IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.12 of 2015

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United India Insurance Company Ltd. Patna through Pranay Kumar Manager Cum and Duly constituted Attorney United India Insurance Company Ltd Regional Office 3rd Floor Chanakya Complex B.C. Patel Road P.O. G.P.O., P.S. Sachiwalaya Patna District Patna

... ... Appellant/s

Versus

1. Madhu Kumari Wife of Late Ranjan Kumar, r/v- at P.O. Tetua P.S. Atri, District Gaya
2. Amit Kumar, s/o Late Ranjan Kumar, minor, under the guardianship of his mother Respondent No. 1, r/v- at P.O. Tetua P.S. Atri, District Gaya
3. Aditya Kumar, s/o Late Ranjan Kumar, minor, under the guardianship of his mother Respondent No. 1, r/v- at P.O. Tetua P.S. Atri, District Gaya
4. Durga Singh, s/o not known to the appellant r/v- at P.O. Tetua P.S. Atri, District Gaya
5. Raj Kumari Devi, w/o Durga Singh, r/v- at P.O. Tetua P.S. Atri, District Gaya
6. M/S Srishti Development Pvt. Ltd. through its Proprietor Shailendra Kumar, r/o Krishi Utpadan Bazar Samiti Katra Bazar Patna City, District- Patna.
7. Rampravesh Prasad S/o late Brahamadeo Prasad, r/o Mohalla Nurdiganj, P.S. Malsalami Patna City District- Patna
8. Amit Anand, S/o Late Shatrughan Sharma, r/v Lakhibagh Manpur, P.S. Muffasil, District- Gaya
9. The Oriental Insurance Company Co. Ltd. Through its Regional Manager, Regional Office Pirmohani Kadam Kuan P.S. Kadam Kuan Patna District- Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ashok Priyadarshi, Advocate
For Respondent No. 1-5	:	Mr. Alok Kumar @ Alok Kumar Shahi, Advocate Ms. Archana Sinha, Advocate
For Respondent No. 6 & 7	:	Mr. Shailendra Kumar, Advocate
For Respondent No. 9	:	Mr. Durgesh Kumar Singh, Advocate Mr. Abhijeet Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 05-09-2024

1. Heard Sri Ashok Priyadarshi, learned counsel for the appellant, Sri Alok Kumar @ Alok Kumar Shahi, learned

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counsel for Respondent Nos. 1 to 5 and Sri Durgesh Kumar Singh, learned counsel for Oriental Insurance Company Ltd. (Respondent No. 9).

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/ United India Insurance Company Ltd. against the judgment dated 14.08.2014 and award dated 20.12.2014 passed by the learned District Judge-cum- Motor Vehicle Claims Tribunal, Patna (hereinafter referred to as "learned Tribunal") in M.V. Claim Case No. 53 of 2011.

3. The learned Tribunal held that the claimants are entitled to receive total compensation amount Rs. 13,21,000/- out of which claimants have already received Rs. 50,000/- by way of *ad-interim* compensation under Section 140 of the Act and after deducting the same, the actual payable amount to the claimants is Rs. 12,71,000/- along with simple interest of 9% *per annum* from the date of filing of the claim application, i.e. 17.02.2011 and it was directed to the appellant/United India Insurance Company Ltd. (in short "Insurance Company) to pay the compensation amount as directed within three months of the judgment failing which 12 % interest would be payable from the

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date of default till realization.

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

Sl. No.	Heads	Calculation	Net Amount
1.	Monthly salary of the Deceased		Rs. 6,000/-
2.	Deduction for personal expenses of the Deceased 1/4th	Rs. 6,000x1/4	Rs. 1,500/-
3.	After deduction 1/4th total amount		Rs. 4,500/-
4.	Annual Income of the Deceased	Rs. 4500x12	Rs. 54,000/-
5.	Future Prospect	(50% of Rs. 54,000/-)	Rs. 27,000/-
6.	Total Annual Income	Rs. 54,000/-+ Rs. 27,000/-	Rs. 81,000/-
7.	Total loss of the dependency	Rs. 81,000/-x16	Rs. 12,96,000/-
8.	Loss of estate		Rs. 10,000/-
9.	Loss of Consortium to the wife		Rs. 10,000/-
10.	Funeral Expenses		Rs. 5,000/-
11.	Total payable compensation		Rs. 13,21,000/-
12.	Claimant received *ad-interim* compensation		Rs. 50,000/-
13.	Net payable amount (along with interest 9% per annum from the date of filing of the application)	Rs. 13,21,000- Rs. 50,000	**Rs. 12,71,000/-**

