IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.118 of 2018

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Reliance General Insurance Co. Ltd. Through Its Manager, Himalaya House, 8th Floor 38 B, Jawahar Lal Nehru Road, Kolkata – 700001.

... ... Appellant/s

Versus

1. Swata Devi @ Sweta Devi W/o Late Indrajeet Singh
2. Bibha Devi W/o Late Harendra Prasad Singh Both residents of Village - Yamunapur, P.O. - Alawalpur, P.S. - Gaurichak, District - Patna.
3. Sunil Kumar Mahto S/o Munilal Mahto Resident of Village - Alamganj, P.S. - Bari Bazar, District - Vardhman, West Bengal.
4. Arvind Sharma S/o Late Shiv Nandan Sharma Resident of Bhangekuthi, G.T. Road Near Meen Bhawan, District - Vardhman, West Bengal.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi. Advocate.

For the Respondent/s : Mr. Rabindra Prasad Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 24-10-2024

1. Heard the learned counsel for the appellant as well as the learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act") on behalf of the appellants/Insurance Company against the judgment/award dated 20.09.2017 passed by the learned Additional District & Sessions Judge VII-cum-M.A.C.T., Patna (hereinafter referred to as “Learned Tribunal”) in Claim Case No.176 of 2010.

3. The learned Tribunal allowed the claim application and held that applicants are entitled to receive Rs.26,51,720/- as compensation and accordingly Reliance General Insurance Co. Ltd. (hereinafter referred to as “Insurance Company”) has been directed to make payment of the compensation amount to the applicants within three months from the date of passing of aforesaid order along with 6% simple interest *per annum* from the date of filing of the claim case till realization of the compensation amount after adjusting the amount, if already paid to the applicants as interim compensation under Section 140 of the Act. It is also held that after making the payment of compensation amount the Insurance Company can take appropriate steps for recovery of the same from the relevant party in accordance with law.

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

S.No.	Particular	Calculation	Net Amount
1.	Monthly Salary		Rs.12,788/-
2.	Addition of 50% of monthly income.	Rs.12,788/- +Rs.6,394/-	Rs.19,182/-
3.	Annual Income	Rs.19,182/- x 12	Rs. 2,20,184/-
4.	1/3rd deduction towards personal and living expenses	1/3 x Rs.2,20,184/-	Rs.1,46,790/-
5.	Multiplier	18	
6.	Loss of dependency	Rs.1,46,790/- x 18	Rs.26,42,220/-
7.	Funeral expenses		Rs. 2,000/-
8.	Loss of Estate		Rs. 2,500/-
9.	Loss of consortium		Rs. 5,000/-
10.	**Total Compensation**		**Rs. 26,51,720/-**

5. From perusal of the calculation of compensation amount given by the learned Tribunal it appears that Income after addition towards future prospects would amounts to Rs.19,182/- and after multiplying by 12, annual income amounts to Rs.2,30,184/- while learned Tribunal has wrongly calculated the annual income of deceased to be Rs.2,20,184/.

6. The appellant/Insurance Company being not satisfied and aggrieved by the impugned order dated 20.09.2017 filed the present Memo of appeal for setting aside the impugned judgment/award passed by the learned Tribunal.

7. The brief facts of this case is that the deceased

Indrajeet Singh on 01.01.2010 while he was going from Patna to Raghopur by Sumo bearing its Registration No. BRP-0189, the driver of sumo stopped his vehicle on the road side for natural call. A truck bearing Registration No. WB-41D-0523, driving rashly and negligently by its driver from Bakhtiyarpur side dashed the deceased's sumo parked left side due to which he sustained serious head and chest injuries where he succumbed the injuries and died on spot. The post-mortem was done by Dr. Vinay Kumar Chaudhary at Barh. A case was registered *vide Bakhtiyarpur* P.S. Case No. 1 of 2010 under Sections 279 & 304-A of the Indian Penal Code (I.P.C.) against the driver of the offending truck. The Police after investigation of the case submitted charge-sheet in the court under Sections 279 & 304-A of I.P.C. against the driver of offending truck.

8. Applicant No. 1 (Wife) and applicant No. 2 (mother) have filed claim petition bearing MACT case No. 176 of 2010 before Motor Accident Claim Tribunal, Patna claiming that the offending vehicle was driven rashly and negligently by the driver of offending vehicle dashed the sumo due to which the deceased succumbed to the injury and died. O.P. No. 1/Respondent no.3 is driver of offending Truck, O.P. No. 2/Respondent no.4. is owner of offending Truck and appellant/O.P. No.3 is insurer of the said offending truck.

9. It is claimed that the deceased at the time of occurrence was aged about 26 years, employee of Government of Bihar, as a constable, posted in the office of S.S.P., Patna and his monthly salary was Rs.12,788/- which he made expenses on his family.

