Mohan, Advocate Ms. Pallavi Pandey, Advocate
For the Respondent nos. 1 & 2	:	Mr. Raj Kumar Singh Vikram, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

17 13-07-2023

This Miscellaneous Appeal has been filed against the judgment dated 26.09.2013 and Award dated 11.12.2013 (for enhancement of compensation) granted in Claim Case No. 223 of 2011 (Trial Case No. 176 of 2013) by the learned Adhoc Additional District Judge cum Motor Accident Claim Tribunal, Bhagalpur, whereby the claimants-appellants have been awarded Rs. 18,37,510/- as amount of compensation as against the claim of Rs. 32,23,580/-.

2. The Insurance Company did not file any appeal against the aforesaid Judgment and Award.

3. The appellants filed their claim under Section 166 of the Motor Vehicle Act against the owner, driver and the insurer (The New India Assurance Company Limited) of the vehicle. The mother-in-law of the appellant no. 1 and her another son, namely, Niwas Kumar Yadav were arrayed as opposite party nos. 5 & 6 (respondent no. 5 & 6) in the claim petition.

4. The appellants claimed compensation of Rs. 32,23,580/- on the following count. The break up thereof is being given here under:-

Loss of earning	21,23,720/-
Loss of future prospect	10,71,360/-
Funeral expenses	2,000/-
Loss of Estate	2500/-
Loss of consortium	5000/-
Total	32,23,580/-

5. On summon the mother of the deceased (O.P. No. 5) and another son (O.P. No. 6) appeared on 28.03.2012 and filed their common written statement on 19.05.2012 stating that the deceased Kumod Prasad Yadav at the time of his death was 28 years old and was working as 4^{th} grade employee in Plant Conservation Department, Saraiya Hat Block, Dumka and was

getting Rs. 16,740/- as his salary. They also stated that they have no objection if the entire amount of compensation is paid to the claimants. They relinquish their claim, if any, in favour of the claimants. The Insurance Company appeared and filed written statement and made an evasive denial, questioning the jurisdiction of the Motor Vehicle Accident Claim Tribunal on the ground that accident had taken place outside the territorial jurisdiction of the Tribunal. It was also denied that vehicle in question was insured. Therefore, the claim petition was not maintainable. It is alleged that the claimants did not produce registration certificate of the Motor bike on which the deceased was travelling. The driving licence of the driver of the truck. Post-mortem and succession certificate had also not been filed by the claimants. In absence of those documents, the claimants are not entitled to claim as the incident was a result of contributory negligence.

6. During the trial, the claimants examined three witnesses in support of their claim and also filed 10 documentary exhibits as Exhibit 1 to 10. It is submitted that insurance company neither examined any witness nor did produce any documentary evidence.

7. After considering the oral and documentary evidence produced by the claimant-appellants, the learned

Tribunal arrived at the definite findings that accident took place by Truck bearing Registration No. BR-1D-2955 on 11.11.2011 which was being driven by Mukesh Kumar in which Kumod Prasad Yadav died. The Tribunal has held that since the claimant had been residing at Brahman Tola, P.S. Sabaur in Bhagalpur District, hence the claim case was maintainable before the Motor Accident Claim Tribunal Bhagalpur. It is further held that Truck in question had been insured with the Insurance Company Ltd. and the policy was valid for the period 11.09.2011 to 10.09.2012 and the age of the deceased Kumod Prasad Yadav was held to be 43 years 2 months 7 days according to date of birth mentioned in the PAN Card of the deceased. The learned Tribunal further held that the deceased at the time of accident had been drawing a salary as Rs. 16,714/- per month, and therefore claimants were held to be entitled for compensation amounting to Rs. 18,37,510/- and the amount of Rs. 50,000/- under Section 140 of the Act as an interim compensation was already paid. The said amount was deducted and finally it is held that claimant is entitled to compensation amounting to Rs. 17,87,510/-.

8. Learned counsel for the appellants submitted that the learned Tribunal erred in law is not granting 9% interest on the amount of compensation awarded in favour of the appellants, and learned Tribunal acted illegally in deducting 30% of the total

amount as income tax in absence of not producing copy of income tax return by the appellants. The deduction of 30% amount of total amount of annual income is illegal and contrary to the provision of Income Tax Act. It is also submitted that the learned Tribunal wrongly fixed the multiplier taking the age of deceased as 43 years as per the date of birth mentioned in PAN Card.

