

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1082 of 2016

1. Bebi Khatoon, wife of Fucho Miyan@ Md. Fucho
2. wife of Fucho Miyan @ Md. Fucho, son of Koko Miyan
Both resident of village - Sadhua. PS- Rangra Gopalpur Distt- Bhagalpur

... .. Appellants

Versus

1. Mrs. Sita Devi, wife of Bipin Kumar Resident of village- Bariyarpur. PS- Bariyarpur. Distt- Munger.
2. Lalan Singh @ Lalan Kumar Singh, son of Umashankar Singh, resident of village- Katehar. PS- Surajgarha. Distt- Lakhisarai.
3. Manager, Sri Ram. General Insurance Company LTD. Sitapura. Jaipur, (Rajasthan) 302022 (Insurer of the vehicle)

... .. Respondents

Appearance :

For the Appellant/s	:	Mr.Vivekanand Vivek, Advocate
For the Respondent/s	:	Mr.Alok Kr. Shahi, Advocate Ms. Archna Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 10-02-2023

Heard learned counsel for the appellants and learned
counsel for the Insurance Company (respondent no.3).

2. This miscellaneous appeal has been preferred being aggrieved by and dissatisfied with the adjudication as regards issue nos. 4 and 5 by the learned Tribunal vide impugned judgment and award dated 06.02.2016 and 13.05.2016 respectively in Claim Case No. 43 of 2013. The appellants who are parents of the deceased are seeking modification of the judgment and the award impugned in the appeal by way of enhancement of the compensation amount.



Brief facts of the Case

3. It is the case of the claimants that on 12.11.2012 the deceased Md. Bado was waiting for the bus at Rangra Chowk. A Bolero vehicle bearing registration no. BR-09G-4570 came in the meantime and crushed the deceased and another person who were standing there. Md. Bado was seriously injured, he was admitted in Patna Hospital and only after five days in course of treatment he died on 17.11.2012. The accident took place allegedly due to rash and negligent driving of the Bolero vehicle by the driver. A criminal case giving rise to Gopalpur (Rangra) P.S. Case No. 364 of 2012 dated 12.11.2012 under Section 279, 337, 338, 304A, 427 of the Indian Penal Code was registered against the driver of the offending vehicle.

4. The claimants filed their claim under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') before the learned Tribunal. They claimed that the deceased had a business of dealing in animals and he was earning Rs. 6,000/- per month from that business. It is not in dispute that the offending vehicle was insured with Shri Ram General Insurance Company Limited (O.P. No. 3) and at the time of accident, the insurance policy was effective.



5. In the Tribunal the owner and driver of the offending vehicle appeared, they filed their joint written statement. They admitted that the vehicle was insured with O.P. No. 3 vide policy effective from 01.03.2012 to 28.02.2013 and was covered on the date of accident i.e. 12.11.2012. The owner claimed that he has not committed any breach of terms and conditions of the insurance policy and at the time of accident the driver was holding a valid and effective driving licence.

6. The claimant no.1 produced herself and also brought another witness Lukman Ali (C.W.2). In addition to the oral evidence, they also relied upon some documentary evidence which are Exhibit '1' to Exhibit '7'. Exhibit '1' is the certified copy of the F.I.R., Exhibit '2' is the certified copy of the chargesheet, Exhibit '3' is the photocopy of post-mortem report of the deceased, Exhibit '4' is the photocopy of the insurance policy of the offending vehicle, Exhibit '5' is the photocopy of registration certificate of the offending Bolero vehicle, Exhibit '6' is the photocopy of driving licence of O.P. No. 2 and Exhibit '7' is the original heirship certificate.

7. The Insurance Company (O.P. No. 3) appeared and filed a written statement. They contested the case showing that the proof of age and income has not been filed and that the driver was



not holding a valid and effective driving licence. Some other ornamental pleas were also taken on behalf of the Insurance Company.

8. The Tribunal framed as many as five issues which are being reproduced hereunder:-

“Issues

1. Whether the claim application as framed and filed is maintainable.
2. Whether the claimants have any cause of action.
3. Whether claimants are entitled to get compensation.
4. What should be just compensation.
5. To what relief or reliefs.”

