IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.30 of 2021

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Magma HDI General Insurance Company Limited through its Chairman cum Managing Director, 3rd Floor, ID Complex, West Boring Canal Road, Opposite Lalita Hotel, Plot No. 166, Dist. Patna, Bihar, Appeal and Appellant through Authorized Signatory/ Duly Constituted Attorney, Magma HDI General Insurance Company Limited, 2nd Floor, Shiv Laxmi Plaza, Opposite to Rajendra Nagar Terminal, Kankarbagh, Main Road, Patna- 20.

... ... Appellant/s

Versus

1. Renu Kumari wife of Lt. Vikas Kumar Resident of Mohalla- High Court East Gate, Q-6 , P.S.- Kotwali, Dist. Patna, Bihar.
2. Kunal Raj S/o Lt. Vikas Kumar Respondent no. 2 is minor and under the guardianship of mother, Respondent no. 1, Resident of Mohalla- High Court East Gate, Q-6 , P.S.- Kotwali, Dist. Patna, Bihar.
3. Kumari Aakanksha D/o Lt. Vikas Kumar Respondent no. 3 is minor and under the guardianship of mother, Respondent no. 1, Resident of Mohalla- High Court East Gate, Q-6 , P.S.- Kotwali, Dist. Patna, Bihar.
4. Bhagirath Saw S/o Kali Saw Resident of 19, Budgada Goniyato, Dist. Bokaro, Jharkhand (Owner).

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Durgesh Kumar Singh, Advocate.
For the Respondent/s	:	Mr.Rajesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 26-09-2024

Heard learned counsel for the appellant as well as learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of the appellant/Magma HDI General Insurance Company Limited (O.P. No.2) against the Judgment/order dated 28.02.2020 passed by learned Additional District Judge-XXV-cum-Motor Accident Claims Tribunal, Patna (hereinafter referred to as "Learned Tribunal") in Claim Case No.317 of 2016.

3. The learned Tribunal held that claimants are entitled to receive Rs.76,07,920/- as compensation and are also entitled to simple interest @ 6% *per annum* from the date of filing of the claim petition till realization of the compensation amount. Liberty has been granted to the appellant/Insurance Company to prosecute its remedy to recover the compensation amount paid to claimants from the owner of offending vehicle in accordance with law.

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

S.No.	Particulars	Amount
1.	Income assessed monthly (A)	Rs.47,000/-
2.	Future Prospects 40% of assessed Income (B)	Rs.18,800/-
3.	Total Monthly Income (A+B) = C	Rs.65,800/-
4.	Annual Income (C)	Rs.7,89,600/-
5.	Total Income Tax @ 10% and 20% (D)	Rs.82,920/-
6.	Total Annual Income (C-D) (E)	Rs.7,06,680/-
7.	1/3rd Personal and living expenses in a year (F)	Rs.2,35,560/-
8.	Actual Annual Income	Rs.4,71,120/-
9.	Multiplier applicable	16
10.	Loss of Financial Dependency	Rs. 75,37,920/-
11.	Funeral Expenses	Rs.15,000/-
12.	Loss of Estate	Rs.15,000/-

13.	Loss of Consortium	Rs.40,000/-
14.	**Total**	**Rs.76,07,920/-**

5. The brief facts of this case are that on 03.07.2016 Vikash Kumar was going towards Hajipur from Patna by Motorcycle, at around 5:30 when he reached at new bypass, in front of Shubh Shivam Hospital within Jurisdiction of Patrakar Nagar Police Station a Truck bearing Registration No. JH-02Y-6095, being driven rashly and negligently, dashed his motorcycle in consequence of it he fell down on the road and the wheels of the offending Truck ran over his body due to which he sustained injuries to which he succumbed and died. *Post-mortem* of the deceased was conducted by doctor of P.M.C.H, Patna. The Police registered a criminal case vide Traffic P.S. (Gandhi Maidan) Patna case No.100 of 2016 against the driver of offending vehicle under Section 279, 304-A and 427 of Indian Penal Code,1860 (I.P.C). After investigation, I.O. of the case submitted Charge sheet under Section 279, 427 and 304-A of I.P.C. against the driver of offending vehicle.

6. The offending Truck was registered in the name of Respondent no. 4/O.P. No. 1 and insurer of the Truck is Appellant/O.P. No.2. The Claimant No.1 is wife and Claimant Nos.2 and 3 are children of the deceased who filed claim petition bearing MACT Case No. 317 of 2016 before the learned Tribunal claiming that the offending vehicle was driven rashly and negligently dashed the deceased causing his death.

7. It is further claimed that deceased was aged about 33 years, completely healthy and was working as Senior Sales promoter in Nokia Field Force Programme through Indus Management Consultants Pvt. Ltd. having a monthly income of Rs. 44,290/- by which he was maintaining his family i.e., the deceased was an income tax payee**.** The claimants claimed Rs.80,00,000/- with interest.

