IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1223 of 2016

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Sunita Devi, W/o Late Kailash Mandal @ Kailu Mandal, R/o Village-Bageshwari, P.S. Haveli Kharagpur, P.O. Kachhari Shampur, District-Munger.

... ... Appellant/s

Versus

1. Harindra Kumar, S/o Harishchan, R/o 28 Village- Mukandpur (Pijur), Delhi-110042 (Owner of TATA Motor Truck No. DL-01LM-2784).
2. Manager, Sriram General Insurance Co. Ltd. E-8, E.P.I.P.R.I.I.C.O. Industrial Area Sitapur Jaipur, Rajasthan-302022 (Insurer-TATA Motor Truck No. DL-01LM-2784 Policy No. 10003/31/13/524320 valid from 1.01.2013 to 31.12.2013).
3. Pawan Kumar S/o Sri Turam C/o Harindar Kumar, R/o 28 Village-Mukandpur (Pijur) Delhi-110042. (Driver of TATA Motor Truck No. DL-01LM-2784, D.L. No.16750 dated 28.12.2009 valid from 28.03.2021 to 27.03.2014 issued by D.T.O. Fatehgarh Farukhabad, U.P.)

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ratnakar Ambastha, Advocate

For the Respondent/s : Mr. A.K. Shahi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 06-09-2024

1. Heard the learned counsel for the appellant 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”) on behalf of appellant for enhancing the compensation amount awarded to the appellant/claimant by the learned Motor Vehicle Claim Tribunal-cum-District Judge, Munger (hereinafter referred to as “learned Tribunal”) in Claim Case No. 53 of 2013 vide Judgment dated 07.06.2016 and award dated 17.08.2016.

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3. The learned Tribunal held that the appellant is entitled to receive Rs.5,21,000/- as compensation and accordingly Sri Ram General Insurance Co. Ltd. (respondent/opposite party no.2) has been directed to make payment of the compensation amount as per the order within 90 days, along with 7.5% interest *per annum* from the date of filing the claim case i.e., 31.08.2013 till its realization.

4. The details of the calculation of compensation amount made by the learned Tribunal are as under:

S.N.	**Heads**	**Calculation**	**Net Amount**
1.	Monthly income of the Deceased	Rs.100/- per day	Rs.3,000/-
2.	Add:- Future Prospect	(50% of Rs.3,000/-)	Rs. 1,500/-
3.	Total Income	(Rs.3,000/- + Rs.1,500/-)	Rs.4,500/-
4.	Deduction towards personal and living expenses.	50 % of Rs.4,500/-	Rs.2,250/-
5.	Net monthly Income comes to	Rs.4,500/- - Rs.2,250/-	Rs.2,250/-
6.	Yearly income of deceased	Rs.2,250/- X 12	Rs.27,000/-
7.	Multiplier	------	18
8.	Loss of dependency	Rs.27,000/- X 18	Rs.4,86,000/-
9.	Funeral expenses	----	Rs.10,000/-
10.	Pain and suffering	----	Rs.25,000/-
11.	Total Amount of Compensation	----	Rs.5,21,000/-

5. The brief facts of this case are that the claimant's son Kanahaiya on 18.06.2013 at about 7:15 A.M. met with an accident near Good Year Chowk when a TATA Truck bearing Registration No. DL-01LM-2784 being driven rashly and negligently by its driver Pawan Kumar (respondent/opposite party No.3), dashed the deceased from behind due to which he

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sustained injuries and succumbed to death during the course of treatment at Ballavgarh Hospital, District: Faridabad, Uttar Pradesh. The *post-mortem* of the deceased was conducted by the Doctor of M.O.B.D, Hospital. The police registered F.I.R. vide Faridabad P.S. Sector-7 Case No. 505 of 2013 based on the information given by Sanjay Kumar on dated 18.06.2013 against unknown driver of the offending vehicle, under Sections 279, 337 & 304-A of the Indian Penal Code (I.P.C).

6. Claimant/appellant mother of the deceased has filed case bearing Claim Case No. 53 of 2013 before the learned Tribunal, Munger claiming that the offending vehicle was driven rashly and negligently by the driver which dashed the deceased causing death to him. Respondent/O.P. No.1 is the Owner of offending vehicle, Respondent/O.P. No.2 Manager of Sriram General Insurance Co. Ltd. is insurer of the offending Truck, Respondent/O.P. 3 is Driver of the offending vehicle.