5. The brief facts of this case are that Ranjan Kumar who was regular driver of bus bearing Registration No. BR-2J-6651 owned by O.P. No. 4/ Respondent No. 8 and insured with O.P. No. 5, Oriental Insurance Company Limited (respondent No.9) w.e.f. 03.03.2010 to 02.03.2011. On 26.09.2010, Rajan Kumar was driving the said bus from Gaya to Islampur and when the bus reached near Village Tetwa a rash and negligent Truck bearing Registration No. BR-1G-5727 dashed the bus causing death of the driver on the same day

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during the course of his treatment. The said truck was owned by O.P. No. 1/Respondent No. 6 and it was driven by O.P. No. 2/ Respondent No. 7 and the said offending truck was insured with the O.P. No. 3 (appellant) United India Insurance Company Ltd. for the period 01.10.2009 to 30.09.2010. The post-mortem of the deceased was conducted. The police registered F.I.R, vide Islampur P.S. Case No. 163 of 2010 for the said accident and after investigation, charge-sheet filed in the aforesaid case against the driver of the offending truck. Claimant No. 1 (Respondent No. 1) is wife of the deceased whereas Claimant Nos. 2 and 3 (Respondent Nos. 2 & 3) are minor sons of the deceased. Claimant Nos. 4 and 5 (Respondent Nos. 4 & 5) are father and mother of the deceased. They filed a case bearing Claim Case No. 53 of 2011 before the learned Tribunal claiming that the offending vehicle came rashly and negligently from opposite direction and dashed the bus which was driven by the deceased causing death of the deceased during treatment due to multiple injuries caused to him by the said offending truck. It is further claimed that the deceased was aged about 30 years as his date of birth was 15.03.1980 as per the driving license and he was the driver of the bus bearing Registration No. BR-2J-6651 and having monthly income of Rs. 6,000/- per month by which

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he was maintaining the claimants who are his family members. The owner and the driver of the bus or the truck involved in the accident did not appear to contest the claim in spite of the service of notice. The United India Insurance Company Ltd./appellant who is insurer of the offending truck and Oriental Insurance Company Ltd. who is insurer of the bus have filed their separate written statement contesting the claim of the claimants.

6. The United India Insurance Company, insurer of the offending truck, in its written statement refuted and disputed the case and claim of the claimants and contended that since the driver was negligent, the insurer has no liability to pay the compensation rather the liability lies with the owner of the vehicle. It is further stated that the driver of the bus was also negligent and as such it is a case of contributory negligence.

7. The Oriental Insurance Company, the insurer of the bus, in its written statement objected the claim of the claimants on the ground that the police has charge-sheeted against the driver of the truck, accordingly, the responsibility is solely of the driver of the offending truck and the responsibility cannot be fastened against the insurer of the bus.

8. On the basis of pleading and submissions

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advanced on behalf of the parties, the learned Tribunal framed the following issues:-

> *(i) Has Ranjan Kumar died in motor vehicle accident as claimed?*
> *(ii) What should be the just and reasonable compensation and who is liable to pay?*
> *(iii) Is it a case of negligence on the part of driver of both the referred vehicles?*

9. In support of the claim petition, the claimants have examined two witnesses, i.e. PW.-1 Madhu Kumari who is the wife of the deceased and P.W.-2, Ravindra Kumar, is an eye-witness of the occurrence. The claimant also filed documentary evidence in support of their claim petition, i.e. certified copy of the F.I.R. (Ext.-1) of Islampur P.S. Case No. 163 of 2010, Charge-sheet (Ext.-2) in the Islampur P.S. Case No. 163 of 2010 against the driver of the offending truck, post-mortem report (Ext.-3) of the deceased Rajan Kumar, copies of the Insurance policies (Ext.-4). No oral or documentary evidence have been produced by the opposite parties in rebuttal of the claim. After hearing the parties and the material on record, the learned Tribunal held that Rajan Kumar died in a motor accident and this is not a case of contributory negligence rather the accident was caused due to rash and negligent driving of the offending truck and hence, the liability to the compensation amount shall

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be payable by the appellant/ United India Insurance Company who is the insurer of the truck. The Tribunal awarded the aforesaid amount of Rs. 13,21,000/- along with interest as stated aforesaid. The appellant being not satisfied and aggrieved by the said judgment and award filed the present appeal. The claimant also filed cross-objection.

