IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.254 of 2015

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1. Parwati Devi, W/o Late Sanjay Kumar
2. Parwari Devi, W/o Late Baidnath Sah
3. Kajal Kumari, D/o Late Sanjay Kumar
4. Hema Kumari, D/o Late Sanjay Kumar, Claimant No.3 and 4 are minor under the guardianship of their Mother, All are Resident of Mohalla- Maika Colony, Digha Ghat, P.S. Digha District Patna.

... ... Appellant/s

Versus

1. Regional Manager, Oriental Insurance Co. Ltd.
2. Divisional Manager, D.O. 1st National Insurance Co. Ltd. Arunachal Building, Exhibition Road, Patna
3. Smt. Sharda Sharma, W/o Chandra Bhushan Prasad Sharma, Resident of New Area Bishar Tank, Civil Line, Gaya. Owner of the Bus.
4. Nagendra Singh, S/o Musafir Singh Resident of Mohalla- Dubla P.O.- Chand Chaure P.S. Magadh Medical College District- Gaya, Owner of the Truck.
5. Surendra Kumar, S/o Komal Yadav, Resident of Village- Mastpura, P.S. Bodhgaya, District- Gaya Driver of truck.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr Alok Kumar Shahi, Advocate Mr. Archana Shahi, Advocate
For the Respondent No. 1	:	Mr. Durgesh Kr. Singh, Advocate Mr. Abhijeet Kr. Singh, Advocate
For the Respondent No. 2	:	Mr. Shailendra 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 counsels for the Oriental Insurance Co. Ltd. and National Insurance Co. Ltd.

2. This Misc. Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act

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of 1988") on behalf of claimants for enhancing the compensation amount awarded to the claimants/ appellants by the learned Additional District Judge-VIII-cum-Motor Accident Claim Tribunal, Patna (hereinafter referred to as "learned Tribunal") in Claim Case No. 409 of 2010 vide Judgment and award dated 21.10.2014 and 04.05.2015, respectively.

3. The learned Tribunal held that total compensation amount became Rs. 5,71,500/- after deducting the paid amount of Rs. 50,000/- (ad-interim compensation u/s 140 of the M.V. Act) and since the case is of contributory negligence so the Oriental Insurance Company Ltd. (respondent no.1) & National Insurance Company Ltd. (respondent no. 2) with whom offending bus and offending truck were insured will have to pay half (½) compensation each. Accordingly, it has been directed to respondent no. 1, the Oriental Insurance Company Ltd. and respondent no. 2, National Insurance Company Ltd. to pay compensation amount of Rs. 2,85,750/- each to Parwati Devi claimant no. 1/appellant no. 1 within one month from the date of the said order and further both the insurance companies were given liberty to realise the said amount from the owner of their insured vehicles i.e. offending bus no. BR-2F-8351 and offending truck no. BR-2J-3861 through the process of the court

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as per rule.

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

The monthly income of the deceased	Rs. 4500/-
1/3 deduction	Rs. 1500/-
Rest yearly Income of Rs. 3000 X 12	Rs. 36000/-
Compensation amount of Rs. 36000 X 17	Rs. 6,12,000/-
Funeral cremation and others	Rs. 9,500/-
Total compensation amount	Rs. 6,21,500/-
Less:- U/s. 140 of M.V. Act ad-interim compensation	- (Rs. 50,000/-)
Rest compensation amount	Rs. 5,71,500/-

5. The appellants/claimants being not satisfied and aggrieved by the impugned judgment and award dated 21.10.2014 and 04.05.2015 respectively passed by the learned Tribunal, filed the present appeal for enhancement of compensation amount.

6. It is submitted on behalf of Insurance Companies that Insurance Companies have not challenged the impugned Judgment and award.