10. No one appeared on behalf of O.P. Nos.1 and 2(driver and owner of the offending truck), who were proceeded *ex-parte.*

11. In the written statement filed on behalf of the Insurance Company it is stated that in the present case two vehicles were involved i.e. Truck No. WB-41D-0523 and Sumo Jeep No. BRP-0189 and the accident occurred due to contributory negligence on the part of both the drivers and owners. The claimants have not made owner-cum-driver of Sumo Jeep namely Raju Kumar as party and accordingly the claim case is not maintainable on the ground of non-joinder of necessary party. The claimants may be put to strict proof with documentary evidence with respect to age, income and occupation of deceased. The claimants may also be put to strict proof that driver of the offending Truck was holding a valid and effective licence and the registered owner (O.P. No.2) of offending Truck had used the same without any breach of permit and traffic rules. It is further stated that the claim is exorbitant and exaggerated.

12. On the basis of pleading and submissions advanced on behalf of the parties, the learned Tribunal framed the following issues:

> ***i)*** *Whether the said claim are filed by applicants is maintainable?*
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> ***ii)*** *Whether the applicants are legal representative of the deceased?*
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> ***iii)*** *Whether the deceased was Govt. employee as a constable in Patna?*
>
> ***iv)*** *Whether the deceased died in Motor accident?*
>
> ***v)*** *Whether the said Truck No. WB-41D-0523 rashly and negligently driven by the driver?*
>
> ***vi)*** *Whether the said Truck No. WB-41D-0523 insured at the time of accident?*
>
> ***vii)*** *Whether the said Truck driver have a valid driving licence at the time of accident?*
>
> ***viii)*** *Whether the applicants are entitle for claimed amount?*
>
> ***ix)*** *Whether the applicants are entitled for interest and other reliefs?*

13. In support of the claim petition, applicants have examined total five witnesses *viz.,* AW-1 Vibha Devi, AW-2 Brajesh Kumar, AW-3 Amit Kumar Singh, AW-4 Shweta Devi, and AW-5 Shyad Md. Ajaj. The following documentary evidence has been produced in support of its claim petition i.e., Service Book of the Deceased (Ext.1), Signature of Deputy S.P. on pay Statement of the deceased (Ext.2), Certified copy of FIR (Ext.3), Certified copy of charge sheet (Ext.4), Photocopy of registration certificate of offending vehicle (Ext.5), Photo Copy of Insurance Policy (Ext.6), Photo Copy of postmortem report (Ext.7), photocopy of death certificate (Ext.8).

14. On the other hand, Insurance Company examined one witness OPW-1, Sachin Kumar who proved the investigation report which is marked as Ext.-A.

15. 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 Insurance Company at the relevant period of time and the said Insurance Company is liable to pay the amount of compensation to claimants who are wife and mother of the deceased. The learned Tribunal has held that the claimants are entitled for compensation to the tune of Rs.26,51,720/- along with simple interest as stated above.

16. Learned counsel for the appellants/Insurance Company has submitted that the learned Tribunal passed the impugned judgment/award which are against the settled principles for grant of compensation and had not appreciated the evidence and documents on record in right prospective. He has further submitted that as per FIR (Ext. 3), deceased himself was driving the vehicle at the time of accident which amounts to contributory negligence of 50% on the part of deceased. He has submitted that the I.O. without proper investigation and to help the deceased who was a constable filed incorrect charge-sheet which cannot be relied upon. Moreover, it is submitted that the learned Tribunal had considered gross salary of Rs.12,788/- and failed to deduct income tax from the salary. Furthermore, appropriate multiplier would be 17 instead of 18 and award is required to be modified accordingly.

17. On the other hand, learned counsel appearing for the respondents/applicants has submitted that the applicants have duly proved their case by examining witnesses as well as the documentary evidence got exhibited on their behalf in support of their claim. Learned counsel has further submitted that the learned Tribunal has rightly awarded the claim which requires no interference by this Court. It is further submitted that the learned Tribunal has rightly held that the claimants have succeeded in proving their case that deceased met with an accident at the relevant date and time, succumbed to injuries and claimants are entitled for compensation. However, learned counsel has admitted that in view of the settled law, the appropriate multiplier in that case would be 17.

18. Having heard the learned counsel for the parties and considering the rival submissions made, it appears that there is no dispute as to the occurrence of accident in question in which the deceased lost his life and liability of the Insurance Company to pay the compensation amount to the claimants. The question raised in this appeal before this Court is *“whether there was contributory negligence on the part of deceased and whether the learned Tribunal awarded the just* *compensation?"*

19. It is proved that the deceased lost his life due to rash and negligent driving of the offending Truck which was insured with the Insurance Company at the relevant time of occurrence. The F.I.R. has been lodged against the driver of the offending Truck and on completion of investigation the charge-sheet has also been filed against the driver of the offending Truck which was also proved by the claimant's witnesses. It is to be noted that AW-2 and AW-3 claimed eye-witnesses of the occurrence and they deposed that they were coming on motor-cycle and had seen the occurrence that the truck driver rashly and negligently driving the truck hit the Sumo vehicle which was parked and the deceased was sitting in it. The factum of an accident could also be proved from the FIR. The proof of rashness and negligence on the part of driver of the vehicle is *sine qua non* for maintaining an application under Section 166 of the Act. It is well settled that if any evidence before learned Tribunal runs contrary to the contents of the FIR, the evidence which is recorded before the learned Tribunal has to be given weightage over the contents of the FIR. Where the driver has been charge sheeted under

Section 173 of Cr.P.C., it is safe to conclude that *prima facie* the accident occurred on his rash and negligent driving. There is no contrary evidence on record. The question of any contributory negligence by any other vehicle or person does not arise in this case and the argument of contributory negligence is not tenable in the facts and circumstances of the case.

