IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.29 of 2018

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Manager, National Insurance Company Limited, Branch at Madhepura, S.B.I. Road, Ward No. 18, P.O. & P.S. & District-Madhepura represented by its Regional Office, Sone Bhawan (4th floor), Birchand Patel Marg, Patna-800001.

... ... Appellant

Versus

1. Rajmani Devi, Wife of Late Rajendra Das, resident of Village- Gwalpara, P.S.- Udakishunganj, District- Madhepura, Bihar.
2. Manoj Kumar Yadav, Son of Shivnath Yadav, resident of Village- Narhi, P.S. & District- Madhepura, Bihar.

... ... Respondents

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Appearance :

For the Appellant : Mr. Sanjay Kumar No.1, Advocate
For the Respondents : Mr. Dinesh Prasad Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

9 18-09-2023 The present Miscellaneous Appeal is directed against the judgment dated 29.06.2017 (Award dated 18.09.2007) passed by the learned Additional District Judge-III-cum-Motor Accident Claims Tribunal, Madhepura (in short 'the Tribunal') in Claim Case No. 04 of 2013 whereby the Tribunal has allowed the claim case and awarded compensation to the tune of Rs. 13,05,000/- with interest thereon @ of 9% per annum from 24.01.2013 till the date of realisation of the said amount. The present appeal has been filed by the National Insurance Company Limited (appellant), challenging the quantum of compensation as exorbitant compensation.

2. The brief facts of the case is that on 24.03.2007 at about 10:00 pm in the night, when the deceased, namely, Guddu Kumar Das, aged about 20 years was going for urination then a Yamaha motorcycle bearing Registration No. BR-43-8589 which was being driven rashly and negligently dashed against the deceased, who received severe head injury. During the course of treatment, on 31.03.2007, he died. The said accident was registered as Udakishunganj P.S. Case No. 50 of 2007 dated 28.04.2007 under Sections 279 & 304(A) of the Indian Penal Code. The Police submitted charge-sheet on 18.08.2007 against the owner-cum-driver, namely, Manoj Kumar Yadav of the offending motorcycle, who was driving the alleged motorcycle at that time. At the material time of accident, the alleged motorcycle was validly insured as 'Package Policy' with the National Insurance Company Ltd. (appellant).

3. The mother of the deceased, namely, Rajmani Devi filed the claim case against the alleged motorcycle driver-cum-owner, namely, Manoj Kumar Yadav and National Insurance Company Ltd.. She submitted the copy of the First Information Report, charge-sheet, death certificate, copy of registration certificate of the vehicle, photo-copy of insurance paper and post-mortem report of her deceased son. The deceased was

bachelor and running a betel shop from where he was earning Rs. 10,000/- per month.

4. After summon, the appellant-insurance company appeared and filed written statement and contested the case on the ground that the driver was not having a valid effective driving license. Further, the driver has neither produced the driving license before the Tribunal nor supplied the same to the appellant.

5. Learned trial court after considering the facts and circumstances held that at the time of accident / death, as per the post-mortem report (*Exhibit '6'*), the age of the deceased was about 20 years. It was further held by the learned trial court that on the basis of the evidence adduced by the parties, the income of the deceased along with his brother was about Rs. 10,000/- per month. As the two brothers were running the said betel shop, it means the income of the deceased was Rs. 5,000/- per month. Taking the income of the deceased as Rs. 5,000/- per month as well as adding 50% of it towards future prospect and deducting 1/3rd towards personal expenses and applying multiplier of 18 for the age group between 15 to 20 quantified compensation came to the tune of Rs. 10,80,000/-. The learned tribunal further added Rs. 1,00,000/- towards love and affection, Rs. 1,00,000/-

for loss of estate, and Rs. 25,000/- towards funeral expenses taking the total amount to Rs. 13,05,000/- along with interest @ of 9% per annum from the date of filing of the claim case.

6. Learned counsel for the appellant submits that in absence of conclusive proof of income of the deceased the Tribunal ought to have taken the notional income while computing the compensation. It is further submitted that while computing compensation, the Tribunal has wrongly calculated the income from the business of the betel shop at Rs. 10,000/- per month. Further, the Tribunal has awarded excessive compensation under general / non-pecuniary head.