10. Learned counsel for the appellant has submitted that the learned Tribunal erred in law by not considering the point that this is a case of contributory negligence and the liability under Section 140 of Act was fixed on both the vehicles and the said order was not appealled by the Respondent No. 9 also. He has further submitted that as per the F.I.R., the accident had been caused due to head-on collision of both the vehicles and it can only happen on the negligence of both the vehicles.

11. On the point of age of deceased, learned counsel for the appellant submits that the learned Tribunal failed to appreciate that in the post-mortem report of the deceased his age was assessed as 42 years but the learned Tribunal relied on the statement of PW-1 only and assessed his age 30 years. He further submits that the photocopy of the driving license of the deceased is on record but the same has not been exhibited, so

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the learned Tribunal erred in relying upon the said documents. Learned counsel further submits that if the age of the deceased is taken as 42 years as per the post-mortem report, then the future prospects shall be 30 % only. He also submits that the learned Tribunal has applied multiplier 16 instead of 15. He also submits that the cross-objection filed on behalf of the claimants is not maintainable and liable to be rejected.

12. It is further submitted by the learned counsel for the Insurance Company that loss of consortium is to be granted @ Rs. 40,000/- to the wife only. He next submitted that the learned Tribunal erred in directing the penal interest to be paid by the appellant which is not in accordance with law.

13. On the other hand, learned counsel for the claimants has submitted that the learned Tribunal rightly given finding that it is not a case of contributory negligence rather the accident had caused due to rash and negligent driving of the offending truck. He has further submitted that after investigation the police also charge-sheeted the driver of the offending truck which also *prima facie* proves that there was no contributory negligence in the present case. There is no material on record to show that the deceased who was driver of the bus was negligent. Accordingly, he submits that the plea of contributory negligence

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has no merit. He has further submitted that the appellant/ Insurance Company has not challenged the judgment and award in Claim Case No. 20 of 2011 ***(Bittu Kumar and Another Vs. M/s Srishti Developers Pvt. Ltd. and Others)*** arising out of said accident in which the Insurance Company was directed to pay the compensation to the claimants in that case and the appellant/company satisfied the said award and not filed any appeal. Accordingly, the plea of contributory negligence is now not available to the appellant.

14. Learned counsel for the claimants further submits that the claimant's witness PW-1 who is widow of the deceased has categorically stated the age of the deceased as 30 years and the photocopy of the driving license of the deceased is also on record showing the age of the deceased on which the learned Tribunal has rightly assessed the age of the deceased. He has submitted that the learned Tribunal can look into the documents on record even if the same is not exhibited in a view to ascertain the just compensation to the claimants. The enquiry under the M.A.C.T. cases cannot be equated with the regular trial. He conceded that in view of the age of the deceased, the future prospects would be 40% instead of 50% on the assessment of conventional head. He has submitted that the

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claimants also filed Memo of cross-objection for enhancement of compensation with respect to loss of Estate, Funeral expenses and loss of consortium. Learned counsel has further submitted that claimants are entitled for loss of estate and funeral expenses @ 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 direction of Hon'ble Supreme Court in the case of Constitution Bench Judgment in ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. That enhancement is required in every three years and from the date of said judgment, i.e. 31.10.2017 six years has already been completed. He has next submitted that the learned Tribunal wrongly applied multiplier of 16 instead of 17. He has lastly submitted that the learned Tribunal has rightly granted interest which requires no interference by this Court.

15. Learned counsel for Oriental Insurance Company Ltd./ Respondent No. 9 has submitted that learned Tribunal has rightly held that this is not a case of contributory negligence rather the accident was caused due to rash and negligence driving of the offending truck and hence liability to the entire compensation amount goes with the United India Insurance Company Limited who is insurer of the offending

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truck. He also pointed out that the appellant United India Insurance Company Ltd. in the other claim case as stated above has not challenged the finding that appellant is liable to pay entire compensation amount to claimants rather accepted the said findings and made payment to the awarded amount. Hence, Oriental Insurance Co. Ltd. is a formal party being the insurer of the bus of which the deceased was driving. He has further submitted that the order on the petition under Section 140 of the Act is *ad-interim* compensation and the order has been passed at pre-trial stage on the principle of “No fault liability” and the interim compensation is always subject to the final result of the main case.