7. It is further claimed that the deceased was aged about 23 years and unmarried at the time of alleged occurrence, working at Super Auto Company, and was getting monthly remuneration of Rs.6,200/- by which he was maintaining the claimant. The claimant who is widow mother of deceased has claimed compensation to the tune of Rs.7,99,000/- along with

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interest of 9% *per annum* from the date of filing of the claim case till its realization.

8. In written statement filed on behalf of the respondent/opposite party No. 1 stated that the offending vehicle was validly insured with Sriram General Insurance Co. Ltd. bearing policy No. 10003/31/13/524320 valid for the period from 01.01.2013 to 31.12.2013. On the date of alleged occurrence the aforesaid offending vehicle was driven by Pawan Kumar having valid Driving License, there is no violation of any terms and conditions of Insurance Policy, there is no rash and negligent driving and the vehicle was being driven within prescribed speed.

9. It is stated in the written statement filed on behalf of Insurance Company, O.P. No. 2, that the case is suffering from mis-joinder and non-joinder of necessary party. It has been further admitted that Insurance Policy issued by the Insurance Company in favour of the offending vehicle has been valid for the period from 01.01.2013 to 31.12.2013 which was found in possession of the insurer. It is further stated that the owner of offending vehicle be directed to produce and prove the policy of insurance. Furthermore, the driver did not hold valid and effective driving license, thus failed to satisfy Rule 3 of

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Central Vehicle Rule,1989. It is stated that besides other factors the income of the deceased as claimed by claimant is highly exaggerated, excessive and imaginary. The offending vehicle was plying on the road without valid road permit hence the owner of the vehicle has violated the terms and conditions of the Insurance Policy, thus, Insurance Company is not liable to pay any compensation. Driver of the offending vehicle O.P. No. 3 did not appear in spite of proper process of service of notice and ultimately case proceeded *ex-parte* against him.

10. On the basis of pleading and submissions advanced on behalf of the parties, the learned Tribunal on 25.11.2014 framed the following issues:

> ***I.*** *Whether the claim case brought by the claimant is maintainable or not?*
> ***II.*** *Whether the death of Kanhaiya aged about 23 years was due to rash and negligent driving of the vehicle bearing No.DL-01LM-2784?*
> ***III.*** *Whether the accident took place on 18.06.2013 by the vehicle Truck bearing No.DL-01LM-2784 was involved in the accident or not?*
> ***IV.*** *Whether the Truck No.DL-01LM-2784 was insured with Sriram General Insurance Co. Ltd. at the relevant date and time of accident? If so, whether the Sriram General Insurance Co. Ltd. is liable to pay compensation?*
> ***V.*** *Whether the amount of compensation claimed by the claimant is reasonable or not?*
> ***VI.*** *Whether the vehicle in question violated*

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> *any terms and conditions of Insurance Policy?*
> ***VII.*** *Whether the driver of the vehicle involved in accident possesses any valid and effective driving license or not?*

11. In support of the claim petition, claimant has examined two witnesses. The claimant has also filed documentary evidence in support of her claim petition i.e. Certified copy of F.I.R (Ext-1) lodged against driver of the offending Truck, photo copy of *post-mortem* report (Ext-2), photo copy of Driving License of the driver of offending Truck (Ext-3), photo copy of valid permit in the name of owner (Ext-4), photo copy of owner book of offending vehicle (Ext-5), Family Membership certificate (Ext-6) and photo copy of Insurance Policy of offending vehicle (Ext-7), these documents were exhibited without objection.

12. No oral or documentary evidence have been produced by the respondents/opposite parties in rebuttal of the claim.

13. After hearing the parties and the materials on record, the learned Tribunal held that the death of deceased was caused due to rash and negligent driving by the driver of the offending vehicle and awarded the aforesaid amount of Rs.5,21,000/- along with the interest @ 7.5% per annum from

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the date of filing the claim case i.e., 31.08.2013 till its realization of the amount to the claimant within ninety days from the date of award otherwise the claimant shall be entitled to realise the same through the process of the Court provided for the recovery of the same under the act at the cost of Insurance Company (respondent/O.P. No.2).

14. The appellant being not satisfied and aggrieved by the awarded amount of compensation vide the impugned Judgment/Award, filed the present appeal for enhancement of the compensation amount by setting aside the Judgment dated 07.06.2016 and Award dated 17.08.2016 passed by the learned Tribunal.

