IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.949 of 2017

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Br. Manager United India Insurance Company Ltd. Alam Market Girija High School Road, Katihar.
Represented through its
Regional Manager
United Indian Insurance Company Limited, Regional Office at Chanakya Commercial Complex (3rd floor), Near R-Block, Patna – 800001.

... ... Appellant

Versus

1. Buchhi Devi @ Buchiya Devi Wife of Lok Narayan Rishi, Resident at Village Mahiyarpur, P.S.- Jalalgarh, Purnea.
2. Md. Khasim Allam @ Md. Khushbur Alam, Son of Abdul Rasid, Resident of Village- Ahalgawn Belwari P.S.- Jalalgarh, District- Purnea.
3. Pintu Kumar Bhagat, Son of Janardan Prasad Bhagat, Resident of Village- South Bhatta, P.S. K. Hat District- Purnea.

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Sanjay Kumar No.1, Advocate
For the Respondents	:	Mr. Ram Prawesh Kumar

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

8 17-08-2023 This Miscellaneous Appeal has been filed against the Judgment and order dated 28.07.2017 passed by the learned 2nd Additional District Judge-cum-Motor Vehicle Accidents Claims Tribunal, Purnea in Claim Case No. 52 of 2007. The Tribunal has awarded a sum of Rs. 4,67,000/- (Four Lakhs Sixty Seven Thousand) with interest at the rate of 6% p.a. from the date of filing petition till the date of deposit.

2. The case of the claimants, in short, is that Siraj Kumar Rishi (deceased) aged 1 year on the date of the accident i.e. 19.04.2017, while traveling on the offending tempo, bearing registration No. BR-11D-6677 along with applicant, met with an accident due to rash and negligent driving of the driver the said tempo. The tempo turned upside down and on account of the accident Siraj Kumar Rishi, one year old infant, succumbed to death on the spot. F.I.R. has been lodged under Section 279, 304A and 339 of Indian Penal Code as Kasba PS case No. 114 of 2007. The claim petition has been filed by his mother, namely, Buchhi Devi alias Buchiya Devi, under Section 166 of Motor Vehicles Act, claiming the compensation of Rs. 1,00,000/- (One Lakh) beside other benefits provided under the Act.

3. The learned Tribunal has held that since the age of the deceased was a one year old infant there is no question of income of the deceased. Placing reliance on the judgment of ***Kishan Gopal and Anr Vs. Lala and Ors*** reported in ***(2014) 1 SCC 244*****,** the Tribunal has considered Rs. 30,000/- (Thirty Thousand) per annum as notional income of the deceased. Further, in the light of the judgment by Hon'ble Sikkkim High Court in the case of ***Branch Manager, Bajaj Alliance Insurance Co. Ltd. Vs Janga Bhadur Chettri and Ors.*** reported in ***2016 ACCI C.R. 221 (Sik),*** the Tribunal has taken future prospect of 50% and hence the notional income of the deceased comes to Rs. 45,000/- (30,000/- + 15,000/-) after computing 50% as future prospects. The Tribunal further in consideration of the expenses which the victim would have incurred towards maintaining himself if he would have been alive, 50% out of total income has been deducted and hence, the annual income comes to 22,500/- (45,000 – 22,500). The deceased was one year old and hence, the multiplier of 15 has been applied for multiplying the compensation amount of the deceased; the total comes to Rs 22,500 X 15 = 3,37,500/- (Three Lakhs Thirty Seven Thousand Five Hundred). It is further held that the claimants will also get Rs 5,000/- (Five Thousand) each as funeral expense and loss of estate and Rs. 1,25,000/- (One Lakh Twenty Five Thousand) as loss of love and affection. Hence, the claimants are entitled to get Rs. 4,67,500/- (Four Lakhs Sixty Seven Thousand Five Hundred) with interest at the rate of 6% per annum from the date of filing of the claim from the Insurance Company.

4. Aggrieved by the said judgment and award passed by the learned Claims Tribunal, the Insurance Company filed the present appeal and challenged the aforesaid Judgment and Award. Learned Counsel for the appellant submits that the Tribunal have erroneously decided the claim and have awarded exorbitant amount of compensation. It is further submitted that the consideration of the notional income of 30,000/- (Thirty Thousand) of one year old infant by the Tribunal is erroneous. The appellant submits that the lower court failed to award just compensation and have awarded excessive amount of 1,25,000/- (One Lakh Twenty Five Thousand) on account of loss of love and affection.

5. Perused the materials on record as well as impugned judgment under appeal. In view of submissions of learned counsel for the appellant with regard to the question of multiplier, the Hon'ble Supreme Court in the case of ***Sarla Verma (Smt) (Supra)*** prepared a chart 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.***

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

Age of Deceased (in years)	**Multiplier**
Up to 15	-
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

7. 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*** reported in ***(2023) 1 SCC 204*** relying on the judgment of ***Kishan Gopal and Anr Vs. Lala and Ors*** reported in ***(2014) 1SCC 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."

8. In view of the aforesaid finding, reasonable notional income is assessed at Rs. 30,000/- (Thirty Thousand) and the multiplier of 15 can be applied to the multiplicant. Thus, Rs. 30,000 X 15= Rs. 4,50,000/- (Four Lakhs Fifty Thousand) and Rs. 50,000/- (Fifty Thousand) under conventional heads towards loss of love and affection, funeral expenses would be just and reasonable compensation to be awarded in favour of the appellants.

9. Accordingly, this appeal is dismissed.

10. The amount of compensation as awarded by the learned Tribunal is enhanced from Rs. 4,67,000/- (Four Lakhs Sixty Seven Thousand) with interest of 6% per annum to Rs.

5,00,000/- (Five Lakhs). The enhanced 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 appellant. The awarded amount of Rs. 5,00,000/- (Five Lakhs) with interest at the rate of 6% per annum should be paid by the appellant from the date of filing of the application till the date of payment.

11. The appellant-Insurance Company will be at liberty to recover the awarded amount from the owner of the offending vehicle after making the payment.

12. The Office is directed to return the statutory amount deposited at the time of filing of the Miscellaneous Appeal to the appellant-Insurance Company.

(Khatim Reza, J)

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