16. Having heard the learned counsels for the parties and considering the submissions made, it appears that there is no dispute as to the occurrence and the fact that the police after investigation filed the charge-sheet against the driver of the offending truck which was insured by the appellant/ Oriental Insurance Company. Learned Tribunal has categorically given finding that the occurrence took place due to rash and negligent driving of the driver of the offending vehicle and there is no material on record to show that the driver of the bus was also negligent, so, the finding of learned Tribunal

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cannot be interfered by this Court. It is also admitted by the Insurance Company that the judgment in Claim Case No. 20 of 2011 has not been appealed in which it was held that it is not a case of contributory negligence rather the truck dashed the bus.

17. It is well settled that where the driver has been chargesheeted under Section 173 Cr.P.C., it is safe to conclude that *prima facie* the accident occurred on account of his rash and negligent driving. The police during investigation if comes to conclusion that a particular vehicle was involved in the accident and filed a report under Section 173 Cr.P.C. on that basis, it dispels any notion of collusion.

18. The fact that there is no evidence on record which could even *prima facie* point out any negligence on the part of deceased, it cannot be held that there is any contributory negligence on his part.

19. Three-judge Bench of Hon'ble Supreme Court in ***Urmila Devi & Ors. vs. Branch Manager, National Insurance Company Ltd. & Anr.*** reported in ***2020 (1) T.A.C. 718 (SC); AIR 2020 SC 709*** held that cross-objection of the claimant is maintainable. Taking any cross-objection to the decree or order impugned is the exercise of right of appeal, though such right is exercised in the form of taking cross-

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objection. The connection in that if the Insurance Company in the appeal challenged on the ground only restricted to denial of its liability to make the payment of compensation on the ground of breach of terms and conditions of Insurance Policy by the vehicle owner or driver of the vehicle, then also cross-objection at the behest of the claimants in the shape of appeal would also be tenable. It is well settled that if the Insurance Company had challenged the quantum of compensation awarded to the claimant, there is no impediment for the claimant to file cross-objection in an appeal filed by the Insurance Company.

20. It is well settled that "No fault liability" envisaged in Section 140 of the Act is distinguishable from the rule of strict liability. In the former, the compensation amount is fixed and can be deducted from final amount by the Tribunal. It is a statutory liability created by statute. It amounts to an award appealable under Section 173 of the Act. The provision in the Act is benevolent provision for the victims of accidents of negligent driving and hyper technical approach in such matter can hardly be appreciated. There is no dispute regarding the fact that the deceased sustained injuries and succumbed to it in the motor accident. There is no serious dispute regarding the occurrence of accident in question in which deceased lost his

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life.

21. In so far as conventional damage of claimants are concerned, the learned Tribunal has awarded loss of estate @ Rs. 10,000/-, funeral expenses @ Rs. 5,000/- and loss of consortium to wife @ Rs. 10,000/- which is not just compensation and required to be enhanced. The deceased Ranjan Kumar left behind his wife, two minor sons and his parents as his dependents. On the basis of judgments delivered by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***, ***Magma General Insurance Co. Ltd. v. Nanu Ram*** reported in ***(2018) 18 SCC 130***, ***United India Insurance Company Limited v. Satinder Kaur @ Satwinder Kaur & Ors.*** reported in ***(2021) 11 SCC 780*** and ***Rojaline Nayak and Ors. v. Ajit Sahoo and Ors.*** reported in ***2024 SCC OnLine SC 1901***, the following amounts are awarded as 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. 2,42,000/- (Rs. 48,400 x 5)
3.	Funeral expenses	Rs. 15,000/- + Enhance 10% twice	Rs. 18,150/-

22. In the present case, the total number of claimants is five including the parents of deceased (respondent

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nos.4 & 5) who were also dependents upon the deceased. Resultantly, 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 judgment of the Constitution Bench in the case of ***Pranay Sethi*** *(supra)* that where the number of dependent family members is in between 4 and 6, the deduction towards personal and living expenses of deceased should be 1/4th. The deduction of 1/4th from the income of deceased towards personal and living expenses by the learned Tribunal is appropriate and no fault can be found in this regard.

