

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.884 of 2017

1. Chairman (Now Administrator), Bihar State Road Transport Corporation, Parivahan Bhawan, Bir Chandra Patel Marg, Patna.
2. Depot Superintendent, Bihar State Road Transport Corporation, Darbhanga.

... .. Appellant/s

Versus

1. Vidyut Kumari W/o Late Bhim Shankar Jha.
2. Shreya Kumari D/o Late Bhim Shankar Jha.
3. Siddhi Kumari D/o Late Bhim Shankar Jha
4. Shreyas Kumar S/o Late Bhim Shankar Jha, all minor are represented through mother and natural guardian Vidyut Kumari (Respondent No.1) and all are resident of Village- Nirmali, P.S. Nirmali, District- Supaul
5. Aparajeeta Devi W/o Shyam Sundar Jha.
6. Shyam Sundar Jha, S/o Late Jibach Jha, both resident of Village – Nirmali, P.S. Nirmali, District- Supaul.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dr. Anand Kumar, Advocate.
	:	Mr. Rajan Prakash, Advocate.
For the Respondent/s	:	Mr. Nawnit Kumar Tiwary, Advocate.
	:	Mr. Ranjan Kumar Dubey, Advocate.
	:	Mr. Kumar Gaurav, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 28-08-2024

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

2. This Miscellaneous Appeal has been filed under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of the appellants against the Judgment/order dated 07.10.2015 passed by learned Additional District Judge-II-cum-Motor Accident Claims Tribunal, Supaul



(hereinafter referred to as “Learned Tribunal”) in Claim Case No.31 of 2012.

3. The learned Tribunal held that claimants (respondent nos. 1 to 4) are entitled to receive Rs.34,82,500/- as compensation and accordingly Chairman & Depot Superintendent, Bihar State Road Transport Corporation, Darbhanga (appellant nos. 1 & 2 respectively) have been directed to make payment of the compensation amount as per the order within two months from the date of order along with 6% simple interest *per annum* from the date of filing of the claim case i.e. 27.07.2012 till realization of the compensation amount.

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

S.N.	Head	Calculation	Compensation (Rs.)
1.	Net annual income of deceased (As per Income Tax Return)	----	Rs.2,89,376/-
2.	Deduction towards personal and living expenses @ 1/4.	1/4 th of Rs.2,89,376	Rs.72,344/-
3.	Total Annual Income	----	Rs. 2,17,032/-
4.	Multiplier (Age of the deceased being 40 years)	16	----
5.	Loss of dependency	Rs.2,17,032 x 16	Rs.34,72,512/-
6.	Loss of estate.	----	Rs.5,000/-
7.	Funeral expenses.	----	Rs.5,000/-
8.	Compensation Amount		Rs.34,82,512/-

5. The brief facts of this case are that Binay Kumar



Jha and Bhimshankar Jha both were going to participate in marriage ceremony and reached at Kadirabad Darbhanga Bus Stand on 19.04.2012 at about 07:30 A.M. and they were standing to board on a bus to Patna, in the meantime, the offending bus bearing Registration No. BR-07P-0597 was being driven rashly and negligently by its driver who dashed Bhimshankar Jha causing grievous injuries to him. Thereafter he was brought at the private clinic of Dr. Shabbir Ahmad where he succumbed to injuries and died. The *post-mortem* of the deceased was conducted by the Doctor of D.M.C.H., Darbhanga. The Police registered a criminal case vide L.N.M. Vishwavidyalaya (Darbhanga) P.S. Case No. 81 of 2012 against O.P. No. 3, driver of offending vehicle, under Sections 279 & 304-A of the Indian Penal Code (I.P.C). The driver of offending vehicle was caught on spot by people present there and handed over to police. After completion of investigation, I.O. of the case submitted Chargesheet No.140 of 2012 under Sections 279 & 304-A of I.P.C. against the driver of offending vehicle.

