IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1255 of 2016

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1. Hari Shankar Rai, son of Baidhyanath Ray,
2. Smt. Indara Devi, W/o Harishankar Ray,
   Both resident of Village- Bhargawa, P.S.- Sugauli, District- East Champaran.

... ... Appellant/s

Versus

1. Anil Kr. Singh, son of Sri Upendra Pd. Singh, resident of Village- Ardama, P.O.- Kusar, P.S.- Kusaor, District- Darbhanga, at present Bhagwanpur, N.H.-28, P.S.- Muzaffarpur, District- Muzaffarpur.
2. Maya Lal Bhagat, son of Sanjay Bhagat, resident of Mohalla- Koeriyatola Bettiah, P.S.- Nagar Bettiah, District- West Champaran.
3. The New India Assurance Co. Ltd. through its Branch Office, Bishwanath Service Station N.H. 31 Purnea 854302, through the Branch Manager Insurance of Vehicle.
4. The New India Assurance Co. Ltd., Madhuri Market Man Road, Motihari.
5. The New India Assurance Co. Ltd., Poddar Comlex Club, Road Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Rajesh Kumar, Advocate
For the Respondent Nos. 3,4, & 5: Mr. Bimlesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 15-01-2024 Heard learned counsel for the appellants as well as learned counsel for the respondents-New India Assurance Company.

2. This Miscellaneous Appeal has been filed against the judgment and award dated 05.08.2016/09.09.2016 passed in Claim Case No.07 of 2002 by the Additional District Judge 13th cum Claim Tribunal, East Champaran, Motihari, whereby the learned Tribunal has awarded Rs.1,83,000/- under different

heads. The learned Tribunal has deducted 30% of the compensation amount towards contributory negligence.

3. It is pertinent to mention here that the Insurance Company has not filed any appeal against the impugned award.

4. The case of the claimants is that the deceased Shailendra Kumar died in a motor accident on 27.10.1988 due to rash and negligent driving of a bus of Singh Travels bearing registration no. BR 06D 0186 owned by the respondent no.1. The deceased had reached the bus stoppage Chhapwa Chowk for going to Motihari on the alleged date of incident. In the meanwhile, a bus of Singh Travels came from Bettiah and stopped there. When the deceased was boarding the bus, the driver started the bus and drove the same in high speed rashly and negligently due to which the deceased fell down from the bus and came under the wheel of the bus. Later on, he succumbed to the injuries.

5. Learned counsel for the appellants has submitted that the learned Tribunal has not followed the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121*** in which multiplier has been decided as per the age of the deceased. It is submitted that the learned Tribunal has

wrongly multiplied the multiplicand of 13 in place of 18.

6. With respect to multiplier, the Hon'ble Supreme Court in the case of ***Sarla Verma*** (supra) has prepared a chart for fixing the applicable multiplier in accordance with the age of the deceased after considering the judgments in the case of ***General Manager, Kerala State Road Transport Corporation v. Susamma Thomas*** reported in ***1994 (2) SCC 176; UP State Road Transport Corporation vs. Trilok Chandra*** reported in ***1996 (4) SCC 362 and New India Assurance Co. Ltd. vs. Charlie*** reported in ***2005 (10) SCC 720.*** The relevant extract from the said chart i.e., Column 4 has been set out herein below for ready reference:

Age of the Deceased	Multiplier (Column 4)
Up to 15 years	---
15 to 20 years	18
21 to 25 years	18
26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	09

7. It is the admitted case of the parties that the deceased was aged about 22 years at the time of accident and, therefore, in

view of the judgment of ***Sarla Verma***, multiplier of 18 should be applied instead of multiplier of 13.

8. The learned Tribunal has assessed the income of the deceased at Rs.3000/- per month and since the deceased was unmarried, 50% of the earning was deducted towards personal expenses and thus the amount was calculated at Rs.18,000/- per annum. The Court below has further awarded Rs.10,000/- each towards funeral expenses and for love & affection.

9. The Constitution Bench of Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** has dealt with the various heads under which compensation has to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, consortium has been defined in the case of ***Harpreet Kaur & Ors. vs. Mohinder Yadav & Ors.*** *reported in* ***2022 SCC Online SC 1723*** and in the case of ***Rajesh vs. Rajbir Singh, (2013) 9 SCC 54*** which reads as under:-

> *"21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]*

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine

> *claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium."*

10. Having heard counsel for the appellants as well as counsel for the respondents and perusal of the records as also the judgments of the Hon'ble Apex Court, this Court finds that there is no dispute on applying multiplier of '18' in the instant case (age of the deceased 22 years). Further, there is no dispute on providing future prospects and other claims on conventional heads. With regard to living expenses to be calculated as 50% of the income of the deceased, who was unmarried, and that the claimants are entitled for filial consortium at the enhanced amount is concerned, the monthly income of the deceased in the instant case is assessed at Rs.3,000/-.

