IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.342 of 2015

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1. Sanju Kumari W/o Late Manoj Kumar Sinha @ Manoj Sinha (Wife of Deceased), and
2. Shambhavi Sinha D/o Late Manoj Kumar Sinha @ Manoj Sinha (Minor Daughter of Deceased) Both resident at Dwarikapuri Colony, Near Lanka Colony, Behind Kendriya Vidyalaya, Khagaul, P.O.- Khagaul, P.S.- Danapur, District- Patna. At present at East Lohanipur, P.O. and P.S.- Kadam Kuan, District- Patna 3. (Claimant No. 1 and 2 respectively in the Claim Case).

... ... Appellant/s

Versus

1. Oriental Insurance Co. Ltd. through its Chief Regional Manager having its Regional Office at Patna situated at Pirmuhani More, P.O. and P.S.- Kadam Kuan, Patna- 3 (Insurer of Truck Trailor No. HR- 38J/8599). (Opp. Party No. 1 in the Claim Case).
2. Upendra Kumar Yadav S/o Ram Tapasya, resident of village- Chaupakhri, P.O. and P.s.- Piro, District- Bhojpur, Arrah. At present- 2, Debendra Ghosh Road, Kolkatta- 700025. (Driver of Truck Trailor No. HR- 38J/8599). (Opp. Party No. 2 in the Claim Case).
3. M/s Sharda Goods Carrier through its Proprietor Shri Vikash Kumar Singh S/o Ram Layak Singh, resident of Qr. No. 346, Rental Falt, P.O. and P.S.- Kankarbagh, District- Patna. (Owner of Truck Trailor No. HR- 38J/8599). (Opp. Party No. 3 in the Claim Case).

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Rajen Sahay, Advocate
For the Respondent/s	:	Mr.Bimlesh Kumar Jha, Advocate Mr.Ashok Priyadarshi, Advocate Mr.Sanjay Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 04-09-2024

1. 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”) on behalf of appellants for enhancing the compensation amount awarded to the appellants/claimants by the learned Additional District Judge-X-cum-Motor Vehicle Claim Tribunal, Patna (hereinafter referred to as “learned Tribunal”) in Claim Case No. 475 of 2010 vide Judgment dated 13.03.2015 and award signed on dated 22.07.2015.

3. The learned Tribunal held that the appellants are entitled to receive Rs.14,25,142/- as compensation and accordingly the Oriental Insurance Co. Ltd. (respondent no.1) has been directed to make payment of the compensation amount as per the order forthwith, along with 6% interest *per annum* from the date of institution of the claim case 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 Salary of the Decease	----	Rs.16,222/-
2.	Annual Income of the Deceased	Rs.16,222/- x 12	Rs.1,94,664/-
3.	1/3rd of personal Expenses of Deceased	Rs.1,94,664/- x 1/3	Rs.64,888/-
4.	After deduction 1/3rd	Rs.1,94,664 – Rs.64,888	Rs.1,29,776/-
5.	The age of deceased is 32 years so multiplier is applicable	16 x Rs.1,29,776/-	Rs.20,76,416/-
6.	Loss of estate	----	Rs.2,500/-
7.	Funeral expenses	----	Rs.2,000/-
8.	Loss of consortium	----	Rs.5,000/-
9.	Total Amount	----	Rs.20,85,916/-
10.	U/s 140 M.V. Act amount Rs.50,000/- tendered	Rs.20,85,916 - Rs.50,000/-	Rs.20,35,916/-
11.	Deduction 30% of Income Tax	Rs.20,35,916 – Rs.6,10,774	Rs.14,25,142
12.	Total Compensation Amount	----	Rs.14,25,142/-

5. The brief facts of this case are that Manoj Kumar Sinha on 12.10.2010, reached near *Tomtom* Stand, Phulwari Sharif on a bike for purchasing fruits from a fruit-seller, while he was sitting on his motor cycle a truck trailor bearing Registration No. HR-38J-8599, being driven rashly and negligently by its driver Upendra Kumar Yadav (respondent/opposite party No.2), dashed the deceased from behind resulting into his death on spot. The *post-mortem* of the deceased was conducted by the Doctor of P.M.C.H., Patna. The police registered F.I.R. vide Phulwari Sharif P.S. Case No. 534 of 2010 based on the *fardbeyan* of the informant Narendra Kumar Sinha on dated 14.10.2010 against O.P. No. 2, driver of the offending vehicle, under Sections 279 & 304-A of the Indian Penal Code (I.P.C). After completion of investigation, I.O. of the case submitted Chargesheet No.84 of 2012 under Sections 279 & 304-A of I.P.C. against the driver of offending vehicle.

