

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.934 of 2016

1.	Shobha Devi, W/o Munna Sah
2.	Munna Sah, S/o Ram Vilash Sah All Resident of Village-Pranpur Berai, P.S.- Sadar Hajipur, District- Vaishali

... .. Appellant/s

Versus

1.	Chandar Chandna, W/o Ramesh Kumar Chandna, Chandna Service Station, Mohanpur P.S- Samastipur, District- Samastipur
2.	Ajay Kumar Bhagat, S/o Kailash Bhagat, Resident of Village- Govindpur, P.S- Mahua, District- Vaishali
3.	National Insurance Company Ltd. Through Branch Manager National Insurance Company Ltd. Yadav Chok, Hajipur.

... .. Respondent/s

Appearance :
For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate.
For the Respondent/s : Mr. Ashok Priyadarshi, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 20-08-2024

Heard the learned counsel for the appellants as well
as the learned counsel for the respondents

2. This Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 (hereinafter
referred to as “Act of 1988”) on behalf of the
claimants/appellants for enhancing the compensation amount
awarded to claimants/appellants by the learned Additional Dist.
Judge-I-cum-MACT, Hajipur (hereinafter referred to as
“Learned Tribunal”) vide order dated 12.08.2015 and award
dated 22.08.2015 passed in Claim Case No.82 of 2008



3. The learned Tribunal partly allowed the claim application and held that claimants are entitled to receive Rs.3,28,500/- as compensation and accordingly National Insurance Company Limited has been directed to make payment of the compensation amount as per the order within two months from the date of passing of said order along with 7% simple interest per annum from the date of filing of the claim case till realization of the compensation amount. Liberty was given to the Insurance Company to recover the amount of compensation from the owner of the offending vehicle in accordance with law if at all they are entitled.

4. The details of the calculation made by the learned Tribunal is as under :-

S.N.	Particular	Calculation	Net Amount
1.	Daily income of deceased.		Rs.100/-
2.	Monthly income of deceased	Rs.100 x 30	Rs.3,000/-
3.	Annual income of deceased	Rs.3,000 x 12	Rs.36,000/-
4.	Less the amount of personal and living expenses @ 50%.	Rs.36000-18000	Rs.18,000/-
5.	Towards family contribution @50%		Rs.18,000/-
6.	Loss of income using the multiplier of 18 as the deceased was aged 18 years at the time of his death.	Rs.18,000 x 18	Rs.3,24,000/-
7.	Filial consortium		Rs.2,500/-
8.	Funeral expenses		Rs.2,000/-
9.	Total compensation amount		Rs.3,28,500/-



5. The claimants/ appellants being not satisfied and aggrieved by the impugned judgment dated 12.08.2015 and award dated 22.08.2015 passed by the learned Tribunal, filed the present appeal for enhancing the compensation amount.

6. It is submitted on behalf of Insurance Company that the Insurance Company has not challenged the impugned judgment and award.

7. The brief facts of this case are that the deceased Mukesh Kumar along with his friend Jitendra Kumar was going by bicycle for second shift examination at Rajkiya Krit High School. When they reached near Nagendra Singh house at Hajipur-Mahua main road the driver of a Golden Aro Bus bearing registration No. BR-33A-9801 was driving rashly and negligently dashed the cycle due to which the deceased succumbed to death. Post-Mortem was performed at Sadar Hospital Hajipur. On the basis of Fardbeyan of Jitendra Kumar, friend of the deceased, Sadar P.S. Case No.364 of 2008 was registered under Sections 279, 337, 338 & 304(A) of the Indian Penal Code against the driver of the offending vehicle.

8. It is further claimed that the offending vehicle was driven rashly and negligently by its driver who came from the side Mahua and dashed the bicycle whereby both the



deceased and his friend fell down and the Aro Bus crashingly runover the deceased thereby succumbed to death on the spot and his friend, Jitendra Kumar also received injury for which he undergone for treatment in Sadar Hospital Hajipur.

9. It is further claimed that the deceased was aged about 18 years and was helping in the business of his father being self-employed due to which his earning was about Rs. 5,000/- per month. The deceased was unmarried at the time of occurrence. The claimants have been deprived of love and affection as well as present and future earning of the deceased and the estate left by the deceased has also been put to a loss.

10. After hearing the parties and the materials on record, the learned Tribunal held that the death of deceased was caused in the Motor Vehicle accident due to rash and negligent driving by the driver of the offending vehicle which was insured with the National Insurance Company Ltd. at the relevant period of time and the said Insurance Company is liable to pay the amount of compensation to claimants who are Mother and Father of the deceased. The learned Tribunal has held that the claimants entitled for compensation to the tune of Rs.3,28,500/- as stated above.

