IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.647 of 2016

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1. Meena Devi and Anr W/o Late Ramchandra Choudhary and Mother of Late Ajit Choudhary
2. Sujit Kumar Minor S/o Late Ramchandra Choudhary Serial No. 2 is minor Son of Late Ramchandra Choudhary under the guard Resident of Village- Punar, P.O.- Wajitpur, P.S. Madhuban, District East Champaran.

... ... Appellant/s

Versus

1. Smt. Kanti Devi and Ors W/o Late Shambhu Sharan Singh
2. Randhir Kumar Singh S/o Late Shambhu Sharan Singh Both are Resident of Village- Kothiya, P.S.- Madhuban, District- East Champaran.
3. The Divisional Manager, Oriental Insurance Company Ltd. Aghoria Bazar, District- Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mukesh Prasad Singh, Advocate
For the Respondent/s	:	Mr. Bimlesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

7 31-07-2023

This Miscellaneous Appeal has been filed against the Judgment and order dated 29.07.2015 and award dated 11.08.2015 for enhancement of compensation amount passed by learned 10th Additional District Judge cum Motor Vehicle Accident Claims Tribunal, Muzaffarpur in Claim Case No. 126 of 2007. The Tribunal has awarded a sum of Rs. 2,24,500/- with interest at the rate of 6% p.a. from the date of filing petition till the date of deposit.

2. The facts of present claim case are that Ajit Choudhary (deceased) aged 14 years on the date of the accident i.e. 08/04/2007, while going on his bicycle, met with an accident

caused by the rash and negligent driving of agricultural tractor Tempo OX-35 Balwan 400 DLX bearing chasis no. T0707015124A06 and Engine No. D100 15563. The claimant stated that the deceased was earning 2700/- per month and was doing food grain business with his widowed mother and minor brother. The said claim case was filed for compensation of Rs. 2,95,300/- with interest of 12% by the mother and minor brother of the deceased under the guardianship of his mother and the adequacy of grant of the compensation by the Tribunal has been questioned in the present appeal.

3. Learned counsel for the appellant submits that the claim was partly allowed. It is admitted fact that the tribunal has relied upon the judgment in the case of **Syed Bashir Ahmad Vs Md. Jamil** reported in **(2009) 2 SCC 225** in which the Hon'ble court has held that it is general rule to deduct towards personal and living expenses of the deceased, one-third of the income in case he was married and one-half (50%) if he was a bachelor, in the absence of evidence to the contrary.

4. The learned counsel for the appellant submitted that the lower court failed to consider calculation of the compensation in terms of the settled principle laid down in the case of **Sarla Verma Vs. DTC** reported in **(2009) 6 SCC 121**

which has been affirmed in **Reshma Kumari Vs Madan Mohan** reported in **(2013) 9 SCC 65**. Placing reliance on the Apex Court's judgment in the case of **Kishan Gopal and Anr. Vs. Lala and Ors**. reported in **(2014) 1 SCC 244,** which has been affirmed in **Meena Devi Vs. Nanu Chand Mahto** reported in **(2023) 1 SCC 204** wherein it was observed that the compensation has been calculated treating Rs. 30,000/- as notional income, it is urged that the tribunal erred in adequately assessing the quantum of the compensation.

5. It is stated that the deceased was 14 years old boy died in motor accident leaving behind widowed mother and a minor younger brother. In the case of **Sarla Verma Vs. DTC** reported in **(2009) 6 SCC 121** wherein the Hon'ble Apex Court held that 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.

6. The Learned counsel for the appellant further relied upon the classic decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs Pranay**

Sethi reported in **(2017) 16 SCC 680** where in the Hon'ble Apex Court evaluated all the judicial precedents on the issue of future prospects including **Sarla Verma Case (Supra)** and reasonable figures on conventional heads are namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively and also it should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.

7. Learned counsel for the appellants submits that the Tribunal failed to award any amount of future prospect and filial consortium. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of child cause great shock and agony to the parents and family members of the deceased. The greatest agony for a parents is to lose their child during their lifetime. This aspect has been considered in the case of **Magma General Insurance Company Limited V.s. Nanu Ram** reported in **2018 (18) SCC 130.** The Motor Vehicle Act, 1988, is a beneficial legislation which has been framed with the object of providing relief to the victims or their families in case of genuine claim. In case where a parent has lost their minor child

or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the heads of filial consortium. The amount to be awarded for loss of consortium will be as per the amount fixed in **National Insurance Company Limited V.s. Pranay Sethi and others** reported in **2017 (16) SCC 680.**

8. With respect to the multiplier the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) (Supra)** a chart was prepared for fixing the applicable multiplier in accordance with the age of the deceased after considering the judgments in **Kerela 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.**

9. The relevant extract from the said chart i.e. Column 4 has been set out herein below for ready reference:-

Age of the deceased	Multiplier (Column 4)
Up to 15 years	-
15 to 20 years	18
21 to 25 years	18
26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	9

61 to 65 years	7
Above 65 years	5

10. In view of the aforesaid multiplier chart, there is no mention about the age group up to 15 years. This aspect has been considered by the Hon'ble apex court in the case of Meena Devi Vs. Nanu Chand Mahto (Supra) relied on the judgment of **Kishan Gopal and Anr Vs. Lala and Ors** reported in (2014) 1 SCC 244 wherein paragraph 39 reads as follows:-

"*In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs. 30,000 and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in Sarla Verma v. DTC, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000* x *15 = 4,50,000 and 50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerela SRTC v. Susamma Thomas, which is referred to in Lata Wadhwa Case and the said*

> *amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs 50,000 under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.*"

11. In view of the aforesaid finding reasonable notional income is assessed at Rs. 30000 and the multiplier of 15 can be applied to the multiplicant. Thus Rs. 30,000 x 15= Rs. **4,50,000/**- and Rs. 50,000/- under conventional heads towards loss of love and affection, funeral expenses, the said amount would be just and reasonable compensation to be awarded in favour of the appellants. The awarded amount of Rs. 5,00,000/- with interest at the rate of 6% per annum should be paid to the appellants from the date of filing of the application till the date of payment.

12. Accordingly, this appeal is allowed.

13. The amount of compensation as awarded by the learned Tribunal is enhanced from Rs. 2,24,500/- to Rs. 5,00,000/-. The total amount of compensation would be Rs.

5,00, 000/-, the enhance amount shall carry interest at the rate of 6% per annum from the date of filing of claim petition till realization. The due amount is to be paid by the respondent no. 3, the Divisional Manager Oriental Insurance Company limited within a period of three months.

(Khatim Reza, J)

Sankalp/-

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