6. Claimant no.1 (wife) and claimant no. 2 (minor daughter of deceased), have filed case bearing Claim Case No. 475 of 2010 before the learned Tribunal, Patna claiming that the offending vehicle was driven rashly and negligently by the driver which dashed the deceased causing instant death to him. O.P. No.1 is the insurer, O.P. No.2 is driver of the offending vehicle, and O.P. No.3 is the owner of the offending vehicle who are respondent nos. 1, 2, & 3 herein. The father and mother of the deceased were predeceased.

7. It is further claimed that the deceased was aged about 32 years at the time of occurrence, working as an Area Sales Manager in Byond Tech at Patna on a Gross Monthly Salary of Rs.41,667/- by which he was maintaining his family. The claimants have claimed compensation to the tune of Rs.57,00,000/- along with 18 % interest 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, Insurance Company, stated that it is not a case of accident and barred by mis-joinder and non-joinder of the parties. The accident caused due to contributory negligence, the driver has no license and also the terms and conditions of the Insurance Policy as laid down under section 151 of the Motor Vehicle Act has been violated by the owner and driver of the vehicle. After accident owner and driver should have informed the Insurance Company but Insurance Company has no knowledge of the said incident. The claim of the claimant regarding age, income is not based on any genuine paper and the owner of the alleged vehicle failed to produce the road permit of the offending vehicle thus, claim under Section 166 is not tenable and is fit to be dismissed.

9. Owner of the vehicle (O.P. No.3) filed written statement stating that claim is not tenable as it is barred by non-joinder and mis-joinder of the parties. It is sated that the offending vehicle was insured with the O.P. No. 1 (Insurance Company) bearing Insurance Policy No.331200/31/2010/1393 which is valid from 29.10.2009 to 28.10.2010, so the whole liabilities shift towards the Insurance Company. It is stated that the driver of the offending vehicle was having valid driving license at the time of the accident. Moreover, the claim amount is excessive, so the claimant is not entitled to the compensation.

10. O.P. No. 2, driver of the offending vehicle, has appeared before the learned tribunal but not filed the written statement.

11. It appears from the Tribunal Record that the interim award of Rs.50,000/- under the head of “No Fault Liability” envisaged under Section 140 of the Act was allowed vide order dated 23.12.2012, which was paid to the claimant no.1.

12. On the basis of pleading and submissions advanced on behalf of the parties, the learned Tribunal on

05.05.2012 framed the following issues:

> ***I.*** *Whether the claim is tenable?*
> ***II.*** *Whether the claimant is party for the cause of action against the OP or not?*
> ***III.*** *Whether deceased Manoj Kumar Sinha @ Manoj Sinha died in motor vehicle accident involving Truck Trailor No. HR-38J-8599 due to rash and negligent driving by its driver or not?*
> ***IV.*** *Whether Driver of Truck Trailor bearing No.HR-38J- 8599 was having valid and effective driving license at the material date and time of accident?*
> ***V.*** *Whether the owner of the vehicle in question was having valid and effective permit at the time of the accident?*
> ***VI.*** *Whether the owner of the vehicle in question had complied with all the terms and conditions of the Insurance Policy as well as statutory Provisions of the Motor Vehicle Act, 1988 or not?*
> ***VII.*** *Whether the deceased had also contributed to the cause of accident or not?*
> ***VIII.*** *Whether claimants are entitled for compensation so sought for in the present claim case and if so, then to what extent?*
> ***IX.*** *Whether the claimants are entitled for any other relief/reliefs in the present claim case?*

13. In support of the claim petition, claimants have examined four witnesses. The claimants have also filed documentary evidence in support of their claim petition i.e. salary structure issued by the employer (Ext-1), certificate regarding salary of deceased issued by the employer (Ext-2), F.I.R. of Phulwari Sharif P.S. Case No.534 of 2010 (Ext-3), Chargesheet of Phulwari Sharif P.S. Case No.534 of 2010 (Ext-4), *post-mortem* report of deceased Manoj Kumar Sinha (Ext-5), Insurance Policy (Ext-6) of offending vehicle (truck) for relevant period, Certificate of Registration (Ext-7) of offending vehicle, and Driving License of O.P. No.2/ respondent no.2 (Ext-8). These documents were exhibited without objection.

