IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.415 of 2014

==

1. Kavita Devi W/o Sri Rambilash Kumar alias Rambilash Paswan.
2. Rambilash Kumar @ Rambilash Paswan Son of Late Baijnath Das.
   Both resident of Village- Bhagat Chouki, P.S. Muffasil, P.O. Nawagarhi, District Munger (Bihar)

... ... Appellant/s

Versus

1. Sri Gunjan Kumar S/o Binay Kumar Singh,
   Resident of Village- Near Murti Makan, P.S. Patliputra, P.O. & District Patna. (Owner of the vehicle).
2. Ranjit Kumar S/o Prabhu Rai,
   Resident of Village Manpura, P.S. Patliputra, District Patna. (Driver of vehicle).
3. The Authorized signatory, Future General India Insurance Company Limited, Resident of 1st Floor, Harihar Chamber, Boring Road, Patna, P.O. and District Patna. (Insurer of the vehicle)

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Raj Kumar Choudhary, Advocate.
For the Res. No.3	:	Mr. Durgesh Kumar Singh, Advocate.
	:	Mr. Abhijeet Kumar Singh, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 02-08-2024

1. Heard Learned counsel for the appellants and learned counsel for the respondent no.3/Insurance Company.

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 District Judge-cum-M.V. Accident Claim Tribunal, Munger (hereinafter referred to as "Learned Tribunal") vide judgment dated 31.03.2014 and award dated 16.04.2014 passed in Claim Case No.53 of 2012 arising out of Muffasil P.S. Case No. 115 of 2012.

3. The learned Tribunal held that claimants are entitled to receive ₹4,78,500/- as compensation and accordingly respondent no.3, Future General Insurance Co. Ltd., has been directed to make payment of the compensation amount as per the order within three months from the date of passing of said order along-with 9% simple interest per annum from the date of filing of the claim case till realization of the compensation amount. Liberty has been 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**
1.	Monthly income of deceased.	Rs.4,500/-	Rs.4,500/-
2.	Deduction (50% of Rs.4,500/-)	Rs.2,250/-	Rs.2,250/-
3.	Rest monthly income of deceased.	Rs.2,250/-	Rs.2,250/-
4.	Annual income of deceased after deduction.	Rs.2,250 x 12	Rs.27,000/-
5.	Multiplier.	17	-
6.	Loss of income.	Rs.27,000 x 17	Rs.4,59,000/-
7.	Less; the amount of personal and living expenses @ 50 %	Rs.4,59,000 – 50 % of Rs.4,59,000/-	Rs.2,29,500/-
8.	Loss of estate.	Rs.2,500/-	Rs.2,500/-
9.	Funeral expenses.	Rs.2,000/-	Rs.2,000/-
10.	Medical expenses.	Rs.15,000/-	Rs.15,000/-

11.	Total compensation amount.		Rs.4,78,000/-
12.	Less paid amount u/s 140 of M.V. Act as ad-interim compensation	Rs.4,78,000- Rs.50,000	Rs.4,28,000/-
13.	**Rest compensation amount.**		**Rs.4,28,000/-**

Interest @ 9 % per annum from the date of filing of the claim case till its realization.

5. The claimants/ appellants being not satisfied and aggrieved by the impugned judgment and award dated 31.03.2014 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 Sunny Kumar aged about 22 years, on 15.06.2012 at about 8.30 p.m. while going to Nawagarhi from his home by bicycle with the informant and reached near High School, Nawagarhi, a Tata Victa bearing Registration No. BR-01-PC-1600 rashly and negligently coming from side of Munger wrongly dashed the deceased and informant. Being seriously injured, local people brought to Sadar Hospital, Munger for treatment where the Doctor of Sadar Hospital, Munger, referred the deceased to Ishwar Dayal Memorial Hospital Pvt. Hanuman Nagar, Patna for better treatment but during the course of treatment the deceased succumbed to death and the Post-mortem was performed by Dr. Anil Kumar at P.M.C.H. Patna. For the said occurrence on 15.06.2012 at about 8:30 p.m. Muffasil P.S. Case No. 115 of 2012 under section 279, 337, 338 & 304A of Indian Penal Code (IPC) was registered.

8. The claimants who are parents of deceased filed claim petition bearing Claim Case No.53 of 2012 before the learned Tribunal for grant of compensation under section 166 of M.V. Act claiming that the deceased was a bachelor aged about 22 years at the time of occurrence and he was earning Rs.8,000/- per month from the business of decoration.

9. The owner (respondent no.1) and driver (respondent no.2) of offending vehicle had appeared in the claim case and filed their written statement and stated that the said vehicle was insured with respondent no.3 during the said period and the driver of the said vehicle had provisional driving license and they have no liability to compensate the claim of claimants and Insurance Company is fully liable to grant compensation to the claimants.

10. The Insurance Company (respondent no.3) appeared in the claim case and filed written statement and admitted that the offending vehicle was insured with them, however, it is stated that the owner and driver of the offending vehicle have violated the terms and conditions of the insurance policy. It is further stated that the deceased had no income and claimants were not dependent upon his income. It was denied that the income of deceased was to the tune of Rs.8,000/- per month.