9. As against the aforesaid oral and documentary evidences of the claimants, no oral or documentary evidence was brought on record on behalf of the opposite parties.

10. In the aforementioned background, the learned Tribunal considered the evidences available on the record with reference to the issues framed. So far as issue no. 3 is concerned, after a careful analysis of the evidences on record, the Tribunal concluded that the accident took place due to rash and negligent driving of the driver of the offending vehicle and for that reason the claimants are entitled to get compensation.

11. It is the decision of the Tribunal with regard to issue nos. 4 and 5 which has been assailed by learned counsel for the appellants. While deciding these issues the learned Tribunal has recorded that the claimants have led oral evidences. C.W.1



who is the mother of the deceased has supported the fact that the deceased was engaged in business of sale of animals. She was supported by C.W.-2 who said that he knew the deceased as a co-villager and further stated that at the time of occurrence the deceased was doing business of sale and purchase of animals and used to earn Rs. 6,000/- per month.

12. Having recorded so, the Tribunal observed that these two witnesses have been cross-examined by the learned counsel appearing for the opposite party at length but it transpires that nothing has come out in their respective cross-examination to disbelieve their testimony. The Tribunal, however, accepted the submission of the Insurance Company that in absence of any documentary evidence on the point of income, the income must be considered on the notional basis. The Tribunal has, thus, assessed the income of the deceased at Rs. 3,000/- per month. It is this assessment of income @ Rs. 3,000/- per month which has been heavily contested by the parties. While learned counsel for the appellants submits that once the Tribunal has recorded that nothing has come out in their respective cross-examination to disbelieve their testimony, the Tribunal is not justified in reducing the income to the extent of half of the amount mentioned by the two witnesses, on the other hand, learned counsel for the Insurance



Company has submitted that in absence of there being any documentary evidence on the point of income the Tribunal is fully justified in taking a reasonable view of the matter and in this case the Tribunal has rightly fixed the notional income at Rs. 3,000/- per month.

13. It further appears that the Tribunal has applied the multiplier on the basis of the age of the claimant no. 1 who is the mother of the deceased and not on the basis of the age of the deceased. Learned counsel for the Insurance Company agrees that this approach of the Tribunal is in conflict with the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121**. Hence, it would only be just and proper to apply the applicable multiplier '18' taking the age of the deceased as 22 years only at the time of accident.

14. The Tribunal has not allowed any future prospect, as per **Sarla Verma (supra)** future prospect was to be allowed @ 50% of the annual income in certain employments but later on in case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in **(2017)16 SCC 680**, the Hon'ble Supreme Court has held that in case of the deceased being up to the age of 40 years and self employed the future prospect would be added by



40% of the annual income. There is no disagreement on this between the parties.

15. In the present case the Tribunal has allowed compensation on account of loss of estate at Rs. 2,500/- and funeral expenses at Rs. 2,000/- which according to the judgment of the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** would be liable to increase at Rs. 15,000/- each. Apart from this learned counsel for the parties do not dispute that as per the judgment in the case of **Pranay Sethi (supra)** the parents of the deceased would be entitled to get parental consortium at Rs. 44,000/- each at this stage.

Consideration

16. Having heard learned counsel for the parties and upon perusal of the records, this Court finds that so far as the compensation on account of the parental consortium, loss of estate and funeral expenses are concerned, there is no dispute that in view of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**, the claimants-appellants should be entitled to get Rs. 44,000/-, Rs. 15,000/- and 15,000/- respectively. There is also no quarrel on the applicable multiplier being '18' in this case.



17. Learned counsel for the Insurance Company has, however, submitted that the Tribunal has deducted one third of the annual income as personal expenses whereas in view of **Pranay Sethi** the deceased being unmarried the personal expenses would be deducted at the rate of 50% of the annual income. Learned counsel for the appellants do not contest this submission.

18. The only bone of contention between the parties is the monthly income of the deceased. As noted hereinabove, the case of the appellants is that once the Tribunal had found that nothing has come out in the cross examination of the complainant witnesses so as to disbelieve their testimony, the Tribunal should have straightway allowed the amount claimed by the claimants, the submission of Insurance Company is that the Tribunal being the adjudicatory body has to take a final view of the matter not only by considering that in the cross examination nothing has come out against the examination-in-chief of the claimants but also by considering the quality of the evidences and the evidentiary value which are required to be attached to those evidences.

