

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.444 of 2013

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The Manager National Insurance Company Ltd. Madhepura through Sri Anjani Kumar A.O. Cum and Duly constituted Attorney National Insurance Company Ltd. Regional Office 4th Floor Sone Bhawan B.C. Patel Road P.O. G.P.O., P.S. Sachiwalaya, Patna, Dist.-Patna

... .. Appellant/s

Versus

1. Veena Singh W/O Late Amarnath Singh Resident Of Wardno. 18, Mohalla Vidhyapuri, P.S And District- Madhepura.
2. Rishi Singh S/O Late Amarnath Singh Resident Of Wardno. 18, Mohalla Vidhyapuri, P.S And District- Madhepura.
3. Ritu Singh D/O L Ate Amarnath Singh Resident Of Wardno. 18, Mohalla Vidhyapuri, P.S And District- Madhepura.
4. Runa Singh W/O Rishi Singh Resident Of Wardno. 18, Mohalla Vidhyapuri, P.S And District- Madhepura.
5. Arunabh Singh S/O Rishi Singh Resident Of Wardno. 18, Mohalla Vidhyapuri, P.S And District- Madhepura.
6. Sanajy Kumar S/O Tej Narayan Yadav Resident Of Village Patharaha, P.S- And District- Madhepura.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate
For the Respondent/s : Mr. Amandeep Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

28 14-09-2023 This Miscellaneous Appeal has been filed against the judgment and award dated 04.12.2012 and 14.01.2013 respectively passed by learned Additional District Judge, Motor Accident Claims Tribunal, Madhepura in Claim Case No. 23 of 2010 whereby Claimant Nos. 1 and 3 were found entitled to get compensation for vehicular accidental death of deceased and Insurance Company appellant was directed to pay compensation amount of Rs. 41,68,880/- with 6 per cent simple interest over



the same from the date of filing of the claim i.e. 11.06.2010 till the realization from the Insurance Company and payment to the Claimant Nos. 1 and 3.

2. This appeal is preferred by the Insurance Company mainly on two grounds:-

(A). The accident so caused by an unknown vehicle thereby the case will come into the ambit of Section 161 Motor Vehicle Act, 1988.

(B). The award has been calculated without deducting the income tax from the gross income of the deceased.

3. The case of the claimants, in short, is that Dr. Amarnath Singh (deceased) aged 58 years on the date of the accident i.e. 14.03.2009, while travelling with his daughter-in-law, namely, Runa Singh and grandson by their own car bearing Registration No. BR-10F-164 to Saharsa met with an accident due to rash and negligent driving of the driver of the Truck bearing Registration No. BR-11D-7438 near Ganesh Asthan (Madhepura) at about 04:30 am in the morning. All the occupants of the car sustained grievous injury and were brought to the Sadar Hospital where Dr. Amarnath Singh was declared dead and the injured Runa Singh and Nishu were referred to Patna for better treatment. FIR was lodged by the brother of the deceased, namely, Dharmanth Singh under Sections 279, 304A, 337 and 338 of Indian Penal Code as Madhepura P.S. case No.



91 of 2009 dated 14.03.2009.

4. The claim petition has been filed by wife of the deceased namely Veena Singh, two children namely Rishi Singh and Ritu Singh, daughter-in-law namely Runa Singh and grandson namely Arunabh Singh under Section 166 of Motor Vehicle Act.

5. The case of the claimants, in short, is that the deceased Dr. Amarnath Singh died on 14.03.2009, when he was going on a car with his family, in vehicular accident near Ganesh Asthan situated at Madhepura caused by rash and negligent driving of the driver of truck bearing No. BR-11D-7438 and F.I.R. was registered under section 279, 337, 338 and 304A of Indian Penal Code. It is further contended that Dr. Amarnath had been badly injured in the accident and declared dead by the doctor when taken to the hospital. It is contended that the deceased was 58 years old at the time of the accident as per Birth Certificate exhibited as Ext. 2 and he was working as Medical Officer posted at PHC, Madhepura and his gross salary was Rs. 57,000/- per month. Claimant exhibited salary slip of the deceased as Ext. 1 which shows his gross income as Rs. 57,415/- per month.

6. On summons, Respondent No. 6 i.e. Tej Narayan, who is the owner of the vehicle, and Respondent No. 7 i.e. Sanjay Kumar, who was the driver of the offending vehicle at the time



of the accident, had filed joint written statement and exhibited Ext. A-1, which shows that the offending vehicle was covered under the insurance with National Insurance on the date of the accident i.e. 14.03.2009 and also exhibited valid Driving License of the driver (Ext-A1/3) and Permit of the offending Vehicle.