6. Claimant no.1 (wife) and claimant nos. 2 to 4 (minor children of deceased) through their mother i.e. claimant no.1, have filed claim petition bearing MACT Case No.31 of 2012 before the Motor Accident Claims Tribunal, Supaul



claiming that the offending vehicle was driven rashly and negligently by the driver of offending vehicle which was crossing from government bus depot and dashed the deceased causing grievous injury to him. The deceased was brought to the private clinic where he succumbed to the injuries and died. O.P. Nos.1 & 2 are Chairman and Depot Superintendent of Bihar State Transport Corporation respectively, being owner of the offending vehicle who are appellants herein. O.P. No.3 is the driver of offending vehicle. O.P. Nos.4 & 5 (respondent nos.5 & 6 herein) are father and mother of the deceased who have not joined as claimants.

7. It is further claimed that the deceased had a good sound health who was aged about 40 years, working as an L.I.C. agent and he had earning of Rs.5,70,878/- *per annum* by which he was maintaining his family. The deceased was an income tax payee. The claimants claimed Rs.68,80,528/- as loss of dependency, loss of love and affection, loss of consortium and funeral expenses along with 12 % interest.

8. In the written statement filed on behalf of appellants/ opposite party nos.1 & 2, it is claimed that the claim petition is not maintainable. It is admitted that appellants are owner of the offending vehicle but denied that people had



caught the driver of vehicle and handed over to police. It is stated that the vehicle in question was examined by Motor Vehicle Inspector who found everything O.K. The onus lies upon claimants to prove the claim.

9. O.P. Nos. 4 & 5 have appeared but not contested. The O.P. No. 3, who was driver of the offending vehicle not appeared in the case and he was proceeded *ex-parte* vide order dated 16.11.2013. The application on behalf of O.P. Nos. 1 & 2 under Section 170 of the Act to contest the claim as available to O.P. No. 3 (driver) was allowed vide order dated 08.06.2015.

10. It appears from the Tribunal Record that the interim award of Rs.50,000/- under Section 140 of the Act was allowed vide order dated 03.01.2015, which was paid to the claimant no.1.

11. On the basis of pleading and submissions advanced on behalf of the parties, the learned Tribunal on 04.02.2015 framed the following issues:-

- I. Whether the claim petition is maintainable?*
- II. Whether Bhimshankar Jha died in a Motor Vehicle accident caused due to rash and negligent driving of the driver of the said offending bus bearing Reg. No.BR07P-0597?*
- III. Whether the deceased Bhimshankar Jha was a earning member?*
- IV. Whether the claimants are entitled to get compensation and if so to what amount and from whom?*



V. Whether the claimants are entitled to get any other reliefs.

12. The law is now well settled that the proceeding in a claim petition for compensation before the Tribunal is neither suit nor an adversial *lis* and claimant is not required to prove his case as required in the criminal trial.

13. In support of the claim petition, claimants have examined three witnesses. The claimants have filed documentary evidence in support of their claim petition i.e. Chargesheet of Darbhanga University P.S. Case No.81 of 2012 (Ext-1), F.I.R. of Darbhanga University P.S. Case No.81 of 2012 (Ext-2), *post-mortem* report of deceased Bhimashankar Jha (Ext-3), owner book (Ext-4), M.V.I. report (Ext-5), Income Tax Return (Ext-6).

14. No oral or documentary evidence have been produced by the appellants/opposite parties in rebuttal of the claim.

15. After hearing the parties and the materials on record, the learned Tribunal held that the death of deceased was caused due to rash and negligent driving by the driver of the offending vehicle and awarded the aforesaid amount of Rs.34,82,512/- along with the simple interest @ 6% *per annum* from the date of filing of the claim case i.e. on 27.07.2012 till its



realization to be paid by the appellant, Bihar State Road Transport Corporation, Darbhanga.

16. The appellants being not satisfied and aggrieved by the impugned judgment and award, filed the present appeal for setting aside the judgment/order dated 07.10.2015 passed by the learned Tribunal.

17. It is submitted on behalf of claimants that they have not preferred a cross-objection against the quantum of compensation fixed by the learned Tribunal that is for enhancement of compensation. However, he has submitted that in view of the settled law this Court under the appellate jurisdiction and to arrive just compensation may enhance and modify the amount of compensation with respect to conventional head under which the learned Tribunal has awarded scant amount which is required to be enhanced with the fixed amount in view of the decisions of Hon'ble Supreme Court.