8. In the written statement filed on behalf of appellant/O.P. No.2 it is admitted that the interest of Respondent No.4 Mr. Bhagirath Saw in Tata Truck in question was covered at the material time under the policy of insurance issued by it for a period from 31.03.2016 to 30.03.2017. It is denied liability on the ground that the offending truck was not having valid permit to ply on the place of accident and the driver who was driving the said offending truck at the material time of accident was not having a valid and effective driving license and the Insurance Company is not liable to pay any compensation unless and until it is proved that there was no violation of policy terms. The insurance company denied that the deceased was earning

Rs.44,290/- per month and the claimants are put to strict proof regarding age, occupation and income of deceased.

9. O.P. No. 1 did not turn up even after notice hence, case proceeded *ex-parte* against him vide order dated 09.01.2018.

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

> ***I.*** *Whether the claim petition is maintainable?*
>
> ***II.*** *Whether the claimants have got valid cause of action for the compensation case?*
>
> ***III.*** *Whether Vikash Kumar died in this accident due to rash or negligent driving by the driver of truck car bearing registration No. JH-02Y-6095?*
>
> ***IV.*** *Whether the alleged vehicle was involved in the alleged accident insured with the O.P. No. 2 Magma HDI General Insurance Company on the alleged date of accident.?*
>
> ***V.*** *Whether the driver of offending Truck was holding valid and effective driving licence at the time of accident?*
>
> ***VI.*** *Whether the owner and driver have violated the terms and conditions of the insurance policy at the material time?*
>
> ***VII.*** *Whether the claimants entitled to get compensation, if so to what extent?*
>
> ***VIII.*** *To what other relief of relieves if any the claimants are entitled?*

11. The law is now well settled that the proceeding in a claim petition for compensation before the Tribunal is neither suit not an adversial *lis* and claimant is not required to prove his case as required in the criminal trial.

12. In support of the claim petition, claimants have examined two witnesses. The claimants have filed documentary evidence in support of their claim petition i.e., photocopy of deceased's Matriculation Certificate, Provisional Certificate of B.Sc., Letter of Offer (Ext.-3) by Indus Management Consultants Pvt. Ltd. to deceased Vikash Kumar and certificate of professional fee of the deceased (Ext. 4 to 4/1, 4/2). The claimants also filed certified copy of FIR (Ext.-5), Charge Sheet against the driver of offending vehicle, *post-mortem* report (Ext.-7), Insurance Policy (Ext.-8) and Income-Tax Return for the assessment year 2015-2016 (Ext.-9).

13. In rebuttal of the claim petition, the Insurance Company examined its Law Officer Shikhar Sinha (O.P.W-1) and exhibited notice dated 12.06.2017 sent to owner of the Truck in question to provide documents including license, permit, registration paper etc., and receipts of the said notice.

14. After hearing the parties and considering the materials on record, the learned Tribunal held that the death of deceased caused due to rash and negligent driving by driver of the offending truck and awarded the compensation amount of Rs.76,07,920/- with simple interest of 6% *per annum* from the date of filing the claim petition till realization of the award amount as stated above.

15. The appellant being not satisfied and aggrieved by the impugned judgment and award, filed the present appeal for setting aside the judgment/award dated 28.02.2020 passed by the learned Tribunal. A cross-objection has also been filed on behalf of respondents for enhancement of award.

16. Learned counsel for the appellant Insurance Company submits that the learned Tribunal erred while passing the impugned Judgment ignoring the factor of contributory negligence on the part of deceased. It is further submitted that the learned tribunal erred to hold that deceased was in private job having income of Rs.47,000/- per month. He further submits that deceased had professional income and he was income tax payee and the Income Tax Return for assessment year 2015-16 (Ext.-9) has been filed on behalf of claimants and the same is authentic proof of the income of deceased at the relevant time but the learned Tribunal failed to consider the said vital document in computation of the compensation amount and the impugned judgment/award is liable to be modified accordingly. He further submits that since the deceased was not an employee as such there cannot be income from salary and the documents produced by the claimants (Ext-3, Ext.-4, Ext.- 4/1 and Ext.- 4/2) also shows that the deceased had income from professional fee as consultant of Indus Management Consultants Pvt. Ltd.

17. On the other hand, learned counsel for the claimants/respondent nos. 1 to 3 submits that in the present case there is no case of any contributory negligence as alleged. The offending truck came rashly and negligently with wrong manner and dashed the motorcycle of the deceased due to which he fell down on the road and went beneath the wheel and truck run over his body. The FIR has been lodged against the driver of the offending vehicle and after investigation the driver of the offending vehicle has been charge-sheeted. The certified copy of FIR (Ext-5) and charge-sheet (Ext.-6) have been proved by the claimants. C.W.-2 Surendra Kumar has deposed as eye-witness of the occurrence and proved the factum of the rash and negligent driving of offending truck causing death of deceased Vikash Kumar on spot. Learned counsel further submits that learned Tribunal has rightly treated the salary income of the deceased and the impugned judgment/award has been passed considering the material on record and is not liable to be interfered by this Court.

18. Having heard learned counsel for the parties and considering the material on record, it appears that there is no dispute with respect to the death of Vikash Kumar due to rash and negligent driving of the driver of the offending truck. There is no evidence on record to show that the deceased was negligent in driving his motorcycle which caused accident, accordingly, it has been proved that the deceased was also negligent in driving his motorcycle at the time of occurrence. There is no merit in the argument of learned counsel for the Insurance Company that it is a case of contributory negligence.