11. 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 Future General India Insurance Co. Ltd. (respondent no.3) at the relevant period of time and the said Insurance Company is liable to pay the amount of compensation to claimants who are mother and father of the deceased. The deceased was engaged in decoration work and the income of deceased was assessed Rs.4,500/- per month. The learned Tribunal has held that the claimants are entitled for compensation to the tune of Rs.4,78,500/- alongwith simple interest per annum from the date of filing of claim petition till its realization.

12. Despite service of notice upon respondent no.1 (driver of offending vehicle) and respondent no.2 (owner of the offending vehicle), no one appeared on their behalf in this appeal.

13. Learned counsel for the appellants has submitted that the learned Tribunal has determined Rs.4,500/- per month as earning of the deceased instead of Rs.8,000/- per month from decoration business ignoring that there was ample documentary evidence like *sata* of decoration business and also the oral evidence to prove the income of deceased.

14. 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.

15. 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.59.4 of the judgment has submitted that since the deceased aged about 22 years was self employed as a decorator, the addition of 40 % of the established income as future prospects is warranted for computation of compensation, however, the learned Tribunal has not awarded the same.

16. Learned counsel for the appellants further submitted that the learned Tribunal erred in applying multiplier

17 instead of 18 in view of the fact that admittedly the deceased was aged about 22 years at the time of occurrence.

17. Learned counsel for the appellants further submits that the appellants are also entitled to get claim on account of loss of Estate Rs.15,000/-, transportation & medical expenses Rs.60,000/-, funeral expenses Rs.15,000/- and loss of consortium Rs.40,000/-. 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 vs. Delhi Transport Corporation and Anr.** reported in **(2009) 6 SCC 121** 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 filial consortium of Rs.40,000/- to each of the dependents.

18. Learned counsel for the respondent/Insurance Company opposed the contention of learned counsel for the appellants and has submitted that the claimants have failed to prove the income of deceased by adducing reliable evidence and his income assessed by the Learned Tribunal considering the facts and circumstances of the case including the future prospects which requires no interference of this Court. Learned counsel has further submitted that claimants are not entitled to any amount under the head future prospects as the claimants have not established the income of deceased. In view of the age of deceased as 22, the multiplier applicable in this case as 18 has not been disputed by the learned counsel for the Insurance Company in view of the settled position of law in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680**.

19. 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/ Insurer to pay the compensation.

20. The only question that remains to be decided by this Court is on the aspect of the quantum of damages awarded.

21. The deceased was not a salaried person but was engaged in decoration work. The mitigating circumstances are also to be taken into consideration while fixing the notional income. The place of working, nature of job whether skilled or unskilled, age of the person as well as other mitigating factors from part of consideration for the purpose of fixation of notional monthly income for grant of compensation under the Motor Vehicle Act, 1988.

22. Fixation of monthly income of Rs.4,500/- in the present case is appropriate warranting no interference by this Court. It is well settled that assessment of compensation cannot be done with mathematical precision. The Motor Vehicle Act, 1988 also provides for assessment of just and fair compensation. It is not necessary to go into the quantum of compensation under various heads and ultimate order of Tribunal.

23. 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 Sunni Kumar left behind his mother and father as his 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 filial consortium to each dependents (40,000 X 2)	Rs.80,000/-
(iii) Funeral expenses	Rs.15,000/-

(ii). So far as the head of future prospect is concerned, in view of paragraph 59.4 of the Judgment in case of **Pranay Sethi** (*supra*), the deceased who was engaged in decoration work and was aged about 22 years i.e. below the age of 40 year an addition of 40% of the actual salary is warranted.

24. 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.N.	**Head**	**Compensation awarded**
1.	Income	Rs.4,500/- per month
2.	Future prospects	Rs.1,800/- (i.e. 40 % of the income)
3.	Deduction towards personal and living expenses	Rs.3,150/-(i.e. 50% of Rs.4,500+1,800)
4.	Total annual income	Rs.37,800/- (Rs.3,150 x 12)
5.	Multiplier	18
6.	Loss of dependency	Rs.6,80,400/- (37,800 x 18)
7.	Transportation and Medical expenses.	Rs.15,000/-
8.	Funeral expenses.	Rs.15,000/-
9.	Loss of Estate	Rs.15,000/-
10.	Loss of filial Consortium.	Rs.80,000/-
11.	Total compensation	Rs.8,05,400/- (6,80,400+1,25,000)
12.	Less: ad-interim compensation already paid.	Rs.50,000
13.	**Total compensation payable**	**Rs.7,55,400/-** (Rs.8,05,400 – Rs.50,000)

25. The claimants/appellants stand entitled for a total compensation to the tune of Rs.7,55,400/-. The insurance company (respondent nos.3) 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 9 % *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.

26. 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.

27. There shall be no order as to costs.

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

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

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	25/07/2024
Uploading Date	02/08/2024
Transmission Date	NA