IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.63 of 2023

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Rajiv Kumar Chaudhary @ Raju Kumar Chaudhary Son of Lalan Prasad Chaudhary Resident of Village- Rasidpur, P.S.- Bacchwara, District- Begusarai, presently residing at Ganga Bridge Colony, Quarter No.- 101/A, P.S.- Garhara, District- Begusarai.

... ... Appellant/s

Versus

1. Jai Prakash Bhagat Son of Tanik Bhagat Resident of Village- Rachiyahi, P.S.- Mufassil O.P., Singhaul, District- Begusarai. (Driver of Tata Magic Registration No.- BR09M/4990).
2. Jawahar Singh, Son of Sidheswar Singh Resident of Village- Tilrath, P.S.- Barauni, District- Begusarai, (Owner of Tata Magic Registration No.- BR09M/4990).
3. Insurance Company New India Insurance Company Ltd. Tapasya, Begusari (Insurance Valid upto 19-07-2013 to 18-07-2014).

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. N. A. Shamsi, Advocate
		Mr. Rashid Rais, Advocate
For the Respondent/s	:	Mr. Mr. Sanjay Singh (Sc)

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

12 09-01-2024 This appeal has been filed against the judgment and award dated 29.06.2022 and 02.09.2022 respectively passed in Motor Accident Claim Case No. 20 of 2015 by Additional District Judge-VIII-cum-M.A.C.T, Begusarai, for enhancement of awarded amount. The appellant urged various legal grounds and contentions for enhancement of compensation in the case of Motor Accident involving the appellant-claimant wherein the Claims Tribunal awarded compensation of Rs. 11,58,160/- and the interest at the rate of 7% per annum from the date of institution of claim case.

2. It is relevant to mention that the Insurance Company has not filed any appeal against the said judgment and award dated 29.06.2022 and 02.09.2022 respectively passed in Claim Case No. 20 of 2015.

3. The appellant-victim of Motor Vehicle Accident Case was aged about 28 years, who suffered permanent disability to the extent of 40%, has filed this appeal for reliefs which has not been awarded as just compensation as per income of the victim-claimant.

4. Further, the Tribunal did not award full medical expenses towards his treatment although the claimant submitted receipts regarding medical treatment. He adduced documentary evidence in the form of medical bills/receipts (4 Series) to the tune of Rs. 3, 45,000/-. The learned Tribunal reduced the amount to Rs. 1,30,000/- without any cogent reason.

5. The victim-claimant having a wife, two minor sons and advanced age father and mother dependent upon him. Learned counsel for the appellant submits that the learned Tribunal did not consider the income certificate issued by the Circle Officer, Barauni (Ext.-5) which shows income of Rs. 2,50,000/- from business and income of Rs. 50,000/- from agriculture sources in total Rs. 3,00,000/- per annum. The

victim/claimant is self-employed and is owner of two vehicles, namely, *Tata Magic* bearing Reg. No. BR09H-8086 and Commander *Jeep* bearing Reg. No. BR9D-1687 both the vehicles are registered as Taxi and used for commercial purpose. Learned counsel for the appellant further submits that the vehicle was financed by the State Bank Of India (Deona) and Sree Ram Finance, Begusarai and he is also paying installment of Bank with regard to purchased two Insured vehicles and the claimant is paying Rs. 30,000/- per year as Insured sum. The claimant who was paying installment of his two vehicles was tentatively earing at least Rs. 25,000/- per month prior to the accident. It is submitted that all these material facts available on record show stable and sound financial position of the claimant. The learned Tribunal wrongly assessed his monthly income as Rs. 9,000/- treating him as unskilled labour and has finally fixed Rs. 9,000/- per month as income of the appellant.

6. It is further submitted that the learned Tribunal has failed to accept the evidence of witnesses regarding the earning of the deceased which was supported by the income certificate issued by the Circle Officer, Barauni (Ext.-5) and he was earning Rs. 20,000/- per month at the time of accident. The income certificate issued by the Circle Officer is 3,00,000/- per

annum including Rs. 50,000/- from agriculture sources and Rs. 2,50,000/- from business. The learned Tribunal ignored the income certificate which shows that the income was Rs. 3,00,000/- per annum, the victim was earning at the time of accident the notional income applied by the learned Tribunal is not just and proper as notional income of Rs. 9,000/- per month as unskilled labour is unreasonable.