9. On the other hand, the learned counsel for the Insurance Company submitted that the learned Tribunal has followed the principle settled in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi*** reported in ***2017 (16) SCC 680,*** case except the amount under the head of general charges for 70,000/-. It is also submitted that the claimants are only entitled for the compensation of 60,000/- upto 1,00,000/- under the head of general damages and for other heads in the instant appeal. It is submitted that the Award passed by the learned Tribunal has already been complied by the respondent no. 1 & 2, The New India Assurance Company Ltd., and the appellants have received the full and final compensation of Rs. 17,87,510/- along with 6% interest per annum from the date of filing of the case.

10. After analysing the impugned order and materials available on records, this Court is of the view that learned Tribunal has wrongly applied the multiplier (15 for the age of 43

years of the deceased) as settled by the Hon’ble Supreme Court in the Case of ***Sarla Verma*** *Vs.* ***DTC*** reported in **(2009) 6 SCC 121**. In case of ***Sarla Verma (supra)*,** a chart was prepared for fixing the applicable multiplier in accordance with the age of the deceased after considering the judgment in case of ***Kerala 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 deceased	**Multiplier**
Up to 15 years	-
15-20	18
21-25	18
26-30	17
31-35	16
36-40	15
41-45	14
46-50	13
51-55	11
56-60	09
61-65	07
Above 65	05

12. In view of the aforesaid multiplier chart, for the age group between 41 years to 45 years the multiplier of 15 is

not proper as per the aforesaid judgment of the Hon’ble Supreme Court. For the age group between 41 years to 45 years, multiplier of 14 is just and proper in accordance with ***Sarla Verma (supra)*** case.

13. So far deduction of 30% from the total annual income is concerned, it is admitted fact that the deceased was a Government employee. The salary of the deceased needs to be considered for calculating the quantum of compensation The Hon'ble Supreme Court in ***Pranay Sethi (supra)*** has held that the income means actual salary less tax. However, in the case of ***Vimal Kanwar Vs Kishore Dan*** reported in ***(2013) 7 SCC 476,*** it has been held as under:-

> *“As per law, the presumption will be that employer State Government at the time of payment of salary deducted income tax on the estimated income of the deceased employee from the salary and in absence of any evidence, we hold that the salary as shown in the last pay certificate as Rs 8920 should be accepted which if rounded off comes to Rs 9000 for calculating the compensation payable to the*

dependant(s).”

14. Hence, in the instant case the salary of the deceased as mentioned on the salary slip (Ext. 1) i.e. Rs. 16,740/- is deemed to be his income after deducting the tax by the employer and the learned Tribunal wrongly deducted 30% from said amount.

15. So far categories of conventional head is concerned, reliance has been placed in ***Pranay Sethi (Supra)*** case. The Hon'ble Apex Court has recognsied three categories of conventional heads:- (i) funeral expenses at Rs. 15,000/-, (ii) Estate loss at Rs. 15,000/- (iii) loss of consortium at Rs. 40,000/-.

16. In view of the decision of the Hon’ble Supreme Court in the case of ***Sarla Verma(supra)***, the learned Tribunal has wrongly applied the multiplier as 15 in place of 14 for the age group of between 41 to 45 years. Now, taking into consideration the age of the deceased and applying the multiplier as referred in ***Sarla Verma (supra)*** case, the multiplier of 14 is required to be used in place of 15 which would reduce the amount of compensation. The learned Claims Tribunal could not have decided the compensation amount under different heads in the light of the aforesaid decision of the Hon’ble Supreme Court. Owing to non-availability of the aforesaid decision at the time of

passing of the judgment and award on 26.09.2013. In view of the aforesaid reasons and discussions, the appeal is hereby disposed of with a direction to learned Tribunal to recalculate the award amount as per the aforesaid observations and apply multiplier as settled in ***Sarla Verma (supra)*** case, and also recalculate the compensation amount under different heads in the light of the aforesaid decision of the Hon'ble Supreme Court.

17. This appeal is, accordingly, disposed of.

18. The learned Tribunal upon recalculating the compensation amount shall pass necessary order for payment of difference amount, if any, preferably within three months.

(Khatim Reza, J)

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