11. 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 40% of the income of the deceased, who was self-employed, would be entitled to be added while calculating total loss of dependency. Paragraph ‘57’ & ‘59.4’ of the judgment of ***Pranay Sethi*** *(supra)* reads as under:-

> *“57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. ....”*
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> ....
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> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”*

12. So far deduction of living expenses in ***Sarla***

Verma *(supra)*, the Hon'ble Apex Court has observed in paragraphs 30, 31 & 32, which reads as under:-

> *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*
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> *31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not*

be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.
32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

13. Considering the fact that the deceased was unmarried, I am of the opinion that the deduction of 50% of the income on account of personal expenses would be appropriate.

14. With regard to conventional heads, the Hon'ble Apex Court in the case of ***Pranay Sethi*** (*supra*), has held in paragraph '48' which reads as follows:-

"This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule to the Act. The said Schedule has been found to be defective as stated by Court in Trilok Chandra Recently, in Puttamma vs. K.L. Narayana Reddy it has been reiterated by stating: (SCC p. 80, para54)

"54…. we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."

15. In the case of ***Pranay Sethi*** (*supra*), the Hon'ble Apex Court has recognized 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/-. While discussing the meaning of word 'consortium', the Hon'ble Supreme court in the case of ***Pranay Sethi*** (*supra*) though did not approve the principles laid down in ***Rajesh vs. Rajbir Singh (2013) 9 SCC 54,*** but revisited the principles on fixation of conventional heads, after quoting paragraph no. 17 of the judgment of ***Rajesh vs. Rajbir Singh*** (supra), which reads as under:-

"17... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non- pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of

the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

16. In the case of ***Janabai WD/O Dinkarrao Ghorpade & Ors. vs. ICICI Lombard Insurance Company Ltd.*** reported in ***2022 (10) SCC 512,*** the Hon'ble Apex Court has awarded Rs. 40,000/- each on account of the spousal and parental consortium. In the present case, the appellants, who are the parents of the deceased, would be entitled for Rs. 40,000/- each on account of filial consortium. They would also be entitled for the claim on account of funeral expenses at Rs. 15,000/- and Estate loss at Rs. 15,000/-.

17. Learned counsel for the appellants has not challenged the deduction on account of contributory negligence

by the learned Tribunal.

18. In the facts and circumstances of the case, I am of the view that the claimants are entitled for the following amounts under different heads:

NAME	**Shailendra Kumar**
AGE	22 Years
MONTHLY INCOME	Rs.3,000/-
ANNUAL INCOME(3000X12)	Rs.36,000/-
ADDITION TO INCOME TO FUTURE PROSPECT(@ 40% DECEASED BEING LESS THAN 40 YEARS)	Rs.50,400/- (Rs.36,000/- + 40% of Rs.36,000/- =14,400/-)
DEDUCTION TOWARDS PERSONAL & LIVING EXPENSES(50%)	Rs.25,200/- (Rs.50400—Rs.25200/-)
MULTIPLIER BASED ON AGE OF 22 YEARS	18
AMOUNT OF COMPENSATION	Rs.4,53,600/- (Rs.25200/-X18)
DEDUCTION TOWARDS CONTRIBUTORY NEGLIGENCE @30% AS DEDUCTED BY LEARNED TRIBUNAL	Rs.3,17,520/- (30% of Rs.4,53,600/-) Rs.4,53,600—1,36,080/-
LOSS OF ESTATE	Rs.15,000/-
LOSS OF FILIAL CONSORTIUM (MOTHER & FATHER) RS.40,000/- EACH	Rs. 80,000/-
FUNERAL EXPENSES	Rs.15,000/-
TOTAL AMOUNT OF COMPENSATION	Rs.4,27,520/-

19. Thus, the amount of compensation is enhanced from Rs.1,83,000/- to Rs.4,27,520/-. The amount of interim award i.e., Rs.50,000/- as paid by the Insurance Company shall be deducted from the aforesaid awarded amount.

20. The Insurance Company shall pay the difference amount within a period of three months from the date of receipt / production of a copy of this order which shall carry the rate of

interest as awarded by the learned Tribunal.

21. Accordingly, the judgment and award dated 05.08.2016/09.09.2016 passed in Claim Case No.07 of 2002 by the Additional District Judge 13^{th} cum Claim Tribunal, East Champaran, Motihari, is hereby modified to the extent indicated above.

22. This Miscellaneous Appeal is, accordingly, allowed.

(Khatim Reza, J)

J. Alam/-

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