7. On the other hand, the counsel for the claimant-respondents vehemently opposed and argued that the present appeal has been filed challenging the quantum of compensation without obtaining permission under Section 170 of the Motor Vehicle Act as per the decision passed by a Co-ordinate Bench of this Court in ***Miscellaneous Appeal No. 1244 of 2016*** *in* ***ICICI Lombard General Insurance Company Ltd.*** *vs.* ***Ranju Devi & Ors.*** *reported in* 2023 A.C.J. 363 and ***Miscellaneous Appeal No. 493 of 2004*** *in* ***Oriental Insurance Company Ltd. vs. Vidya Nand Yadav***.

8. On the issue of future prospect, the principle is

decided by Hon'ble Apex Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** *reported in* ***(2017) 16 SCC 680*** in paragraph nos. 57 & 59.4, which reads as under:-

> *"57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act…."*
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> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

9. Since, the deceased was the self-employed between age group of 15-20 years and an addition of 40% of the established income of the deceased would be entitled to be

added while calculating total loss of dependency.

10. So far as deduction of living expenses, in ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*** *reported in* ***(2009) 6 SCC 121,*** the Hon'ble Apex Court has observed in paragraph 30, 31 & 32, 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.*
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> *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."

11. Since, the deceased was a bachelor and the claimant / dependent is the mother of the deceased, the deduction of 50% would be towards personal and living expenses.

12. 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."

13. In ***Pranay Sethi*** (*supra*), the Hon'ble Apex Court has recognised three categories of conventional heads- (i) funeral expenses at 15,000/-, (ii) Estate loss at 15,000/- (iii) loss of consortium at Rs. 40,000/-.

14. In legal parlance, consortium has been defined in a case of ***Harpreet Kaur & Ors. vs. Mohinder Yadav & Ors.*** *reported in* ***2022 SCC Online SC 1723*** in which reference of a judgment in the case of ***Rajesh vs. Rajbir Singh*** *reported in* ***(2013) 9 SCC 54*** has been made.

15. In the case of ***Magma General Insurance Co. vs. Nanu Ram*** reported in ***(2018) 18 SCC 130,*** the Hon'ble Supreme Court has held as follows:-

“21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. 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 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. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most *jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. 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 head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium."

16. Having heard counsel for the appellants as well as counsel for the respondents and perusal of the records as also the decisions of the Hon'ble Apex Court, this Court finds that there is no dispute on applying multiplier of '18' in the instant case (age of the deceased-20 years) and as per ***Pranay Sethi*** *(supra),* there is provision for addition of 40% future prospect

and claims under conventional heads. With regard to living expenses, 50% has to be deducted as it is the income of the deceased and the claimant is entitled for filial consortium and the monthly income of the deceased in the instant case is Rs. 5,000/- per month at the time of accident.

17. Considering of the aforesaid decision of the Hon'ble Supreme Court, the claimant is 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.

18. The claimants are found entitled for the following amounts:-

NAME	**GUDDU KUMAR DAS**
AGE	20 Years
ANNUAL INCOME	5,000 X 12 = 60,000/-
ADDITION TO INCOME TO FUTURE PROSPECT(@40% DECEASED BEING LESS THAN 40 YEARS)	Rs. 84,000 /- (60,000+24,000)
DEDUCTION TOWARDS PERSONAL & LIVING EXPENSES(1/2) 50%	42,000/- (84,000-42,000)
MULTIPLIER BASED ON AGE OF 20 YEARS	18
AMOUNT OF COMPENSATION	7,56,000/- (42,000X18)
LOSS OF ESTATE	15,000/-
LOSS OF PARENTAL CONSORTIUM	40,000X1=40,000/-
FUNERAL EXPENSES	15,000/-
TOTAL AMOUNT OF COMPENSATION	10,12,000/-

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

20. The amount of compensation as awarded by the

Tribunal at Rs. 13,05,000/- is modified to Rs 10,12,000/-. The modified amount shall carry interest at the rate of 9% per annum from the date of claim petition till realisation.

21. Office is directed to return the statutory amount to the insurance company- appellant which was deposited at the time of filing of the appeal.

(Khatim Reza, J)

Gaurav Kumar/-

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