15. Learned counsel for the appellant/claimant has submitted that the learned Tribunal completely misconceived while considering the monthly income of the deceased and arrived at the findings on the basis of notional income. Learned counsel has further submitted that the quantum of compensation is too little for reparation of damages which she had suffered. It is further submitted that deduction towards the own expenses of the deceased has also been erroneously assessed at 50% instead of $1/3^{rd}$ as claimant and the brother of deceased were dependent on the income of deceased. He has next submitted that the

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claimant/appellant is entitled to loss of estate Rs.18,150/-, loss of filial consortium Rs.48,400/- and funeral expenses Rs.18,150/- in place of compensation awarded under conventional heading i.e. funeral expenses Rs.10,000/- and pain and suffering Rs.25,000/- in view of the Judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680** and in various subsequent judgments including recent Judgment in **Rojaline Nayak & Ors. vs. Ajit Sahoo & Ors.** reported in **2024 SCC OnLine 1901.**

16. On the other hand, learned counsel for the Insurance Company has submitted that the learned Tribunal considering the material on record has granted the just compensation which the Insurance Company has not challenged and the same requires no interference by this Court. He has further submitted that the claimant has not produced any chit of paper to prove with respect to working of deceased in the Company like identity card, salary slip or qualification or any other relevant document regarding income of the deceased, hence, calculation on the basis of notional income of Rs.3,000/- per month cannot be said to be improper or unjustified in facts and circumstances of the case and the same requires no

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interference by this Court.

17. Learned counsel for the Insurance Company has submitted that the Insurance Company in compliance of the Judgment deposited cheque amounting to Rs.6,25,999/- in the name of claimant on 20.01.2017 with the learned Tribunal which was deposited in her account. This fact is corroborated with the trial Court record.

18. Having heard the learned counsel for the parties and considering the submissions made, it appears that there is no dispute as to the occurrence of accident in question in which deceased lost his life and liability of the respondent/ Insurer to pay the compensation.

19. The only question that remains to be decided by this Court is on the aspect of the quantum of damages awarded.

20. There is no document to prove the income of the deceased and there is also no document to show that he was working in the said Company. The mitigating circumstances are also to be taken into consideration while fixing the notional income. The place of working, nature of job whether skilled or unskilled, age of the person as well as other mitigating factors from part of consideration for the purpose of fixation of notional monthly income for grant of compensation under the Motor

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Vehicle Act, 1988.

21. As there is no proof with respect to income of the deceased, the learned Tribunal considering the facts and circumstances of the case, taken notional income of Rs.3,000/- per month for grant of compensation under the Act.

22. Fixation of monthly income of Rs.3,000/- in the present case is appropriate warranting no interference by this Court. It is well settled that assessment of compensation cannot be done with mathematical precision. The Act also provides for assessment of just and fair compensation.

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

S.No.	**Heads**	**Calculation**	**Compensation Amount**
1.	Loss of Estate	Rs.15,000 + 10% enhanced twice	Rs.18,150/-
2.	Loss of filial consortium	Rs.40,000 + 10% enhanced twice	Rs.48,400/-

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3.	Funeral expenses	Rs.15,000 + 10% enhanced twice	Rs.18,150/-

24. So far as the head of future prospect is concerned, admittedly, in view of paragraph 59.4 of the Judgment in case of **Pranay Sethi** (*supra*), since the deceased was aged about 23 years i.e. below the age of 40 year, an addition of 40% of the notional salary is warranted. There is no dispute with respect to application of multiplier as 18 in view of the Judgment of Hon'ble Supreme Court in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** and in Pranay Sethi ***(Supra)***.

25. 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.N.	**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.18,150/-
8.	Loss of Estate	Rs.18,150/-
9.	Loss of filial Consortium.	Rs.48,400/-
10.	Total compensation	Rs.5,38,300/- (4,53,600+84,700)
11.	**Total compensation payable**	**Rs.5,38,300/-**

26. The claimant/appellant stands entitled for a total

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compensation to the tune of Rs.5,38,300/-. The insurance company (respondent nos.2) will pay the said compensation amount to the claimant deducting any amount which has already been paid to the claimant with simple interest at the rate of 7.5% *per annum* calculated from the date of filing of the claim case till its realization. The dues amount shall be deposited/paid within two months from today.

27. The Judgment dated 07.06.2016 and Award dated 17.08.2016 passed by the learned Tribunal stands modified to the aforesaid extent. Accordingly, this appeal is partly allowed and the same is disposed of with the aforesaid modification in the impugned Judgment and award.

28. There shall be no order as to costs.

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

30. Let the Trial Court Records be returned to the Court concerned.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	29.08.2024
Uploading Date	06.09.2024
Transmission Date	NA

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