IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.463 of 2015

The Branch Manager National Insurance Company Ltd.

... ... Appellant/s

Versus

1. Dayamani Devi W/o late Mahesh Mandal R/o Village- Baraichak Po Patam, P.s Naya Ramnagar Anchal, Jamalpur, District Munger.
2. Mintu Devi W/o late Anil Kumar singh Resident of Village- Umesh Nagar, Po Shekhpur, P.s Ahiyapur, Distt Muzaffarpur-842001

... ... Respondent/s

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with

Miscellaneous Appeal No. 332 of 2015

Dayamani Devi wife of Late Mahesh Mandal, Village- Baraichak, P.O.- Patam, P.S.- Naya Ram Nagar, Anchal- Jamalpur, District- Munger, Bihar.

... ... Appellant/s

Versus

1. Mintu Devi and Anr wife of Late Anil Kumar Singh, Mohalla- Umesh Nagar, P.O.- Shekhpur, P.S.- Ahiyapur, District- Muzaffarpur.
2. The Branch Manager, National Insurance Co. Ltd., Apna Bazar, Dumra Road, Rajopatti, Bai-Pass Chowk,

... ... Respondent/s

Appearance :

(In Miscellaneous Appeal No. 463 of 2015)

For the Appellant/s	:	Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Singh, Advocate Mr. Randhir Kumar Singh, Advocate

(In Miscellaneous Appeal No. 332 of 2015)

For the Appellant/s	:	Mr. Prabhat Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ashok Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

10 24-11-2023 **Re:- Miscellaneous Appeal No.463 of 2015**

This Miscellaneous Appeal has been filed against the judgment and award dated 30.04.2015 passed in Claim Case No. 192 of 2012 passed by the learned Motor Accident Claims Tribunal, Sitamarhi, whereby claimant was found entitled to get compensation of vehicular accidental death of the son of the claimant namely, Ashish @ Ashish Kumar aged about 28 years and it was further directed that the insurance company/ applicant shall pay compensation amount of Rs. 28,17,988/- with 6% interest over the same from the date of filing of claim petition till the date of realization from the insurance company.

2. The Insurance Company has filed the appeal (Miscellaneous Appeal No. 463 of 2015) mainly on two grounds:-

(I) Whether the compensation amount awarded by the tribunal on the basis of gross income is just and proper ?

(II) Whether applicability of multiplier of 18 for the age group of 26 to 30 years is correct?

3. It is admitted fact that at the time of accident age of the deceased was 28 years 8 months 5 days and the learned claims tribunal has wrongly applied the multiplier of 18 instead of 17.

4. With respect to the multiplier the Hon'ble Supreme Court in the case of **Sarla Verma Vs. DTC** reported in **(2009) 6 SCC 121,** has prepared a chart for fixing the applicable multiplier in accordance with the age of the deceased

5. The relevant extract from the said chart i.e. Column

4 has been set out hereinbelow 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

6. In view of the aforesaid decision of the Hon'ble Supreme Court as well as chart of multiplier prepared for fixing the applicable multiplier, in the present case the multiplier should be 17 in place of 18, since the deceased was at the age group of 26 to 30 years.

7. Learned counsel for the Insurance Company submits that compensation has to be ascertained on the basis of net income and not on the basis of gross income. The learned tribunal has taken into consideration basic salary and dearness allowance of the deceased as per exhibit 1 and exhibit 2 and held that the total income of the deceased at the time of accident was Rs. 26,486/- per month. The total income per annum after

taking into consideration of the basic salary and dearness allowance of the deceased was Rs. 3,17,832/-. After deducting the 50%, the amount of total income of deceased would come to Rs. **1,58,916/-** and the multiplier of 18 has been applied by the tribunal which is not in consonance with **Sarla Verma** case (supra).

8. After considering the above submissions, the gross earning of the deceased at the time of accident was Rs. 34686 along with dearness allowance. Exhibit 2 clearly shows that the gross earning was Rs. 34,686/- per month and gross deduction including income tax Rs. 4314 comes to Rs. 30,372/- per month. Hence no further deduction is required.

9. 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.

10. Hence, in the instant case, the salary of the deceased as mentioned above on the salary slip was Rs. 34,686/- and after deduction of Rs. 1046/- income tax is Rs. 30,372/-, his income after deducting the tax by the employer and the said

amount has been wrongly considered by the Tribunal for computing the quantum of compensation as Rs. 26,486/- in place of Rs. 30,372/-.

11. In the aforesaid facts and circumstances of the case, the multiplier of 17 should be applied in place of 18.

12. Accordingly, this appeal is disposed of.

<u>Re:- Miscellaneous Appeal No. 332 of 2015</u>

13. This Miscellaneous Appeal has been filed against the judgment and award dated 30.04.2015 (for enhancement of award amount) passed in Claim Case No. 192 of 2012 passed by the learned Motor Accident Claims Tribunal, Sitamarhi, whereby claimant was found entitled to get compensation of vehicular accidental death of the son of the applicant namely, Ashish @ Ashish kumar aged about 28 years and it was further directed that the insurance company shall pay compensation amount of Rs. 28,17,988/- with 6% interest over the same from the date of filing of claim petition till the date of realization.