19. Learned counsel for the Insurance Company submits that in this case there was no independent witness. C.W.1 is the mother of the deceased whereas C.W.2 is his co-villager. It is not the statement of the C.W.2 that he was engaged in business



with the deceased. He has not disclosed his source of information as to the income of the deceased and had no opportunity to be aware of the transactions of the deceased in the matter of sale and purchase of animals. In such circumstances, it is submitted that the evidences brought on record by and on behalf of the claimants were not clinching.

20. This Court has given anxious consideration to the submissions advanced on behalf of the parties. While it is true that the learned Tribunal has recorded that in cross examination nothing could be extracted from the two witnesses so as to disbelieve the statements of those witnesses in their examination in chief nonetheless in the opinion of this Court the Tribunal as an adjudicating body has to assess the income of the deceased by taking into consideration the evidentiary value of the evidences on the record. In this case, there is no independent witness and the submission of the Insurance Company is that C.W.2 has not claimed any personal knowledge about the business of the deceased and the income derived therefrom, the evidences on the record would not be clinching and the same may be required to be applied keeping in view the principle of 'just compensation'. To this Court, it appears that in such circumstance, the Tribunal has to



balance interest of the claimants as well as the liability of the insurer.

21. This Court finds that the Tribunal has assessed the notional income on the basis of Schedule II of the Act of 1988. In the case of **Sarla Verma (Smt)** the Hon'ble Supreme Court has held that the said schedule II is not workable. In all fairness, equity and justice, in the opinion of this court, the Tribunal should have adopted a more pragmatic approach in fixing the notional income and for that purpose the Tribunal could have relied upon the notifications of the State Government providing for the minimum wages in the State of Bihar.

22. At the relevant time, the notification for the period October 1 2010 to March 31, 2011 was available. This Court has perused the same. In different scheduled employments the rate of unskilled, semi-skilled, skilled and highly skilled as also clerical/supervisory rates were fixed. The rate for skilled work at the relevant time was Rs. 132/- in most of the scheduled employment. In this case the accident has taken place on 12.11.2012 which is about one and half year after the said period of 31st March, 2011, therefore, this Court would give some increase to that amount in order to arrive at "just compensation" to give succor to the dependants of the deceased. This Court,



therefore, allows a sum of Rs. 150/- per day notional income to the deceased. The loss of earning is liable to be calculated taking into account the said amount of Rs. 150/- per day. The impugned judgment and award is, therefore, liable to be modified to the extent indicated hereinabove.

23. As a result of the aforesaid modification, the claims payable to the claimants-appellants would be as under:

1.	Loss of Income Income + Future Prospect @ 40% deductions @ 50%	Rs. 150/- per day 150x26 days= 3900/- 3900x12 = 46800 + 40% 18,720x18 multiplier = 11,79,360/- After deduction – 5,89,680/-
2.	Loss of Estate	Rs.15,000.00
3.	Funeral Expenses	Rs.15,000.00
4.	Parental Consortium	Rs. 44,000 x 2 = 88,000.00
5.	TOTAL	Rs. 7,07,680.00
6.	Already paid	Rs.3,64,500.00
7.	Total payable	Rs. 3,43,180.00 + Interest @ 8% per annum from the date filing of the claim till the date of payment.

24. Learned counsel for the Insurance Company has prayed for returning the statutory amount deposited by the appellant at the time of filing of the appeal. Learned counsel submits that in view of the judgment of this court in the case of **United India Insurance Insurance Company Limited Vs. Manju Devi and others reported in (1998) 3 PLJR 506** the amount so deposited is to be adjusted against the award. Since the Insurance Company has been made liable to pay the award amount, the statutory amount be



refunded. Let the statutory amount be returned to the Insurance Company.

25. The Miscellaneous Application is disposed of.

(Rajeev Ranjan Prasad, J)

vats/Rajeev

AFR/NAFR	
CAV DATE	
Uploading Date	14.02.2023
Transmission Date	

