

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.602 of 2016**

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1. Mala Devi W/o Late Budhan Ram
2. Abhilash Kumar S/o Late Budhan Ram
3. Bebi Kumari D/o Late Budhan Ram, Serial No. 2 and 3 are minor son and daughter of Late Budhan Ram under the guardianship of their mother – Mala Devi. All residents of Village - Chitaura, P.S. Madhuban, District - East Champaran.

... .. Appellants

Versus

1. Sri Amar Kumar and Anr. S/o Brijnandan Prasad Singh resident of Village - Ekangar Sarai, P.S. Ekangar Sarai, District - Nalanda.
2. Divisional Manager, ICICI Lombard Insurance Company Ltd., Mithanpura Ramna, P.S. Mithanpura, District – Muzaffarpur.

... .. Respondents

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**Appearance :**

For the Appellants : Mr. Mukesh Prasad Singh, Advocate

For the Respondents : Mr. Durgesh Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE KHATIM REZA**  
**ORAL ORDER**

**14    03-08-2023**

This Miscellaneous Appeal has been filed against the judgment and award dated 21.12.2015 (for enhancement of compensation) granted in Claim Case No. 93 of 2011 by District Judge-cum-chairman, Motor Accident Claims Tribunal, East Chmaparan, Motihari whereby the claim petition was allowed and respondent No. 2 was directed to pay amount of compensation i.e., Rs. 3,88,000/- (Three Lakh Eighty Eight Thousand) (Total amount of Rs. 4,38,00/-)with 9% interest per annum from the date of filing of the claim case.

2. Learned Tribunal has held that deceased aged about 29 years old was married having two minor children



and was earning 3,000/- (Three Thousand) per month which comes to Rs. 36,000/- (Thirty Six Thousand) per annum. It is also established that the deceased was the only earning member of the family at the time of the accident and three members were dependent on him. 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 i.e.,  $\text{Rs. } 36,000/- - 12,000/- = 24,000/-$  (Twenty Four Thousand). It is further held that the multiplier of 17 will be applied for multiplying the compensation amount of the deceased and it will come to  $\text{Rs. } 24,000/- \times 17 = \text{Rs. } 4,08,000/-$  (Four Lakh Eight Thousand). It is further held that the claimants will also get Rs. 10,000/- (Ten Thousand) each as funeral expenses, for love and affection and for loss of estate and the total amount comes to Rs. 4,38,000/- (Four Lakh Thirty Eight Thousand) out of which the claimants have already received Rs. 50,000/- (Fifty Thousand) under Section 140 of the Motor Vehicle Act. Hence, the claimants are entitled to get Rs. 3,88,000/- (Three



Lakh Eighty Eight Thousand) with interest at the rate of 9% per annum from the date of filing of the claim case from the Insurance Company and held that the Insurance Company will be at liberty to recover the awarded amount from the owner after the payment.

3. Aggrieved by this judgment and award passed by the Claims Tribunal, the claimant filed the present Miscellaneous Appeal and challenged the aforesaid judgment and award. Learned counsel for the appellant submits that the learned Tribunal 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* and *National Insurance Company Limited Vs. Pranay Sethi* reported in *2017 (16) SCC 680* which was affirmed in *Laxmidhar Nayak and Ors. Vs Jugal Kishore Behera and others* reported in *(2018) 1 SCC 746*.

4. The case of the claimant, in short, is that the deceased Budha Ram died on 15.05.2009, when he was going on a bike to Motihari in vehicular accident caused by rash and negligent driving of the driver of truck bearing No. BR1G3848 and F.I.R. was registered under section 279 and



304A of Indian Penal Code. The claim application was filed by his wife i.e. Mala Devi and two minor children i.e. Abhishek Kumar and Bebi Kumari. It is further contended that Budha Ram had been badly injured in the accident and thereafter taken to a local doctor, who provided first aid and sent him to Motihari and from there he was referred to Muzaffarpur but he died on the way. It is also stated that Budha Ram was healthy and whole family was dependent upon his earnings.

5. On summons, respondent No. 1 i.e. Amar Kumar, who is the owner of the vehicle, and respondent No. 2 ICICI Lombard Pvt. Ltd. had filed written statement and exhibited Ext. C, which shows that the offending vehicle was covered under the insurance with ICICI Lombard on the date of the accident i.e. 15.05.2009.

6. The Insurance Company contended that driving license of the driver of the offending vehicle was not brought on the record. It is further contended that the offending Truck was plying without permit. Permit No. 426/2007 alleged to be issued by Road Transport Authority, Patna was found to be fake and forged as per the verification report Memo No. 406



dated 20.05.203 (Ext. A and Ext. B) issued by Road Transport Authority. Patna and proved by witness Mr. Praveen Kumar on behalf of the Insurance Company. Hence, the Insurance Company is not liable to pay any compensation.