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

15. 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.14,25,142/- along with the interest @ 6% per annum from the date of institution of the claim case till its realization to be paid by the Oriental Insurance Co. Ltd. (respondent/O.P. no.1). The respondent Insurance Company, after getting the copy of the aforesaid judgment and award dated 13.03.2015 and 22.07.2015 respectively, deposited the same which was received with protest by the appellants/claimants.

16. The appellants being not satisfied and aggrieved by the awarded amount of compensation vide the impugned Judgment and Award, filed the present appeal for enhancement of the compensation amount by setting aside the Judgment and Award dated 13.03.2015 and 22.07.2015, respectively passed by the learned Tribunal.

17. Learned counsel for the appellants/claimants has submitted that the learned Tribunal erred in fixing the monthly income of the deceased at the time of occurrence. The learned Tribunal in computation of compensation had wrongly taken monthly income of the deceased @ Rs.16,222/- (basic salary) instead of Gross salary @ Rs.41,667/- per month which is against the settled principle of law. Learned counsel further stated that the learned Tribunal has not awarded future prospects, wrongly deducted flat 30 % towards the Income Tax without any basis; and also awarded very less amount under the conventional head i.e. loss of estate, funeral expenses and loss of consortium which is not in accordance with law and thus, the impugned Judgment and Award is required to be modified by enhancing the compensation amount.

18. Learned counsel for the appellants has submitted that claimants are entitled to the future prospects @40% in view of *para 59.4* of the Constitution Bench judgment in **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680.** It is further submitted that the loss of estate, funeral expenses be determined @ Rs.18,150/- each (Rs.15,000/- + enhance 10% twice), and loss of consortium @ Rs.48,400 (Rs.40,000/- + enhance 10% twice) in view of the direction of Hon’ble Supreme Court in **Pranay Sethi** (*supra*) that enhancement is required in every three years and from the date of the said Judgment (i.e. 31.10.2017) six years has already been completed.

19. 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 allowance payable to the deceased cannot be added in the actual salary for the purpose of computation of compensation. He has further submitted that under the conventional head Rs.70,000/- is appropriate amount which the claimants may entitle in view of the Judgment of Constitution Bench of Hon’ble Supreme Court in **Pranay Sethi** (*supra*)**.**

20. Having heard the learned counsel for the parties and considering the submissions made, it appears that there is no dispute as to the occurrence and liability of the respondent/Insurance Company to pay the compensation to claimants.

21. The only issue that would arise for consideration before this Court is: *"whether the appellants/claimants are entitled for enhancement of compensation and if so, to what amount?"*

22. The term compensation is a comprehensive term which includes a claim for the damages. The claimant in a claim for award of compensation under Section 166 of the Act, is entitled for just compensation which has to be equitable and fair. The loss of life and limb can never be compensated in an equal measure but the Act is a social piece of legislation with object to faciliate the claimants to get redress the loss of the member of family, compensate the loss in some measure and compensate the claimants to a reasonable extent.

23. The purpose of award of compensation is to put the dependents of a deceased, who had been bread winner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. But the determination of compensation is not exact since perfect compensation is hardly possible. The element of fairness in amount of compensation so determined is the ultimate guiding factor. The Court or the Tribunal have to assess the damage objectively.

24. In **Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Ars.** reported in **(2009) 6 SCC 121,** the Hon'ble Supreme Court observed that the just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse, or source of profit.

25. The amount of compensation should be determined having regard to the pecuniary loss caused to the dependents by reason of death of victim. In **Sarla Verma** (*supra*), it was observed that where the annual income is in taxable range, the word "actual salary" should be read as actual salary less tax. In **Pranay Sethi** (*supra*) also held that actual salary should be read as actual salary less tax.