7. Learned counsel for the appellant further relied upon a decision of the Hon'ble Supreme Court in case of ***Sidram vs Divisional Manager United India Insurance Company Ltd. and another*** reported in ***2023 3 SCC 439***, the Apex Court has held that:-

"The measure of compensation must reflect a genuine attempt of law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity. It has also held

that the courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the Judge's mind, whenever tasked to adjudge compensation claims."

8. Learned counsel further argued that Dr. Jayant Kumar (PW-6) in his oral evidence has deposed that the appellant has suffered a permanent disability to the tune of 40% physical disability as locomoted disabilities. It is also submitted that the Tribunal has not assessed the effect of permanent disability on the earning capacity of the injured and after assessing the loss of earning capacity in terms of percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings. This aspect of the matter has been considered in the case of ***Mohan Soni Vs Ram Avtar Tomar and others*** reported in ***2012 2 SCC 267***.

9. On the other hand, learned counsel for the Insurance Company has submitted that the learned Tribunal has

rightly passed the compensation Award applying the method of notional income of Rs. 9,000/- per month. It is submitted that the claimant has not produced income tax return to show his genuine income and hence, no proof of income was produced before the Tribunal.

10. Learned counsel for the respondent has relied upon a decision of Punjab and Haryana High Court in case of ***Kavita Devi and others Vs United India Insurance Company Ltd.*** reported in ***2023:PHHC 141930*** wherein the Court in the said case has treated that usually in the absence of a salary certificate, the minimum wage notification can be considered in order to determine the notional income of the victim deceased in motor accident claim case.

11. Considering the submission made by the parties and materials available on record, it is apparent from the evidence that the victim-claimant was earning of Rs. 20,000/- per month at the time of accident. The said claim is reduced by the Tribunal to a sum of Rs. 9,000/- per month without any legal basis. From the evidence available on the record as well as the income certificate (Ext.-5), it also appears the victim-appellant was plying two four wheeler vehicles for commercial purpose which was financed by the Bank and he was paying installment

of the said two vehicles regularly. Further, almost all the witnesses in their oral evidence have supported the income of the appellant as Rs. 20,000/- per month and there is no rebuttal against such income of the victim.

12. In the case of ***Parminder Singh Vs. New India Insurance Company Limited*** reported in ***(2019) 7 SCC 217***, the Hon'ble Apex Court has held under paragraph 5.1 and 5.2 as follows:-

> *"5.1. The appellant has however, produced an affidavit by his employer in this Court. As per the said affidavit, the appellant was earning Rs. 10,000/- p.m. at the time of accident.*
>
> *5.2 On the basis of the affidavit filed by the employer of the appellant, we accept that the income of the appellant was Rs. 10,000 p.m. at the time of accident, for the purpose of computing the compensation payable to him."*

13. The learned Tribunal also failed to assess the expenses related to treatment, hospitalization, medicines, transportation, nursing and miscellaneous expenditure. The injured is entitled to pecuniary as well as non-pecuniary damages. The pecuniary damages which is also known as

special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations.

14. The claimant has submitted that he has taken treatment at Begusarai as well as Patna and he was indoor patient. He has produced hospital bills and medical bills to the tune of Rs. 3,45,000/-. In absence of any other evidence contrary to the claim made by the claimant, in the facts of the present case, the Tribunal should have accepted the claim of the appellant on the basis of the documentary evidence Ext.-1, Ext.-4 and Ext.-5) as well as claimants-witnesses, who supported the case and earning of the victim-appellant in their evidence. The claim of the appellant with regard to monthly income of Rs. 20,000/- per month should have been accepted by the Tribunal. The Tribunal has wrongly reduced the medical expenses to a sum of Rs. 1,30,000/- without any legal basis. There was no reason for the Tribunal to reduce the said medical expenses. The claim of the appellant with regard to medical expense is of Rs. 3, 45,000/- and should have been accepted by the Tribunal.