7. The learned Tribunal after analyzing evidences adduced by the parties, materials on record, has held that the deceased died in vehicular accident caused by rash and negligent driving of truck bearing No. BR-11D-7438 resulting into death of Dr. Amarnath Singh on 14.03.2009 and further held that insurance was valid and effective on the date of accident. On the basis of the evidence adduced by the parties, it was held that the deceased was of 58 years of age at the time of the alleged accident and he was working as a Medical Officer at P.H.C., Madhepura was earning Rs. 57,415/- per months which comprised basic salary, CLA, HRA & Medical Allowance. Hence, the annual income of the deceased on the date of the accident will come to Rs. 6,88,980/- (Rs. 57,415 x 12).

8. The learned Tribunal has held that wife and the daughter of the deceased i.e. Respondent Nos. 1 and 3 respectively was dependent on him at the time of the accident. Hence, out of total income, claimed compensation shall be reduced to one-third in consideration of expenses which victim



would have incurred towards maintaining himself if he would have been alive. Therefore, the annual income of the deceased after deducting his personal expense to the extent of one-third would come to Rs. 4,59,320/- (i.e., Rs. 6,88,980 - Rs. 2,29,660 = Rs. 4,59,320/-). The deceased was 58 and hence, the multiplier of 9 as per *Sarla Verma vs D.T.C.* reported in **(2009) 6 SCC 121**, will be applied for multiplying the compensation amount of the deceased and it will come to Rs. $459320 \times 9 = \text{Rs. } 41,33,880$. The Tribunal further held that since the age of the deceased at the time of the accident was 58 years, hence, no future prospect would be added. It is further held that the claimants will also get Rs. 5,000/- (Five Thousand) each for loss of consortium and estate. Since no specific bill has been submitted to support the claim of medical expense and funeral expense, therefore, the Tribunal awarded Rs. 25,000/- in lump sum and hence, Respondent Nos. 1 and 3 are entitled to get Rs. 41,68,880/- as compensation amount with 6% simple interest per annum from the date of filing of petition i.e. 11.06.2010.

9. Aggrieved by the judgment and award passed by the Claims Tribunal, the Insurance Company filed the present Miscellaneous Appeal and challenged the aforesaid judgment and award. The learned counsel for the appellant submitted that



the said accident was caused by an unknown vehicle. Placing reliance on *National Insurance Co. Ltd. Vs Rattani* reported in *AIR (2009) SC 1499* and *M/s Niharika Infraxtoue (P) Ltd. Vs State of Maharashtra* reported in *AIR (2021) SC 1918*, the appellant pleaded that when FIR is part of the claim case, it should be taken in consideration and must be considered as the whole. FIR clearly mentions that the driver of the offending vehicle ran away with the truck taking advantage of the darkness of early morning of 4:30 am., and hence, the present case should be treated as hit and run case and under Section 161 of MV Act, the claimant would be entitled only for compensation of Rs. 2,50,000/-. The learned Counsel for the appellant further submitted by placing reliance on *National Insurance Company Ltd. Vs Pranay Sethi* reported in *2017 16 SCC 680* and *Sarita Rai Vs Ramyan Singh* reported in *2018 (2) PLJR 462*, that salary of the deceased for the purpose of calculating the quantum of compensation should be actual salary minus income tax.

10. Learned counsel for the claimant submits that the claim was partly allowed. The Learned Counsel for the claimants has challenged the quantum of the compensation awarded by the Tribunal without filing cross-appeal placing reliance on *Surekha and Ors. V Santosh and Ors.* reported in *2020 SCC Online SC 1312* wherein the Hon'ble apex Court



held that:-

“the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimant”.

Also, Delhi High Court in the case of ***National Insurance Co. Ltd. Vs Komal and Ors.*** and Kerala HC in the case of ***Anjali Vs Ragesh and Ors*** reported in ***2021 ACJ 2127***, Madras HC in the case of ***Royal Sundaram Alliance Insurance Co. Ltd. Vs Vani*** reported in ***2019 SCC Online Mad 25390*** and Himchal Pradesh HC in the case of ***Shriram General Insurance Vs. Deep Kumar*** reported in ***2021 ACJ 2310*** have held that appellate court has the power to make any order as is required, even if no cross-appeal/objection has been filed by the respondent. Learned counsel for the claimant submits that the learned Tribunal failed to consider calculation of the compensation in terms of the settled principle laid down in the case of ***National Insurance Company Limited Vs. Pranay Sethi*** reported in ***2017 (16) SCC 680***.

