IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.299 of 2015

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1. Malti Devi W/o late Lavleshwar Kumar
2. Tirupati Kumar
3. Nand Keshari Kumari
4. Annapurna Kumari
5. Shankar Dayal,
   Appellant No. 2 to 5 are Sons and Daughter of Late Lavleshwar Kumar, All are residents of Mohalla-Gujri Bazar, Patna City P.s Khajekalan, district Patna.

... ... Appellant/s

Versus

1. The Administrator Of Bihar State Road Transport Corporation Pariwahan Bhawan Birchand Patel Marg, Patna (Owner of the Offending Bus No. BR-05P-0556)
2. Divisional Manager D.O. -1, United India Insurance Co. Ltd. Laxmi Apartment, Frazer Road, Patna (Insurer of the offending Bus No. BR-05P-0556)

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mrs. Sarita Bajaj, Advocate
For the respondent no. 1		Mr. P.K. Verma, Sr. Advocate with Mr. Arvind Kumar, Advocate
For the Respondent no. 2	:	Mr. Ashok Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

6 23-01-2024 This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as ‘The Act of 1988’) for enhancing of compensation amount allowed to the claimant/appellants by the learned Additional District Judge-VIII, Patna-cum- Motor Accident Claim Tribunal, Patna (hereinafter referred to as ‘learned Tribunal’) in claim Case No. 359 of 2008, by judgment and award dated 11.11.2014 and 04.05.2015 respectively, the learned Tribunal directed to

Administrator of Bihar State Roads Transport Corporation to pay the compensation amount of Rs. 2,71,000/- within one month from the date of order with interest of 6% per annum from the date of institution of the case, and further O.P., No. 2- United India Insurance Company Ltd. was given liberty to realize the paid ad-interim compensation amount from O.P. No. 1- Administrator of Bihar State Road Transport Corporation, who is the owner of the offending bus bearing its registration No. B.R.-05P-0556.

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

Monthly income of the deceased (Lavlesh Kumar)	Rs. 3000/-
Annual Income of the deceased	Rs. 3000 x 12=36,000/-
1/3 (personal expenses of the deceased)	Rs. 36000 x 1/3= 12000/-
2/3 family contribution	Rs. 36000-12000= 24,000/-
Age of the deceased was 48 years at the time of accident, hence multiplier as to age group becomes	13
Total compensation	Rs. 24000 x 13= 3,12,000/-
Loss of estate	Rs. 2500/-
Funeral Expenses	Rs. 2000/-
Loss of consortium	Rs. 5,000/-
Total	Rs. 3,21,500/- (wrongly calculated by the lower court as Rs. 3,21,000/-)
Ad interim compensation already paid	Rs. 50,000/-
Total	Rs. 3,21,500 – 50,000= Rs. 2,71,500/-

3. The appellant being aggrieved by the impugned judgment and award dated 11.11.2014 and 04.05.2015 respectively, passed by the learned Tribunal, filed the present appeal and prayed for the following reliefs:-

The learned Tribunal ought to have allowed compensation which is just compensation. under 168 of the Act, according to the table here under:-

Monthly income of the deceased (Lavleshwar Kumar)	Rs. 10,000/-
Annual Income	Rs. 10000 x 12 = Rs.1,20,000/-
Less 1/4th as personal expenses	Rs. 1,20,000-30,000= 90,000/-
Multiplier applicable of 13	Rs. 90,000 x 13= 11,70,000/-
Future Prospect @ 25%	Rs. 2,92,500/-
Loss of estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Total	Rs. 15,32,500/-

4. It is relevant to mention that the Insurance Company has not challenged the impugned judgment and award.

5. The case of the appellants is that on 10.05.2007, Lavleshwar Kumar (deceased) was coming from Raxaul to Patna boarding a bus having its registration no. BR-05P-0556 of Bihar State Road Transport Corporation at 03.45 am. The said

bus dashed the railing of bridge of Ganga Setu and fell down. It is said that the occurrence took place due to the negligence driving of the driver of the aforesaid bus. The driver as well as the passengers Lavleshwar Kumar of the said bus also died in the said accident. The F.I.R. bearing Ganga Bridge (Hajipur) P.S. Case No. 144 of 2007 dated 11.05.2007 was lodged regarding the said occurrence against the driver of the Road Transport Corporation Bus BR-05P-0556. After investigation, chargesheet has been filed on 18.02.2008 against the deceased driver of the offending road transport bus, namely Rajeshwar Singh.

6. Further case of the claimants is that the deceased Lavleshwar Kumar was service engineer of Medical equipment and he had good clientele and he was only bread earner of his family. After his sudden demise, his family reached on the verge of starvation. The monthly income earning of the deceased was Rs. 10,000/- per month. His age was 48 years, as recorded in the post-mortem report. The offending vehicle has been said to be insured at the time of the accident with United India Insurance Company Ltd.