23. It is well settled that when the copy of driving license is on record but the same is not exhibited, it is only a procedural lapse which cannot be the basis to deny the claim of claimants. It also appears that the age of deceased in the driving license on record is stated as 30 years, and the claimant no.1 who is wife of deceased in her deposition also deposed that the deceased was 30 years old at the time of accident, and accordingly the claimants have proved the age of deceased as 30 years which does not require any interference by this Court only on the ground that the age of the deceased was stated as 42 years in post-mortem report. When there is specific claim which

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is proved by the oral or documentary evidence then the estimation of the age of deceased in post-mortem report cannot be preferred. Thus, it is rightly established that the age of the deceased was 30 years at the time of accident and accordingly, the multiplier to be used would be 17 (for 36 to 30 years of age) instead of 16 as per the judgment of Hon'ble Supreme Court in the case of Sarla Verma ***(supra)*** and Pranay Sethi ***(supra)***.

24. As the deceased was aged about 30 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 as in accordance with para 59.4 of Pranay Sethi ***(supra)***.

25. Therefore, the calculation of loss of dependency will be as follows:

Sl. No.	Heads	Calculation	Net Amount
1.	Monthly salary of the Deceased	---	Rs. 6,000/-
2.	Future Prospects	(40% of Rs. 6,000/-)	Rs. 2,400/-
3.	Monthly Income after future prospects	Rs. 6,000 + Rs. 2,400	Rs. 8,400/-
4.	Deduction of personal and living expenses (since number of dependents are five)	¼ of Rs. 8,400/-	Rs. 2,100/-
5.	Total Monthly Income	Rs. 8,400- Rs. 2,100	Rs. 6,300/-
6.	Annual Income	Rs. 6,300 x 12	Rs. 75,600/-
7.	Multiplier (age of the deceased is 30 years)	----	17
8.	Loss of dependency	Rs. 75,600/-x17	Rs. 12,85,200/-

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

S. No.	Heads	Amount
1.	Loss of Dependency	Rs. 12,85,200/-
2.	Loss of Estate	Rs. 18,150/-
3.	Loss of spousal, parental and filial consortium (Rs. 48,400x5)	Rs. 2,42,000/-
4.	Funeral Expenses	Rs. 18,150/-
5.	**Total Compensation**	**Rs. 15,63,500/-**
6.	Less ad-interim compensation received	50,000/-
7.	**Net payable amount**	**Rs. 15,13,500/-**
8.	**Interest** (from the date of filing of petition till its realization)	**9% *per annum***

The appellants/ claimants stand entitled for a total compensation to the tune of Rs. 15,13,500/- (Rs. 15,63,500/- less Rs. 50,000/- already paid under Section 140 of the Act) with simple interest at the rate of 9% *per annum* from the date of filing of the claim case till its realization to be paid by the United India Insurance Company Ltd. The amount, if any, already paid by the United India Insurance Company Ltd. shall be adjusted.

27. The Hon'ble Supreme Court has settled the issue with respect to the penal interest imposed by the Tribunal in the case of ***National Insurance Company Ltd. vs. Keshav Bahadur & Ors.*** reported in ***(2004) 2 SCC 370***. Grant of interest is discretionary according to known rules of law and in the interest of justice and it cannot be arbitrary. The purpose of

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award of interest is to put pressure on the relevant person not to delay in making the payment; and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of interest. Section 171 of the Act confers a discretion on the Tribunal to award interest. The imposition of penalty by enhancement of interest is not statutorily envisaged and prescribed. In ***Keshav Bahadur (supra)*** it has been held that once the discretion has been exercised by the Tribunal to award simple interest on amount of compensation to be awarded at a particular rate and from a particular date there is no scope for retrospective enhancement for default in payment of compensation.

28. The Judgment and award passed by the learned Tribunal stands modified to the aforesaid extent. Accordingly, this appeal and counter-objections are partly allowed and the same are disposed of with the aforesaid modification in the impugned Judgment and Award.

29. There shall be no order as to costs.

30. Pending application(s), if any, stand disposed of.

31. The appellants are directed to deposit the aforesaid compensation amount along with interest, less any

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amount already deposited, before the learned Tribunal, within a period of six weeks from the date of this judgment/order.

32. Let record of the claim case be transmitted back to the concerned Tribunal forthwith.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	03.09.2024
Uploading Date	05.09.2024
Transmission Date	

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