IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1024 of 2016

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1. Bhawesh Kr. Singh @ Bhawesh Pd. Singh S/o Late Bauski Pd. Singh
2. Rahul
3. Rakhi
   Both Son of and Daughter of Bhawesh Kr. Singh Both are minor represented through their father as the natural guardian and next friend.
   All residents of Village - Azad Nagar, Sabalpur, P.S. Panjwara, Distt. - Banka.

... ... Appellant/s

Versus

1. Rajnikant Yadav S/o Bateshwar Yadav, Resident of Village - Bhaluadamgi, P.O. Pqraria, Distt. Banka.
2. Bhushan Yadav S/o Bhagwat Yadav, Resident of Kamaldih, P.S. Banka, District Banka.
3. Bajaj Allianz General Insurance Co. Ltd., Through Manager, Legal, 6th Floor, Anand Vihar West Boring Canal Road, Patna-800001.
4. Bajaj Allianz General Insurance Co. Ltd., Through Manager, Patal Babu Road, Near Head Post Office, Bhagalpur, Dist.- Bhagalpur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Madan Mohan, Advocate.
	:	Ms. Pallavi Pandey, Advocate.
	:	Mr. Rahul Raj, Advocate.
	:	Mr. Ritik Shah, Advocate.
For the Respondent/s	:	Mr. Durgesh Kumar Singh, Advocate.
	:	Mr. Abhijeet Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 12-07-2024

Heard the learned counsel for the appellants as well as the learned counsel for the Bajaj Allianz General Insurance Co. Ltd.

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 for

enhancing the compensation amount awarded to claimants/appellants by the learned 6th Additional District Judge-cum-Additional Motor Accident Claim Tribunal, Bhagalpur (hereinafter referred to as "Learned Tribunal") vide judgment dated 13.05.2016 passed in Claim Case No.204 of 2011 (Trial No.57 of 2014).

3. The learned Tribunal held that claimants are entitled to receive Rs.10,18,899/- as compensation and accordingly Bajaj Allianz General Insurance Company Limited has been directed to make payment of the compensation amount as per the order within 30 days from the date of passing of said order alongwith 6% 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 (Rs.)
1.	Annual income of deceased.	Rs.6,000 x 12	Rs.72,000/-
2.	Loss of income using the multiplier of 16 as the deceased was aged 34 years at the time of his death.	Rs.72,000 x 16	Rs.11,52,000/-
3.	Less the amount of personal	Rs.11,52,000 –	Rs.7,68,384/-

	and living expenses @ 1/3.	Rs.3,83,616	
4.	Add 30% future prospect.	30 % of Rs.7,68,384/-	Rs.2,30,515/-
5.	Loss of consortium.		Rs.5,000/-
6.	Loss of estate.		Rs.5,000/-
7.	Funeral expenses.		Rs.5,000/-
8.	Cost of litigation.		Rs.5,000/-
9.	**Total**		**Rs.10,18,899/-**

5. The claimants/ appellants being not satisfied and aggrieved by the impugned judgment and award dated 13.05.2016 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 Abha Kumari who was the Panchayat Teacher in Primary School, Bhandar Kala under Katoria Block met an accident on 03.03.2011 at 09.00 A.M. near the bridge at Katoria Road situated at Sakin Gandhi Chowk P.S. and District Banka by the Tractor bearing registration No. BR51/7407 being driven by the driver of the said offending vehicle. On the basis of Fardbeyan of the claimant no.1, husband of the deceased, Banka P.S. Case No.66 of 2011 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 other side and dashed the motorcycle whereby both claimant no.1 and deceased fell down and the deceased succumbed to the injuries on the spot and her husband, claimant no.1 also received injury for which he undergone from treatment in Sadar Hospital Banka.

9. It is further claimed that the deceased was a teacher aged about 34 years at the time of occurrence having a monthly income of Rs.6,000/- per month. The claimants have been deprived of love and affection as well as present and future earning of the deceased and the claimant no.1 has lost his conjugal life 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 Bajaj Allianz General Insurance Co. Ltd. at the relevant period of time and the said Insurance Company is liable to pay the amount of compensation to claimants who are husband and

minor son and daughter of the deceased. The learned Tribunal has held that the claimants entitled for compensation to the tune of Rs.10,18,899/-.

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 and loss of consortium in computation of compensation amount.

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.59.3 of the judgment has submitted that since the deceased aged about 34 years was employed as a teacher in Panchayat, the addition of 50 % of the salary as future prospects is warranted for computation of compensation, however, the learned Tribunal has awarded 30 % of salary of the deceased as future prospects instead of 50 % which requires modification in award.

13. Learned counsel for the appellants further

submits that the appellants are also entitled to get claim on account of loss of Estate at Rs.15,000/-, funeral expenses at Rs.15,000/-, spousal consortium at Rs.40,000/- to appellant no.1, who is widower of deceased and parental consortium at the rate of Rs.40,000/- to each of the two children (i.e. appellant nos.2 & 3). He has submitted that the Constitutional 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 a 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 parental consortium of Rs.40,000/- to each of the dependents.

14. It is also submitted that the learned Tribunal ought to award compensation with interest rate of 9 % per annum instead of 6 % per annum.

15. Learned counsel for the Insurance Company has submitted that respondent no.2 who was driver of the vehicle has drove the motorcycle in rash and negligent manner, therefore, he is solely responsible for the accident. He further submits that respondent no.2 did not have valid license to drive the offending vehicle who was under the influence of alcohol. It is further submitted that respondent no.1 is liable to establish that there is no breach of policy. He also submits that the amount of compensation claimed and the claim of interest etc. by the claimants are excessive, exorbitant and exaggerated.

16. 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 Sanjay Kumar left behind her husband and two children as her 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 consortium	

(a) Spousal consortium (husband) (b) Parental consortium to each of 2 children (40,000 X 2)	Rs. 40,000/- Rs. 80,000/-
(iii) Funeral expenses	Rs. 15,000/-

(ii). So far as the head of future prospect is concerned, in view of paragraph 59.3 of the Judgment in case of **Pranay Sethi** (*supra*), the deceased having permanent job and was aged about 34 years i.e. below the age of 40 year an addition of 50% of the actual salary as warranted.

17. 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. 6,000/- per month
2.	Future prospects	Rs. 3,000/- (i.e. 50 % of the income)
3.	Deduction towards personal and living expenses	Rs. 3,000/-(i.e. $1/3^{rd}$ of Rs.6,000+3,000)= Rs. 9,000/-)
4.	Total annual income	Rs.72,000/- (Rs.6,000 x 12)
5.	Multiplier	16
6.	Loss of dependency	Rs.11,52,000/- (72,000 x 16)
7.	Funeral expenses	Rs. 15,000/-
8.	Loss of Estate	Rs. 15,000/-
9.	Loss of Consortium (a) Spousal consortium (b) Parental consortium to each of 2 children	 Rs. 40,000/- Rs. 80,000/- Total Rs. 1,20,000/-
10.	Total compensation	Rs.13,02,000/- (11,52,000+1,50,000)
11.	**Total**	**Rs.13,02,000/-**

18. The claimants/appellants stand entitled for a total compensation to the tune of Rs.13,02,000/-. The insurance company (respondent nos.3 and 4) 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 6 % *per annum* calculated from the date of filing of the claim case till its realization. The aforesaid amount shall be deposited within two months from today and to be paid to the appellants according to law.

19. 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.

20. There shall be no order as to costs.

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

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	19.06.2024
Uploading Date	12.07.2024
Transmission Date	NA