7. The claimants of this case are Malti Devi, who is the widow of Lavleshwar Kumar, Tirupati Kumar and Shankar

Dayal both sons of Lavleshwar Kumar, Nand Keshari Kumari and Annapurna Kumari, both daughters of Lavleshwar Kumar. All five claimants have brought this case in capacity of legal representatives of Laleshwar Kumar.

8. The claim application has been filed against the Administrator State Road Transport Corporation and Divisional Manager, United India Insurance Company Ltd, who are arrayed as opposite party nos. 1 and 2 respectively. Bihar State Road Transport Corporation has appeared on 12.06.2009 and did not file its written statement. Bihar State Road Transport Corporation was debarred from filing written statement on 29.06.2010. The United India Insurance Company Ltd. appeared and filed written statement and additional written statement has also been filed on behalf of United India Insurance Company. In its written statement, it has been said that on the date of accident, the driver of the offending bus was not having valid and effective license and accident has taken place due to rash and negligent driving of the driver, as such, the insurance company is not liable to indemnify the owner of the aforesaid vehicle, and accordingly Insurance Company is not liable to pay any claim to the claimants.

9. The learned counsel for the appellants submitted

that deceased, aged about 48 years, was skilled service engineer of medical equipment (x-ray machine) and was earning 10,000/- per month, (approx). In support of his contention, he relied upon evidence of claimant witness no. 1, namely, Tirupati Kumar, son of deceased, claimant witness no. 2, namely, Malti Devi, who is the widow of late Lavleshwar Kumar, and claimant witness no. 3, namely, Jitendra Kumar, who is the x-ray machine operator, have supported the case regarding the income of the deceased. It is submitted that the learned Tribunal has failed to consider the income of the deceased and notional income has been fixed at Rs. 3,000/- per month, despite evidence of claimant witnesses and especially, when the respondent-Insurance Company had not adduced any evidence, either oral or documentary, and had not rebutted the same. It is further submitted that the learned Tribunal has not followed the well-settled principle on the point of future prospect and conventional heads for loss of estate, loss of consortium and funeral expenses. It is submitted that the learned Tribunal ought to have fixed the liability upon the Insurance Company to pay the entire amount of compensation first to the appellants and then recovery right may be given to the Insurance Company, if the violation of the terms and conditions of the Insurance

Company as made in case of which the alleged vehicle was insured at the relevant time of the accident. The offending vehicle (bus) bearing Registration No.-BR-05P-0556 was insured with United Insurance Company Ltd, covering the period of insurance from 22-06-2006 to midnight 21-06-2007. The date of accident is 11-05-2007, therefore, the said offending vehicle was insured at the relevant time.

10. Learned counsel for the appellants further submits that the learned Tribunal has not awarded future prospect of 40 per cent of income of the deceased and also has not passed order in consonance with the judgment passed by the Hon'ble Supreme Court in the case of ***National Insurance Company Limited** vs. **Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680*** with regard to the conventional heads and also has not awarded interest at the rate of 9 per cent on the awarded amount. The learned Tribunal ought to have considered the future prospect of the deceased while computing the compensation ought to have added additional 40 per cent on actual income with regard to conventional heads and actual income in monthly income of the deceased then ought to have computed compensation which would be just compensation as envisaged under Section 168 of the Act. The learned Tribunal has also failed to follow the

judgment of the Hon'ble Apex Court in the case of ***Sarla Verma (Smt.)*** *vs* ***Delhi Transport Corporation and Another*** reported in (***2009) 6 SCC 121.***

11. Learned counsel for the appellants further submits that the appellants are also entitled to get claim on account of funeral expenses at Rs. 15,000/-, estate loss at Rs. 15,000/-, spousal consortium at Rs. 40,000/- to appellant no. 1, who is widow of the deceased, and parental consortium at the rate of Rs. 40,000/- to each of the four children (i.e., appellant nos. 2 to 5).

12. Learned counsel for the appellants has relied upon judgment of Hon'ble Apex Court in the case of ***Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors.*** reported in ***(2022) 1 SCC 198*** and submits that in the said case, the Hon'ble Apex Court has relied upon the judgments in the case of ***Sarla Verma*** (supra) and ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and Ors.*** reported in ***(2018) 18 SCC 130*** to hold that the appellants were entitled for parental consortium of Rs. 40,000/- to each of the dependents. The Constitution Bench of Hon'ble Supreme Court in ***Pranay Sethi*** (supra) has dealt with the various heads under which compensation is to be awarded in a death case. One

of these heads is loss of consortium. In legal parlance, consortium has been defined in a case of ***Harpreet Kaur & Ors. vs. Mohinder Yadav & Ors.*** reported in ***2022 SCC Online SC 1723***.