19. The learned tribunal held that the age of deceased was 33 years at the time of his death which is proved by his matriculation certificate and accordingly in view of ***National Insurance Co. v. Pranay Seti & Ors*** reported in ***(2017) 16 SCC 680*** and ***Sarla Verma and Ors v. Delhi Transport Corporation and Anr.*** reported in ***(2009) 6 SCC 121*** the multiplier applicable according to his age range (31 to 35) of deceased would be 16. With respect to future prospect, 40% of monthly income of deceased was added in his income and deduction of 1/3rd of his actual income has been taken. There is no dispute in this regard on behalf of the parties. It is now well-settled and not disputed that loss of consortium would be awarded to each claimants.

20. The main point of determination in this case is the income of deceased for the purpose of calculation of compensation award. The claimants in order to prove the income of the deceased, produced letter of offer dated 03.06.2013 (Ext.-3), certificate of Professional Fees paid to deceased by Indus Management Consultants Pvt. Ltd. for the month of April 2016, May 2016 and June 2016 (Ext Nos. 4, 4/1 & 4/2) which shows that he had received Professional Fees Rs.30,000/-, Rs.30,000/- and Rs.32,400/- respectively alongwith other/special allowance of Rs.14,290/-, Rs.13,324/- and Rs.14,600/- respectively out of which Professional Tax (TDS) @ 10% was deducted. It appears from the letter of offer (Ext.-3) that he was offered to join as consultant with monthly payment and also entitled as reimbursement of travel allowance on submission of expenses claimed supported with vouchers. These documents clearly show that he was engaged as consultant.

21. The Hon'ble Supreme Court in ***Malarvizhi & Ors. Vs. United India Insurance Co. Ltd.*** reported in ***(2020) 4***

SCC 228 held that the determination must proceed on the basis of the Income Tax Return, where available, for computation of annual income. The Hon'ble Supreme Court in ***Smt. Anjali & Ors. Vs. Lokendra Rathod & Ors.*** reported in ***2022 SCC OnLine SC 1683*** reaffirmed the said principle that the Income Tax Return is a statutory document on which reliance be place, where available for computation of annual income.

22. From perusal of the Income Tax Return of the deceased Vikash Kumar for the assessment year 2015-2016 his gross total income was shown as Rs.2,98,682/- and total tax payable was Rs.994/- thus the Net Annual Income of deceased for the said assessment year 2015-2016 was (Rs.2,98,682 – Rs.994) Rs.2,97,688/-.

23. In so far as conventional damage of claimants are concerned, the learned Tribunal has awarded loss of estate Rs.15,000/-, funeral expenses Rs.15,000/- and loss of consortium Rs.40,000/- which is not a just compensation and required to be enhanced. The deceased Vikash Kumar left behind his wife and two minor children as his dependents. On the basis of judgments delivered by the Hon’ble Supreme Court in ***Pranay Sethi*** *(supra)* ***Magma General Insurance Co. Ltd. v. Nanu Ram*** reported in ***(2018) 18 SCC 130, United India***

Insurance Company Ltd. v. Satindar Kaur @ Satwinder Kaur and Ors. reported in ***(2021) 11 SCC 780*** and ***Rojline Nayak and Ors. Ajit Sahoo and Ors.*** reported in ***2024 SCC OnLine SC 1901,*** the following amounts are awarded as compensation under the **conventional head**:

S. No.	Heads	Calculation	Compensation Amounts
1.	Loss of Estate	Rs.15,000/- Enhance 10% twice	Rs.18,150/-
2.	Loss of Consortium	(Rs. 40,000/- + Enhance 10% twice each)	Rs.1,45,200/- (Rs.48,400 x 3)
3.	Funeral Expenses	Rs.15,000/- Enhance 10% twice	Rs.18,150/-

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

S.No.	Heads	Compensation Awarded
1.	Annual Income	Rs.2,97,688/-
2.	Future Prospects	Rs.1,19,075/- (40% of Rs.2,97,688/-)
3.	Deduction towards personal and living expenses	Rs.1,38,921/- (i.e., 1/3 of Rs.2,97,688 + Rs.1,19,075)
4.	Total Annual Income after deduction	Rs.2,77,842
5.	Multiplier	16
6.	Loss of dependency	Rs.44,45,472/- (Rs.2,77,842x16)
7.	Funeral expenses	Rs.18,150/-
8.	Loss of Estate	Rs.18,150/-
9.	Loss of consortium	Rs.1,45,200/-
10.	Total Compensation	Rs.46,26,972/- (Rs.44,45,472 + Rs.1,81,500)
11.	**Total**	**Rs.46,26,972/-**

25. The Judgment/Award dated 28.02.2020 passed by the learned Tribunal stands modified to the aforesaid extent only. Accordingly, this appeal and cross-objection are disposed of with the aforesaid modification in the impugned Judgment and award.

26. There shall be no order as to costs.

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

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

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.10.2024
Transmission Date	NA