7. The case of appellants/claimants, in brief, is that on 26.06.2010, Sanjay Kumar (deceased) was driving the bus bearing registration no. BR-2F-8351 from Patna to Gaya and when he reached near village *Chanaki* under *Dhanarua* P.S., the driver of the truck bearing no. BR-2J-3861 came from opposite

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direction from *Gaya* to Patna rashly and negligently and dashed the said bus due to which the driver of the bus namely Sanjay Kumar and other 19 persons died and 30 persons sustained injuries. The post-*mortem* of the deceased conducted at PMCH, Patna, the FIR bearing *Dhanarua* P.S. Case No. 233 of 2010 dated 26.06.2010 was lodged regarding the said occurrence against drivers of both the vehicles. After investigation, *Dhanarua* P.S. Charge-sheet No. 77/2011 dated 13.03.2011 under Sections 279, 337, 338, 304-A and 427 of the IPC was submitted against Surendra Kumar, driver of offending truck and Sanjay Kumar, driver of the Bus bearing No. BR-2F-8351 was shown as died. In charge-sheet, the accident was said to have taken place due to rash and negligent driving of both the bus and truck.

8. Admittedly, bus bearing no. BR-2F-8351 was insured with Oriental Insurance Company Ltd. and the truck bearing no. BR-2J-3861 was insured with National Insurance Company Ltd. and their insurance were valid on the date of occurrence.

9. Further, case of the claimants/ appellants is that the deceased Sanjay Kumar who was driver of bus no. BR-2F-8351 was earning Rs. 4500/- per month as fixed salary from which

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his family was being maintained and after his death his wife (claimant no. 1), mother, (claimant no. 2) and two minor daughters, (claimant nos. 3 and 4) who were dependent on deceased have no source of income.

10. In *post-mortem* report, age of the deceased Sanjay Kumar has been opined 35 years and the cause of death was opined due to head injury caused by hard and blunt substance.

11. The Oriental Insurance Company Ltd. and the National Insurance Company Ltd. filed their written statement. In the W.S. of the Oriental Insurance Company, it has been stated that claim case is not maintainable and from the perusal of the FIR, it appears that it was head on collision between the bus bearing registration no. BR-2F-8351 and truck bearing registration no. BR-2J-3861 and hence the case is of contributory negligence. It is further stated that the terms and conditions of policy was violated as the insurance policy covers only 33 passengers and driver only and also on the date of accident the bus was having temporary permit to carry reserved from *Bodh Gaya* to Patna and not carrying passenger so there was clear cut violation of permit condition by the insured and Oriental Insurance Company is not liable for any compensation. In written statement of O.P. No. 2, National Insurance Company

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Ltd., it has also been said that the accident taken place due to contributory negligence of offending bus, bearing no. BR-2F-8351 and offending truck no. BR-2J-3861.

12. Despite due notice, the owner of offending bus (respondent no. 3), offending truck (respondent no. 4) and driver of offending truck (respondent no. 5) did not turn up and vide order dated 06.06.2013 ex-*parte* proceeding was drawn against them.

13. It is not in dispute that the deceased aged about 35 years, died leaving behind his widow, mother and two minor children dependent upon him.

14. After hearing the parties, and having gone through the material on record vide the judgment dated 21.10.2014, the learned Tribunal was pleased to held that claimants were entitled for compensation to the tune of Rs. 6,21,500/- out of which Rs. 50,000/- had already been paid to the claimants as ad-interim compensation under Article 140 of te M.V. Act and rest compensation amount of Rs. 5,71,500/- was the rest compensation amount. It was further held that since the case is of contributory negligence, the Oriental Insurance Company Ltd. and National Insurance Company Ltd., will have to pay her ½ (half-half) compensation each as stated above.

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15. 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 the well settled principle on the point of future prospects, deduction of personal and living expenses of deceased, conventional heads of loss of Estate, Funeral Expenses and loss of consortium in computation of compensation amount and also failed to award interest on payable compensation amount.

16. Learned counsel for the appellant relying upon the Judgment of the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Limited 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 was aged about 35 years employed on a established fixed salary, the addition of 40 % of the established salary as future prospects is warranted for computation of compensation. However, the learned Tribunal has not awarded future prospect while computing the compensation and the learned Tribunal ought to have added 40 % on the fixed salary of the deceased.

17. It is further submitted that the learned Tribunal has failed to follow the Judgment of Hon'ble Supreme Court in the

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case of **Sarla Verma vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121** with respect to deduction with respect to personal and living expenses of deceased. Admittedly, the deceased was died leaving behind four dependents legal heirs the deduction as personal and living expenses of deceased ought to have 1/4th from the monthly income of deceased instead of 1/3rd, which requires modification to that extent.