13. It is also submitted that the learned Tribunal has wrongly deducted 1/3 income of the deceased with regard to personal and living expenses, considering the fact that the deceased died leaving behind a widow and four children, out of them, one son and one daughter was minor at the relevant time.

14. Having heard learned counsel for the appellants as well as learned counsel for the respondents, on perusal of the records and also the judgment of the Hon'ble Apex Court, this Court finds that there is no dispute on applying multiplier of 13 in the instant case (age of the deceased- 48 years). Further, it is well settled on providing future prospects and claims on conventional heads with regard to living expenses, the learned Tribunal has rightly deducted 1/3rd income of the deceased. It is admitted fact that the deceased died leaving behind a widow and two minor children who are dependents.

15. On adding the future prospect, in view of the judgment of the Hon’ble Apex Court in ***Pranay Sethi*** *(supra),* this Court has no doubt that in this case 25% of the income of

the deceased would be entitled to be added while calculating total loss of dependency.

16. In ***Pranay Sethi*** (*supra*), the Hon'ble Apex Court has recognised three categories of conventional heads- (i) funeral expenses at Rs. 15,000/-, (ii) Estate loss at Rs. 15,000/- (iii) loss of consortium at Rs. 40,000/-. It is well settled by the judicial pronouncements that the widow of the deceased would be entitled for a spousal consortium and the minor children would get parental consortium. In case of the parents if dependent on the deceased, they would be entitled for filial consortium. In the case of ***Janabai WD/O Dinkarrao Ghorpade & Ors. vs ICICI Lombard Insurance Company Ltd.*** *reported in **2022 (10) SCC 512*** wherein the Hon'ble Apex Court has awarded *Rs. 40,000/-* each on account of the spousal and parental consortium. In the present case the widow-appellant no. 1 would be entitled for Rs. 40,000/- as spousal consortium whereas the minor children would get parental consortium Rs. 40,000/- each. They would also be entitled for claim on account of funeral expenses at Rs. 15,000/- and loss of estate at Rs. 15,000/-.

17. So far income of the deceased is concerned, the evidence of appellant no. 1 is that her husband was earning Rs.

10,000/- and that he was 48 years of age. The learned Tribunal assessed monthly income of the deceased as Rs. 3,000/- notional income in the absence of proof of income/salary. Therefore, keeping in view the notional income and the age of the future prospects in terms of judgment of Apex Court in ***Pranay Sethi (supra)***, the compensation is assessed as follows:-

Monthly income of the deceased (Lavleshwar Kumar) aged 48 years	Rs. 3000/-
Annual Income of the deceased	Rs. 3000 x 12=36,000/-
Deduction towards personal and living expenses= 1/3	Rs. 36000 x 1/3 = 12,000/-
2/3 family contribution	Rs. 36000-12000= 24,000/-
Addition to income to future prospect @ 25% deceased being less than 50 years	Rs. 24,000 x 25% = Rs. 6000/-
Age of the deceased was 48 years at the time of accident, hence multiplier as to age group becomes	13
Amount of compensation	Rs. (24000 + 6000) x 13= Rs. 30,000/- x 13= 3,90,000/-
Loss of estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Loss of parental consortium for two minors	Rs. 40,000/- x 2 = Rs. 80,000/-
Loss of spousal consortium	Rs. 40,000/-
Total amount of compensation	Rs. 3,90,000 + 1,50,000 =5,40,000/-
Ad interim compensation already paid	Rs. 50,000/-
Total	Rs. 5,40,000/- – 50,000 = Rs. 4,90,000/-

18. In the result, this Miscellaneous Appeal is allowed.

19. So far payment of compensation by the Administrator of Bihar State Road Transport Corporation is concerned, the same shall be paid by the Insurance Company, and thereafter, the same may be recovered from the owner of the offending bus bearing Registration No. BR-05P-0556.

20. In view of the decision of the Apex Court in the case of ***National Insurance Co. Ltd.*** *Versus* ***Challa Upendra Rao and Others*** reported in ***(2004) 8 SCC 517,*** it has been held that the payment of amount of compensation by the Insurance Company to the claimants be recovered from the insurer i.e. owner of the offending bus i.e. respondent no. 1. Therefore, the Insurance Company-respondent no. 2 is directed to pay compensation amount to the claimants and recover the same from respondent no. 1.

21. The amount of compensation as awarded by the learned Tribunal is modified from Rs. 3,21,500/- to Rs. 5,40,000 minus Rs. 50,000/-, which was granted under Section 140 of the Act, the modified amount shall carry the interest at the rate of 6% per annum from the date of claim petition till realization, the due amount be paid by the United India Insurance Co. Ltd. within a period of three months from today.

22. The Insurance Company will be at liberty to

recover the awarded amount from the owner of the offending bus after the payment.

(Khatim Reza, J)

Premchand/
shyambihari-

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