20. The term compensation is a comprehensive term which includes a claim for the damages. The claimant in a claim for award of compensation under Section 166 of the Act, is entitled for 'just' compensation which has to be equitable and fair. The loss of life and limb can never be compensated in an equal measure but the Act is a social piece of legislation with object to facilitate the claimants to get redress the loss of the member of family, compensate the loss in some measure and compensate the claimants to a reasonable extent. However, the determination of compensation is not exact since perfect compensation is hardly possible. The element of fairness in amount of compensation so determined is the ultimate guiding factor. The learned Tribunals have to assess the damage objectively with reasonableness.

21. In the present case the claimants in order to prove the income of the deceased for the purpose of calculation of compensation award produced salary slip for the month of December, 2009. It appears that the gross salary of the deceased was Rs.12,788/- and the learned Tribunal has rightly calculated compensation taking the same as monthly income which requires no interference. Thus, the annual income of the deceased would be Rs.1,53,456/-. Taking Judicial notice of the Income Tax slab as per Financial Year 2011-12 (Assessment year 2012-13) the salary of the deceased falls under income slab up to Rs.1,80,000/- tax rate would be nill. Therefore, in this case no deduction towards income tax is required in this case.

22. Insofar as the conventional heads are concerned, the learned tribunal has awarded only Rs.2,000/- for funeral expenses, for loss of consortium at Rs.5,000/- and for loss of estate at Rs.2,500/- which is not in accordance with the settled principle by the Hon'ble Supreme Court in various judgments which is also admitted by the learned counsel for the parties and is accordingly required to be modified.

23. The three-judge Bench of the Hon'ble Supreme Court in **United India Insurance Company Ltd. Ors. v. Satinder Kaur @ Satwinder Kaur & Ors.** reported in **(2021) 11 SCC 780**, approved comprehensive definition given to the expression 'consortium' and laid down that consortium is not only limited to spousal consortium but it also includes parental as well as filial consortium.

24. In view of the settled principles of law as held by the Hon'ble Supreme Court in the cases of Pranay Sethi (*supra*), **Magma General Insurance Co. Ltd. v. Nanu Ram** reported in **(2018) 18 SCC 130,** Satinder Kaur (***supra***), and **Rojaline Nayak & Ors v. Ajit Sahoo & Ors** reported in **2024 SCC OnLine SC 1901** which are binding on this Court, the following amounts are awarded as compensation under the conventional heads:

S.No.	Heads	Calculation	Compensation Amount
1.	Loss of Estate	15,000 + enhance 10% twice	Rs.18,150/-
2.	Loss of consortium (48,400 x 2)	40,000 + enhance 10% twice	Rs.96,800/-
3.	Funeral expenses	15,000 + enhance 10% twice	Rs.18,150/-
4.	**Total**	-----	**Rs.1,33,100/-**

25. Thus the total amount of compensation payable will be as follows:-

S.No	Heads	Compensation Awarded
1.	Annual income	Rs.1,53,456/- (Rs.12,788 x12)
2.	Addition of 50 % towards future prospects	Rs.2,30,184/- (Rs.1,53,456/- + Rs.76,728/-)
3.	1/3rd deduction towards personal and living expenses	Rs.76,728/-
4.	Annual income after deduction	Rs.1,53,456/- (Rs.2,30,184 – Rs.76,728)
5.	Multiplier	17
6.	Loss of dependency	Rs.26,08,752/- (Rs.1,53,456/- x 17)
7.	Loss of Estate	Rs.18,150/-
8.	Loss of consortium	Rs.96,800/-
9.	Funeral expenses	Rs.18,150/-
10.	**Total Compensation**	**Rs.27,41,852/-** (Rs.26,08,752 +Rs.1,33,100/-)

26. The claimants/appellants stand entitled to a total compensation to the tune of Rs.27,41,852/-. The insurance company shall 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 dues amount shall be deposited within two months from today and to be paid to the appellants according to law.

27. The impugned judgment/award dated 20.09.2017 passed in Claim Case No.176 of 2010 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 application(s), if any, shall stand disposed of.

30. Let the Trial Court's Record of this case be returned back forthwith to the concerned Court/ Tribunal.

31. The statutory amount deposited by appellant/Insurance Company at the time of preferring the appeal shall be remitted to the learned Tribunal within a period of six weeks from today for adjustment of award to be indemnified by the Insurance Company to the claimants.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	08.10.2024
Uploading Date	25.10.2024
Transmission Date	NA