18. 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/-, funeral expenses Rs. 15,000/- spousal consortium Rs. 40,000/- to appellant no. 1, who is widow of deceased, parental consortium at the rate of Rs. 40,000/- to each of the two children (i.e. appellant nos. 3 and 4) and filial consortium at the rate of Rs. 40,000/- to the mother of deceased i.e. appellant no. 2. He has submitted that the Constitution Bench of the 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 has been 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

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Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & 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 and 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.

19. It is also submitted that learned Tribunal failed to give interest on the awarded amount and it ought to be given at the rate of 9 % *per annum.*

20. On the other hand learned counsels for the Insurance Companies i.e. National Insurance Company and Oriental Insurance Company Ltd. opposed the contention of learned counsel for appellants. It is submitted that the age of the deceased at the time of occurrence was 35 years. Accordingly, the multiplier of 16 would be applicable and the learned Tribunal applied the multiplier 17 which requires to be corrected for which the learned counsel for appellants has not disputed.

21. Learned counsel for the National Insurance Company Ltd. has further submitted that the income of the deceased has not been properly proved and the deceased not

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having a permanent job, will not be entitled for any amount under the head of future prospects.

22. Learned counsel for the claimants/appellants has submitted that the claimants have proved the income of the deceased by documentary and oral evidence and the Insurance Company had not rebutted the same by adducing evidence to the contrary.

23. Having heard the learned counsel for the parties and taking into consideration of their submission made, the Court comes to following conclusions:-

(i) The monthly salary of the deceased as per the salary certificate (exhibit-1) was Rs. 4,500/- i.e. Rs. 54,000/- *per annum*.

(ii) As the deceased has died leaving behind his four legal representatives and dependents, hence 1/4th of the aforesaid income would be deducted as personal and living expenses of the deceased, in view of the Judgment in case of **Sarla Verma vs. DTC (2009) 6 SCC 121** (particularly paragraph 30).

(iii). In view of the Judgment in case of **National Insurance Company Ltd. vs. Pranay Sethi (2017) 16 SCC 680** specifically paragraph no. 42 and 59.7 thereof, the age of

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the deceased and not the age of the dependent would be basis of selection of multiplier, the age of deceased being 35 year, the multiplier in the case will be 16.

(iv). In so far as the conventional heads are concerned, the deceased Sanjay Kumar left behind his mother, a widow and two children 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 consortium (a) Spousal consortium (wife) (b) Parental consortium to each of 2 children (40,000 X 2) (c) Filial consortium (mother)	 Rs. 40,000/- Rs. 80,000/- Rs. 40,000/-
(iii) Funeral expenses	Rs. 15,000/-

(v). 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 having fixed salary and was aged about 35 years i.e. below the age of 40 year an addition of 40% of the established salary as warranted.

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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:-

Sl. No.	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. 2,100/-(i.e. 1/3rd of Rs. 45,00+18,00)= Rs. 6300/-)
4.	Total annual income	Rs. 50,400/- (Rs. 42,00 X 12)
5.	Multiplier	16
6.	Loss of dependency	Rs. 8,06,400/- (50,400 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 (c) Filial consortium	Rs. 40,000/- Rs. 80,000/- Rs. 40,000/- Total Rs. 1,60,000/-
10.	Total compensation	Rs. 9,96,400/- (8,06,400+1,90,000)
11.	Ad interim compensation already paid	Rs. 50,000/-
12.	Total	Rs. (9,96,400-50,000) =Rs. 9,46,400/-

25. The claimants/appellants stand entitled for a total compensation to the tune of Rs. 9,96,400/-deducting the sum of Rs. 50,000/- which has already been paid to the claimants, the

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insurance companies (respondent nos. 1 and 2) will pay ½ (half-half) the balance amount 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.

26. Needless to say that if any amount against the award is realized, the interest on that amount shall be calculated from the date of claim petition till the said payment by insurance company.

27. 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.

28. There shall be no order as to costs.

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

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
CAV DATE	25.06.2024
Uploading Date	12.07.2024
Transmission Date	

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