15. In the present case, income certificate (Ext.-5) was issued by the State authority. As per the said income certificate,

the appellant was earning Rs. 2,50,000/- from business and Rs. 50,000/- from agriculture per annum at the time of accident.

16. Considering the Ext.-4 i.e., medical bills of Rs. 3,45,000/- and Ext.-5 as well as oral evidence of the claimant/appellant, this court is of the view that the income of the appellant from business was Rs. 20,000/- per month.

17. So far loss of earning capacity is concerned, the appellant has placed material to show that the victim whose injury was assessed to be 40% (Ext.-1) (Permanent disability) as loss of earning capacity in terms of percentage of income, it has to be quantified in terms of money, to arrive at the future loss to earning by applying multiplier method which is used to determine loss of dependency. The appellant at the time of accident was about 28 years.

18. In the judgment of the Constitution Bench in ***National Insurance Company Limited vs Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***, the Apex Court has held that the benefit of future prospect should not be confined only to those who have a permanent job and would extend also to self-employed individuals. In the case of self-employed person, an addition of 40 % of the established income should be made where the age of victim at the time of accident was below 40

years.

19. In the present case, the loss of future income may be calculated using multiplier method which is as follows:-

Income of the appellant was Rs. 20,000/- per month at the time of accident, therefore, the annual income is Rs. 2,40,000/-, multiplier according to age (28 years) as per the decision of ***Sarla Verma Vs. DTC*** *reported in* ***(2009) 6 SCC 121,*** would be 17. Thus, the total comes to Rs. 2,40,000/ x 17 = Rs. 40,80,000/-, percentage of disability (permanent) is 40%. Therefore, loss of future earning would come to Rs. 16,32,000/-. So far loss of earning for 6 months to be considered in view of the decision reported in ***Sidram Vs. United India Insurance Co. Ltd.*** (Supra), the compensation under the aforesaid head is awarded Rs. 20,000/- X 6= Rs. 1,20,000/-.

20. In view of aforesaid discussions, I award an amount of loss of amenities i.e. Rs. 20,000/- taking into consideration the fact that the appellant was 28 years old at the time of accident and also considering the nature of injuries suffered by him and the extent of his disability. So far other heads i.e. litigation charges, pain/suffering and medical expenses has been followed.

21. Considering all the aspect of the matter, the details

of the compensation amount under different heads in the light of the decision of the Hon'ble Supreme Court passed in the case of ***Sidram Vs. United India Insurance Co. Ltd.*** (Supra), the claimant/appellant is awarded compensation under the manner indicated in chart below and the judgment and award passed by the claim Tribunal is modified to the aforesaid extent.

1.	***Name***	***Rajiv Kumar Chaudhary @ Raju Kumar Chaudhary***
2.	***Age***	***28 years***
3.	***Monthly Income***	***Rs. 20,000/- (self-employed)***
4.	***Annual Income***	***Rs. 20,000 X 12= Rs. 2,40,000/-***
5.	***Multiplier based on age of 28 years***	***17***
6.	***Total Income***	***Rs. 2,40,000/-x17=Rs. 40,80,000/-***
7.	***Loss of future earning capacity due to permanent disability i.e. 40%***	***Rs. 40,80,000/- X 40%= Rs. 16,32,000/-***
8.	***Loss of earning for 6 months***	***Rs. 20,000 X 6= Rs. 1,20,000/-***
9.	***Litigation charges***	***Rs. 20,000/-***
10.	***Pain/Suffering***	***Rs. 50,000/-***
11.	***Loss of Amenities***	***Rs. 20,000/-***
12.	***Medical Expenses***	***Rs. 3,45,000/-***
	Total Amount of Compensation i.e. Loss of future earning capacity due to permanent disability i.e. 40%+Loss of earning for 6 months+Litigation charges+Pain/Suffering+Loss of Amenities+Medical Expenses	***Rs. 21,87,000/-***

22. In the result, the appeal is allowed and the compensation awarded by the claims Tribunal is modified from Rs. 11,58,160/- to Rs. 21,87,000/-. The appellant shall be entitled to 7% simple interest per annum from the date of filing of the claim petition till the date of realization. The amount already paid as interim payment shall be deducted from the awarded amount. The due amount be paid to the appellant within a period of three months.

(Khatim Reza, J)

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