11. Learned counsel for the claimant submits that the Tribunal failed to consider future prospect in calculating the quantum of the compensation as per ***National Insurance Company Limited Vs. Pranay Sethi (Supra)***. It is further submitted that the Tribunal erroneously failed to add compensation for the loss of consortium as per latest judgment



of Hon'ble apex court.

12. The Learned counsel for the claimant submits that the Tribunal has erroneously made one-third deduction towards the personal expenses of the deceased by considering only the wife and daughter of the deceased as dependents of the deceased whereas there are five dependents of the deceased and hence, as per *Sarla Verma vs D.T.C.* reported in **2009 (6)SCC 121**, the deduction of one-fourth should be made towards the personal expenses of the deceased. The learned counsel placed reliance on *National Insurance Co. Lts vs Birender* reported in **2020 ACJ 759**, wherein, it has been held that even major, married and earning son has right to apply for compensation. Also, in the case of *Reliance General Insurance Co. Ltd Vs Gangappa MFA No. 102868 of 2014*, the Hon'ble Karnataka HC held that the married daughter are also entitled to claim compensation under MV Act.

13. Further, the claimant submits that the salary of the deceased at the time of the accident was Rs. 57,415/- as per the salary slip exhibited as Ext-1 and it clearly shows that the salary of Rs. 57,415/- was computed deducting tax and hence, no further deduction is required. In the case of *Vimal Kanwar Vs Kishore Dan* reported in **(2013) 7 SCC 476** and *Smt. Ranjhita Seal Vs Lal Chand* (By Guwahati HC) the Hon'ble courts have held that there is a presumption that the employer under Section



192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary.

14. The claimant further submits that the Tribunal erred in computing only 6% interest rate on the awarded compensation. Placing reliance on Supreme Court's Judgment in the case of ***United India Insurance Co. Ltd. Vs M.K.J. Corporation*** reported in ***(1996) 6 SCC 428***, wherein, it was held that since the insurance companies earn 11.3% interest on their investment, hence, the companies are also liable to pay 12% interest, the claimant in the instant appeal submits that the appellant is also liable to pay the compensation at the rate of 12% simple interest.

15. Learned Counsel for the claimant submits that defense taken by the appellant on merit of the case is not maintainable unless permission under Section 170 of MV Act is granted by the Tribunal as held by this High Court in the case of ***Chairman, ICICI Lombard General Insurance Co. Ltd. Vs Ranju Devi*** reported in ***2023 ACJ 363***.

16. It is well settled principle that appellate court under Order XLI Rule 33 has power to make an order to enhance the compensation even though the claimant has not filed any cross appeal/ objection.

17. In the case of ***Ranjana Prakash and others Vs Divisional Manager and another*** reported in ***2011 (14) SCC***



639 it has been held follows:-

“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”

18. With regard to the salary of the deceased which needs to be considered for calculating the quantum of the compensation, the Supreme Court in **Pranay Sethi case** (Supra) held that the income means actual salary less tax. However, in the case of **Vimal Kanwar v. Kishore Dan**, reported in (2013) 7 SCC 476 it has been as follows:-

“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).”

Hence, in the instant case the salary of the deceased as mentioned on the salary slip (Ext. 1) i.e. Rs. 57,415/- is deemed to be his income after deducting the tax by the employer and the



said amount has been rightly considered by the Tribunal for computing the quantum compensation.

19. With regard to non-pecuniary loss, the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi, (Supra)*** has held as under:-

“It seems to us that 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.”

20. In the ***Magma Insurance Vs Nanu Ram*** reported in ***2018 (18) SCC 130*** the Hon'ble Supreme Court held that:-

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.

21. After analyzing the materials on record, judgment and award passed by the learned Tribunal as well as submissions of the parties, who have placed reliance on several decisions passed by the Hon'ble Supreme Court as well as Hon'ble High Courts wherein the determination of age, income of the deceased, addition of income to future prospect, deduction towards personal and living expenses, multiplier based on age, loss of estate, loss of consortium and funeral expenses are being



considered.

22. The appellant also submitted that the present case should be treated as hit and run case and under Section 161 of the Motor Vehicle Act. The claimants could be entitled for compensation of Rs. 2,50,000/- only. The salary of deceased for the purpose of calculating the quantum of compensation should be actual salary minus tax. It is apparent from the record that injured Runa Singh wife of Rishi Singh (AW-1) is the eye witness of the accident. She stated in her evidence that her father-in-law died in vehicular accident occurred on 04.03.2009 at about 04:30 am. She was travelling by that very car along with her said father-in-law and her son, Nishu to Saharsha while a truck came from opposite direction rashly and negligently dashed to their car and all the three travellers became injured badly. The said truck was having Registration No. BR-11D-7438. The car was badly damaged, she and her son was also injured. After accident they were brought to Sadar Hospital, Madhepura but her father-in-law died during the course of treatment. She herself and her son were referred to Patna. They were treated by Dr. D.N. Singh for one month completely.