26. Three Judge Bench in **Reshma Kumari & Ors. v. Madan Mohan & Ars.** reported in **(2013) 9 SCC 65**, approved with some observation in the case of **Sarla Verma** (*supra*) with respect to multiplier, addition of future prospects and deduction for personal and living expenses in computation of compensation in case of death. It was directed that the proposition stated in **Reshma Kumari** (*supra*) shall apply to all pending matters where above aspects are under consideration.

27. Earlier, in **T.N. State Transport Corporation Ltd. v. S. Rajapriya and Ors.** reported in **(2005) 6 SCC 236** in para 9 observed as follows:

> *"**9.** The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of dependents. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase."*

28. The same view was reiterated in **New India Assurance Co. Ltd. v. Charlie and Ars.** reported in **(2005) 10 SCC 720**. However, therein although 'net income' has been used but the same would ordinarily means gross income minus the statutory deductions.

29. In **National Insurance Co. Ltd. v. Indira Srivastava and Ors.** reported in **(2008) 2 SCC 763**, it was held:

> *"**19.** The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra-distinguished to the*

> *ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."*

30. In **Raghuvir Singh Matolya and Ors. v. Hari Singh Malviya and Ors.** reported in **(2009) 15 SCC 363**, the Hon'ble Supreme Court held that Dearness Allowance and House Rent Allowance ought to be included for determining the income of the deceased.

31. It is clear from the recent Judgment dated 11-07-2024 of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. v. Nalini 2024 SCC OnLine SC 2252** that while computation of monthly income of the deceased's allowances under the heads of transport, house rent, provident fund loan and special allowance ought to be added while considering the basic salary of the deceased to arrive at the dependency factor. Therefore, salary components have to be included in the basic salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor.

32. In **Meenakshi v. The Oriental Insurance Co. Ltd.** decided on 23-07-2024, the Hon'ble Supreme Court held that components of House Rent Allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor.

33. In the present case, from the perusal of salary structure of the deceased of the relevant period filed by the appellants in the Tribunal which is not disputed, it appears that the deceased's Gross Monthly Salary was @ Rs.36,049/- and after employee's deduction, Net Salary of the deceased was @ Rs.35,847/- which includes basic pay of Rs.16,222/- and allowances.

34. The net annual salary of the deceased stands at Rs.4,30,164/- (Rs.35,847 x 12). Taking Judicial notice of the Income Tax slab as per the Financial Year 2010-11, the salary of deceased falls under the tax slab of Rs.1,60,000 – Rs. 5,00,000 to which 10% of the amount exceeding Rs.1,60,000/- is required to be deducted as Income Tax. The taxable amount on which 10% Income Tax slab will be applicable is Rs.2,70,164 (Rs.4,30,164 – 1,60,000). Thus, the amount to be deducted as tax amount will be Rs.27,016/-. Therefore, the annual income of the deceased after deduction of the Income Tax amount stands at Rs.4,03,148/- (Rs.4,30,164 – Rs.27,016).

35. As the deceased was aged about 32 years (i.e.

below 40 years) and was having fixed salary at the time of accident and it was not established that he was a permanent employee, hence future prospects to the tune of 40% must be paid. Hence, 40% of the aforesaid amount Rs.4,03,148/- i.e., Rs.1,61,259/- is appropriate as as future prospects. Thus, the total net annual income of the deceased would be Rs.5,64,407/-. Besides the aforesaid amount, deduction towards personal and living expenses will be Rs.1,88,136/- i.e. 1/3rd of Rs.5,64,407/-. Thus, the total amount would be Rs.3,76,271/- (Rs.5,64,407 - Rs.1,88,136). Considering the age of the deceased between 31-35 years, multiplier 16 shall be applied. The total loss of dependency on account of the deceased income is calculated to the tune of Rs.60,20,336/- (Rs.3,76,271 x 16).