11. Learned counsel for the appellants has



submitted that the learned Tribunal has not awarded the just compensation as envisaged under Section 168 of the Act of 1988 and has not followed to well settled principle on the point of future prospects, conventional heads of loss of Estate, Funeral Expenses, loss of consortium in computation of compensation amount and very less amount has been awarded toward the head under loss of filial consortium and funeral expenses which ought to be increased in view of the well settled principle of law.

12. Learned counsel for the appellants relying upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** specially paragraph no.59.4 of the judgment has submitted that since the deceased was aged about 18 years, the addition of 40 % of the earning as future prospects is warranted for computation of compensation, however, the learned Tribunal has not awarded the same.

13. Learned counsel for the appellants further submits that the appellants are also entitled to claim on account of loss of Estate at Rs.15,000/-, funeral expenses at Rs.15,000/-, and filial consortium at the rate of Rs.40,000/- to each of the appellant. He has submitted that the Constitution Bench of



Hon'ble Supreme Court has dealt with the various heads under which compensation is to be awarded in a death case and one of these heads is loss of consortium. The consortium is defined in case of **Harpreet Kaur & Ors. vs. Mohinder Yadav & Ors.** reported in **2022 SCC OnLine SC 1723**. He has further submitted that the Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandram & Anr. vs. Mukesh Kumar Yadav & Ors.** reported in **(2022) 1 SCC 198** relying upon the Judgments in the case of **Sarla Verma (supra)** and **Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130** held that the appellants were entitled for filial consortium of Rs.40,000/- to each of the dependents.

14. Learned counsel for the Insurance Company has submitted that the deceased was a student having no document with respect to his income and notional income of Rs. 100/- per day has rightly been calculated which were accepted by the parties, accordingly question of any future interest does not arise. However, learned Counsel has not disputed the fact of incident and the fact that the offending vehicle was insured at the time of incident. He has further submitted that considering facts and circumstances of the case, the MACT has rightly not



granted any future interest and further has submitted that the appeal has no merit and liable to be rejected.

15. Having heard the learned counsel for the parties and taking into consideration of their submission made, the Court comes to following conclusions:-

(i). In so far as the conventional heads are concerned, the deceased Mukesh Kumar left behind his mother and father as his dependents. On the basis of the Judgments in **Pranay Sethi (supra)**, **Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130** and **United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur and Others (2021) 11 SCC 780**, the following amounts are awarded compensation under the conventional heads:

(i) Loss of Estate	Rs. 15,000/-
(ii) Loss of filial consortium to each of 2 dependents (40,000 X 2)	Rs. 80,000/-
(iii) Funeral expenses	Rs. 15,000/-

(ii). So far as the head of future prospect is concerned, in view of paragraph 59.4 of the Judgment in case of **Pranay Sethi (supra)**, the deceased was aged about 18 years i.e. below the age of 40 year an addition of 40% of the said income is warranted.

16. Thus, in view of the facts stated herein above, in



opinion of the Court, the computation of the total amount of compensation payable will be follows:-

S.No.	Head	Compensation awarded
1.	Income	Rs. 3,000/- per month
2.	Future prospects	Rs. 1,200/- (i.e. 40 % of the income)
3.	Deduction towards personal and living expenses	Rs. 2,100/- (i.e. 50% of Rs.3,000+1,200)
4.	Total annual income	Rs.25,200/- (Rs.2,100 x 12)
5.	Multiplier	18
6.	Loss of dependency	Rs.4,53,600/- (25,200 x 18)
7.	Funeral expenses	Rs. 15,000/-
8.	Loss of Estate	Rs. 15,000/-
9.	Loss of filial consortium to each Mother and Father (40,000 X 2)	Rs. 80,000/-
10.	Total compensation	Rs.5,63,600/- (4,53,600+1,10,000)
11.	Total	Rs.5,63,600/-

17. The claimants/appellants stand entitled for a total compensation to the tune of Rs.5,63,600/-. The insurance company (respondent nos.3) will pay the said compensation amount to the claimants deducting any amount which has already been paid to the claimants with simple interest at the rate of 7 % *per annum* calculated from the date of filing of the claim case till its realization. The dues amount shall be deposited within two months from today and to be paid to the appellants according to law.



18. The Judgment and award passed by the learned Tribunal stands modified to the aforesaid extent. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned Judgment and award.

19. There shall be no order as to costs.

20. Pending applications, if any, shall stand disposed of.

21. Let the Trial Court Record of this case be returned back forthwith to the concerned Court/ Tribunal.

(Sunil Dutta Mishra, J)

ashishkr/-

AFR/NAFR	NAFR
CAV DATE	13.08.2024
Uploading Date	21.08.2024
Transmission Date	NA