14. Details of Calculation made by the learned Tribunal as under:-

1.	Monthly income of the deceased	Rs. 26,486/-
2.	Annual income of the deceased	Rs. 3,17,832/-
3.	50% personal expense as	Rs. 1,58,916/-

	deceased age was 29 years	
4.	Total compensation	Rs. 1,58,916x18= Rs. 28,60,488/-
5.	Loss of estate	2500
6.	Funeral Expenses	5000
7.	Total amount	Rs. 28,67,988/-

15. The appellant being aggrieved by the judgment and award passed by the learned tribunal sought for the following reliefs under the following heads:-

S. No	Heads	calculation
1.	Salary	Rs. 37,864/-
2.	100% of (I) above to be added as future prospects.	Rs. 75,728/- (Rs.37,864/-)
3.	Fifty percent of (ii) deducted as personal expenses of the deceased	Rs. 75,728-37,864 = Rs. 37,864/-
4.	Compensation after multiplier of 18 is applied	Rs.37,864x12x18=Rs. 81,78,624/-
5.	Loss of estate	50,000/-
6.	Loss of funeral expenses	25000/-
	Total compensation award	Rs. 82,53,624/-

16. The claim of the appellant is that she was dependent on her son deceased Ashish@ Ashish Kumar and at the time of accident, age of her son was 28 years 8 months 5 days and he was employee of Food Corporation of India. The deceased had a permanent job and his annual income was in the taxable slab, though the word actual salary should be read as

actual salary after deducting taxable amount. It is further contended that it has already come in evidence that actual salary of the deceased was Rs. 37,864/- as per Exhibit 1. It is further submitted that if he had been alive and as such an addition of 100% to the actual salary would have been added as future prospect of the deceased.

17. Learned counsel for the appellant submits that the Tribunal has failed to consider future prospect in calculating the quantum of the compensation as per ***National Insurance Company Limited Vs. Pranay Sethi reported in 2017 (6) SCC 680***. It is further submitted that the Tribunal erroneously failed to add compensation for the loss of consortium as per decision in the case of ***Magma Insurance Vs Nanu Ram*** reported in ***2018 (18) SCC 130*** in which 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."*

18. 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."*

19. Learned counsel for the claimant-appellant submits that the salary of the deceased at the time of the accident was Rs. 37,864/- after 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.

20. 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 have been considered.

21. On the basis of evidence adduced by the parties, I find that deceased was of about 29 years (28 years 8 months 5 days) of age at the time of the accident (15.09.2012) and he was the Manager in the Food Corporation of India, Muzaffarpur and was getting a gross salary of Rs. 34,686/- and after deduction of income tax and other deductions he was getting Rs. 30,372/- per month as per Exhibit 2 (Gross deduction including tax =4314) which comprises basic salary, dearness allowance and other allowances. Hence, the annual income of the deceased at the time of accident was Rs. 30,372 x 12=Rs. 3,64,464/-. The deceased was unmarried at the time of accident. The claimant/appellant is the mother who was only dependent upon the deceased. Hence, out of total income 50% shall be reduced considering the 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 expenses to the extent of 50% would come to Rs. 1,82,232/- (50% of 3,64,464).

22. The deceased was of about 29 years and (age group of 26 to 30 years.) hence the multiplier of 17 (The

tribunal has wrongly applied the multiplier as 18 instead of 17) will be applied for multiplying the compensation amount of the deceased and it will come to Rs. Rs. 1,82,232 x 17 = Rs. 30,97,944/-.

23. The insurance company did not produce any evidence before the Tribunal to contradict the same.

24. So far 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 50% of the salary amount of the deceased would be required to be added while calculating total loss of dependency. Paragraph '59.3' of the Hon'ble Apex Court's 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."

25. So far conventional heads is concerned, 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/-. In the category of filial consortium applicant (who was the mother of the deceased) was fully dependent upon her son.

26. 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 claimant is awarded in the manner indicated in chart mentioned below and the judgment and award passed by the Claim Tribunal is modified to the extent indicated hereinbelow:-

1.	***Name***	***Ashish@ Ashish Kumar***
2.	***Age***	***29 (28 years 8 months 5 days)***
3.	***Monthly Income Less tax***	***Rs. 30,372/- (permanent job)***
4.	***Addition to income to future prospect@50% deceased being of the age group of 26 to 30 years***	***Rs 45,558/- (30372+15186)***
5.	***Annual Income (Rs. 45,558x12)***	***Rs. 5,46,696/-***
6.	***Deduction towards personal and living expenses 50%***	***Rs. 2,73,348/-***
7.	***Multiplier based on age of 29 years***	***17***

8.	***Amount of compensation***	***Rs. 2,73,348/- x17= 46,46,916/-)***
9.	***Loss of estate***	***Rs. 15,000/-***
10.	***Loss of filial consortium***	***Rs. 40,000/-***
11.	***Funeral expenses***	***Rs. 15,000/-***
12.	***Total amount of compensation***	***Rs. 47,16,916/-***

27. Accordingly, this Miscellaneous Appeal is allowed with modification in the quantum of compensation as aforesaid. The amount of compensation as awarded by the learned Tribunal is modified from Rs. 28,17,988/- along with the interest at the rate of 6% per annum to Rs. 47,16,916/-. The modified amount shall carry interest at 6% per annum from the date of filing of the claim petition till the date of realization. The due amount is to be paid by the respondent no. 2 namely, the Branch Manager, National Insurance Co. Ltd. within a period of three months.

(Khatim Reza, J)

Sankalp/-

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