36. Under the conventional or traditional head namely, loss of estate, loss of consortium and funeral expenses has been quantified with fixed reasonable sums in **Pranay Sethi** (*supra*) as Rs.15,000/-; Rs.40,000/-; and Rs.15,000/- respectively to bring consistency in these heads which should be enhanced @10% in span of three years. The Hon'ble Supreme Court in **New India Assurance Company Ltd. v. Somwati and Ors.** reported in **(2020) 9 SCC 644** referred various Judgments including the Judgment of Constitution Bench of Hon'ble

Supreme Court in **Pranay Sethi** (*supra*), wherein in *para 52*, it has been opined that reasonable figures on conventional heads, namely, “loss of estate”, “loss of consortium” and “funeral expenses” should be Rs.15,000/-; Rs.40,000/-; and Rs.15,000/- respectively. In *para 59.8*, the Hon’ble Supreme Court further held that the amount of conventional head should be enhanced @10% every three years. The Hon’ble Court further referred a two-judge bench Judgment in **Magma General Insurance Co. Ltd. v. Nanu Ram** reported in **(2018) 18 SCC 130** , wherein the amount of Rs.40,000/- each was awarded to father and sister of the deceased for loss of filial consortium considering the principles laid down in **Pranay Sethi** (*supra*). Then, Judgement of a three-judge bench in **United India Insurance Company Limited v. Satinder Kaur @ Satwinder Kaur & Ors.** reported in **(2021) 11 SCC 780** has been referred wherein the view of **Magma General Insurance Co. Ltd.** (*supra*) was reaffirmed and approved the comprehensive interpretation given to the expression “consortium” to include spousal consortium, parental consortium as well as filial consortium and in *para 87* there in “consortium” to all the three claimants was thus, awarded. The Hon’ble Court in **Somwati Case** (*supra*) observed that the Judgment of **Pranay Sethi** (*supra*) cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife. The Hon'ble Court further observed in **Satinder Kaur** (*supra*) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable and the Judgment of three-judge bench is binding.

37. In case of **Janabai v. M/S I.C.I.C.I. Lambord Insurance Company Ltd.** reported in **(2022) 10 SCC 512**, the Hon'ble Supreme Court has awarded Rs.40,000/- each on account of spousal and parental consortium.

38. In so far as conventional damages of the claimants are concerned, the learned tribunal has awarded loss of estate at Rs.2,500/-; Funeral expenses at Rs.2,000/-; and loss of consortium at Rs.5,000/- which is not just compensation and required to be enhanced. The deceased Manoj Kumar Sinha left behind his wife and minor daughter as his dependents. On basis of the Judgment delivered by Hon'ble Supreme Court in **Pranay Sethi** *(supra)*, **Magma General Insurance Co. Ltd.** (*supra*) and **Satinder Kaur** (*supra*), and **Rojaline Nayak and Ors. v. Ajit Sahoo and Ors.** reported in **2024 SCC OnLine SC 1901**, the following amounts are awarded compensation under the conventional heads.

S.No.	Heads	Calculation	Compensation Amounts
1.	Loss of Estate	Rs.15,000/- + Enhance 10% twice	Rs.18,150/-
2.	Loss of spousal and parental consortium	(Rs.40,000/- + Enhance 10% twice) each	Rs.96,800/- (Rs.48,400 x 2)
3.	Funeral expenses	Rs.15,000/- + Enhance 10% twice	Rs.18,150/-

39. Thus, the total amount of compensation payable will be as follows:

S.No.	Heads	Amount
1.	Loss of Dependency	Rs.60,20,336/-
2.	Loss of Estate	Rs.18,150/-
3.	Loss of spousal and parental consortium	Rs.96,800/-
4.	Funeral Expenses	Rs.18,150/-
5.	**Total Compensation**	**Rs.61,53,436/-**

The appellants/claimants stand entitled for a total compensation to the tune of Rs.61,53,436/- deducting Rs.50,000/- already paid under Section 140 of the Act, with simple interest at the rate of 6% *per annum* from the date of filing of the claim case till its realization to be paid by the Insurance Company. The amount already paid by the Insurance Company shall be adjusted.

40. 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.

41. There shall be no order as to costs.

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

43. The Insurance Company is directed to make the payment of dues amount in terms of the aforesaid Order within two months from today.

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

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	AFR
CAV DATE	08.08.2024
Uploading Date	04.09.2024
Transmission Date	NA