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. BR1G3848 resulting in into death of Budha Ram on 10.05.2009 and further held that insurance was valid and effective on the date of accident. It further found that the offending truck was plying without a valid permit at the time of the said accident. However, it is vicarious liability of the company to compensate the claimant for the vehicular accident of Budha Ram. So, the ICICI Lombard Co. Ltd. is responsible to pay the compensation amount to the claimant and the Insurance Company will be at liberty to recover the awarded amount from the owner after the payment. On the basis of the evidence adduced by the parties, it was held that the deceased was of 29 years of age at the time of the alleged accident and he was a worker in Petrol Pump earning Rs. 3,000/- (Three Thousand) per month and



hence, Rs. 36,000/- (Thirty Six Thousand) was earning annually. The claim compensation amount shall be reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself i.e. Rs. 12,000/- (Twelve Thousand) out of Rs. 36,000/- (Thirty Six Thousand). The learned Tribunal has applied the multiplier of 17 to remaining amount of 24,000/- (Twenty Four Thousand) as per ***Sarla Verma Vs. DTC*** reported in ***2009 (6) SCC 121***. The Tribunal further granted 10,000/- (Ten Thousand) each for Funeral expense, loss of love and affection and loss of estate.

8. The learned counsel for the appellants has placed reliance on several decisions passed by the Hon'ble Supreme Court, wherein, the determination of age, income of the deceased, addition of income to future prospects, deduction towards personal and living expenses, multiplier based on age, loss of estate, loss of consortium and funeral expenses have been considered. The details of the judgments are as follows:-

(i). ***Sarla Verma Vs. D.T.C. reported in 2009 (6) SCC 121,***



(ii). *National Insurance Company Ltd. Vs.*

*Pranay Sethi* reported in *2017 (16) SCC 680*,

(iii). *Magma General Insurance Company Ltd.*

*Vs. Nanuram* reported in *2018 (18) SCC 130*.

9. In the case of *Magma General Insurance Company Ltd.* (supra) the Hon'ble Supreme Court 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.

10. In the case of *Ramla & others vs National Insurance Company Ltd. & others* reported in *2019 (2) SCC 192*, the Apex Court held that:-

*“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'”*



11. After analyzing all aspects of the matter as well as 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:-

| S. No. | PARTICULARS                                                                       | Details                                       |
|--------|-----------------------------------------------------------------------------------|-----------------------------------------------|
| 1.     | NAME:-                                                                            | Budha Ram                                     |
| 2.     | AGE:-                                                                             | 29 years                                      |
| 3.     | MONTHLY INCOME:-                                                                  | Rs. 3,000/- (self – employed/ fixed salaried) |
| 4.     | ADDITION TO INCOME TO FUTURE PROSPECT(@40% DECEASED BEING LESS THAN 40 YEARS):-   | Rs. 4,200/- (3,000 + 1,200)                   |
| 5.     | ANNUAL INCOME(4200 X 12):-                                                        | Rs. 50,400/-                                  |
| 6.     | DEDUCTION TOWARDS PERSONAL & LIVING EXPENSES(1/3):-                               | Rs. 33,600/- (50,400 – 16,800)                |
| 7.     | MULTIPLIER BASED ON AGE OF 29 YEARS:-                                             | 17                                            |
| 8.     | AMOUNT OF COMPENSATION:-                                                          | Rs. 5,71,200/- (33,600 X 17)                  |
| 9.     | LOSS OF ESTATE:-                                                                  | Rs. 15,000/-                                  |
| 10.    | LOSS OF CONSORTIUM (SPOUSAL AND PARENTAL) (WIDOW & TWO MINOR CHILDREN 40,000 X 3) | Rs. 1,20,000/-                                |
| 11.    | FUNERAL EXPENSES:-                                                                | Rs. 15,000 /-                                 |
| 12.    | TOTAL AMOUNT OF COMPENSATION:-                                                    | Rs. 7,21,200/-                                |

13. Accordingly, this Miscellaneous Appeal filed by the appellants is hereby allowed with modification in the



quantum of compensation as aforesaid.

**14.** The amount of compensation as awarded by the learned Tribunal is modified from Rs. 4,38,000/- (Four Lakh Thirty Eight Thousand) with 9% interest to Rs. 7,21,200/- (Seven Lakh Twenty One Thousand Two Hundred) out of which 50,000/- (Fifty Thousand) has already been paid. The modified amount shall carry interest at the rate of 6% per annum from the date of claim petition till the date of realization. The due amount be paid by the Branch Manager, ICICI Lombard Limited within a period of three months from today. The Insurance Company will be at liberty to recover the awarded amount from the owner of the offending vehicle after the payment.

**(Khatim Reza, J)**

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