23. In her cross examination, she has admitted that she was sitting in the back seat of the car and the Investigating Officer had recorded her statement during the course of investigation. This statement had been corroborated by final



form submitted by the Investigating Officer in Madhepura P.S. Case No. 91 of 2009. In the aforesaid facts, this case will not come into ambit of Section 161 of the Motor Vehicle Act, 1988.

24. So far deduction of tax is concerned, the salary was computed deducting tax and hence, no further deduction is required. Reliance has been placed in this regard in the Case of ***Vimal Kanwar vs Kishore Dan*** reported in **2013 (7) SCC 476** and ***Smt. Ranjhita Sal Vs Lal Chand*** (By Guwahati High Court) reported in **2022 SCC Online Gau 250**.

25. Therefore, in case the income of the informant is only from salary, the presumption would be that the employer under Section 192 (1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if any objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.

26. It is apparent from the impugned judgment and award that the Insurance Company did not produce any witness before the Tribunal to contradict the same.

27. 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 15% of the salary amount of the deceased would be entitled to be added while calculating total loss of dependency. Paragraph '59.3' of the



Hon'ble Apex Court Judgment in ***Pranay Sethi*** (*supra*) reads as under:-

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less (minus) tax.”

28. So far deduction of living expenses in ***Sarla Verma*** (*supra*), the Hon'ble Apex Court has observed in paragraphs 30, 31 & 32, which reads as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards



personal and living expenses of the deceased, should be one- third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be



independent and earning, or married, or be dependent on the father.

32. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

Considering the number of dependents (total number of dependents two, widow and daughter)

29. I am of the opinion that the deduction of 1/3rd 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', which reads 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.”

30. In ***Pranay Sethi*** (*supra*), the Hon’ble Apex Court has recognised 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/-. 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."

It is well settled by the judicial pronouncements that the widow of the deceased would be entitled for a spousal consortium and parental consortium to each child @ Rs. 40,000/-.

31. The Supreme Court in the case of ***Magma General Insurance Company*** (supra) has 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.

32. On the point of just compensation the Hon'ble Apex Court in case of ***Ramla & others vs National Insurance Company Ltd. & others*** reported in ***2019 (2) SCC 192***, has held as follows:-

"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'"

33. In the case of ***Ranjana Prakash and others vs Divisional Manager and another*** reported in ***2011 (14) SCC***



639, 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.”

34. Considering 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.	<i>Name</i>	<i>Amarnath Singh</i>
2.	<i>Age</i>	<i>58</i>
3.	<i>Monthly Income</i>	<i>Rs. 57,415/- (permanent job with increments)</i>
4.	<i>Addition to income to future prospect@15% deceased being greater than 50 years and lesser than 60 years</i>	<i>Rs 66,027.25/- (57,415+8,612.25)</i>
5.	<i>Annual Income (Rs. 66027.25X12)</i>	<i>Rs. 7,92,327/-</i>
6.	<i>Deduction towards personal and living expenses(1/3)</i>	<i>Rs. 5,28,218/- (7,92,327-2,64,109)</i>
7.	<i>Multiplier based on age of 58 years</i>	<i>9</i>
8.	<i>Amount of compensation</i>	<i>Rs. 47,53,962/- (5,28,218X9)</i>



9.	<i>Loss of estate</i>	<i>Rs. 15,000/-</i>
10.	<i>Loss of consortium(widow & daughter)</i>	<i>Rs. 40,000X2= Rs. 80,000/-</i>
11.	<i>Funeral expenses</i>	<i>Rs. 15,000/-</i>
12.	<i>Total amount of compensation</i>	<i>Rs. 48,63,962/-</i>

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

36. The amount of compensation as awarded by the learned Tribunal is modified from Rs. 41,68,880/- plus 6% per annum to Rs. 48,63,962/-. The modified amount shall carry interest @6% per annum from the date of claim petition till realization. The due amount be paid by the appellant i.e. Manager National Insurance Company within a period of three months.

37. The Office is directed to return the statutory amount to the Insurance Company appellant which was deposited at the time of filing of this appeal.

(Khatim Reza, J)

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