18. Learned counsel for the appellants submitted that the learned Tribunal erred while passing the impugned Judgment as the learned Tribunal ignored the factor of contributory negligence on the part of deceased. He has further submitted that the incident was occurred at the bus stand having



large public and no independent witness was examined. The learned Tribunal has not considered the M.V.I. report and the *post-mortem* report. Moreover, no verification of income tax return of the deceased has been made but the learned Tribunal relied on the Income Tax Return for calculation of compensation amount.

19. Learned counsel has further submitted that the learned Tribunal had wrongly calculated the award which requires to be modified. The learned Tribunal has failed to appreciate that there is no evidence on record to show that the bus in question was being driven at high speed, rashly and negligently as in the bus stand no bus can be driven in rash and negligent way and also where the buses were standing in idle condition for departure/arrival. It is further submitted that the Police has also wrongly given their finding and submitted chargesheet against the driver of the vehicle that the bus in question was driven rashly and negligently. It is next submitted that the age of the deceased has been mentioned in the Award is 40 years, thus, the multiplier will be 15. However, the learned Tribunal has assessed the income of deceased with the multiplier of 16 which also requires modification. It is next submitted that the deceased was not a government employee,



rather he was an LIC Agent and he was getting commission against his income which was not in the nature of permanent income which cannot be the basis of calculation of the compensation amount.

20. On the other hand, learned counsel for the respondents has submitted that the driver of the offending vehicle was driving rashly and negligently and after investigation the I.O. has filed chargesheet against the driver of the offending vehicle which is on record. The claimants have duly proved their claim by oral and documentary evidence. Learned counsel for the respondents has further submitted that the learned Tribunal has rightly calculated the compensation amount on the basis of ITR of the deceased which reflects the income from LIC commission and from other business. The impugned Judgment/order has rightly been passed by the learned Tribunal on the basis of material on record, which requires no interference by this court. On the point of appropriate multiplier it is not disputed that 15 is appropriate multiplier for the calculation of the compensation.

21. The argument on behalf of appellants that the police after investigation has given wrong report has no merit, since pursuant to lodging of F.I.R. (Ext-2), a report under



Section 173 Cr.P.C. (Ext-1) was filed against the driver of the offending vehicle who was facing criminal prosecution. Law in this regard is well settled, 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. Besides, damage not caused to the offending vehicle in such type of accident, is no ground to allege that it is a case of false involvement of a vehicle for the purpose of filing claim petition. No other evidence has come on record which could, in any way, even *prima facie* indicate that there has been any collusion between the claimants and driver of the offending vehicle. 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.

22. 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.

23. In the present case, the number of claimants is four and parents of the deceased (respondent nos.5 & 6) are also dependent on 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 **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.** reported in (2017) 16 SCC 680 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 $\frac{1}{4}^{\text{th}}$. The deduction of $\frac{1}{4}^{\text{th}}$ 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.

24. The claimants have filed the Income Tax Return of the deceased for the assessment year 2011-2012 with the Income Tax department on 30.03.2012 which was before the date of incident. It reflects that the deceased's annual income was Rs.2,81,500/- out of which the Income Tax payable was Rs.3,136/- and thus Annual net income of the deceased was Rs.2,78,364/-. The Hon'ble Supreme Court in **Malarvizhi & Ors. Vs. United India Insurance Co. Ltd. & Ars.** reported in (2020) 4 SCC 228 held that the determination of income must proceed on the basis of the Income Tax Return, where available. The Income Tax Return is a statutory document on which reliance may be placed to determine the annual income of the



deceased. In view of the aforesaid facts and settled principle of law, this Court is of the opinion that computation of deceased's annual income by the learned Tribunal on the basis of deceased's Income Tax Return for the assessment year 2011-2012 is appropriate. However, the learned tribunal has taken net annual income of deceased as Rs.2,89,376/- which is required to be modified with Rs.2,78,364/-. After deducting one fourth towards personal expenses the net amount comes to Rs.2,78,364/- [Rs.2,78,364- Rs.69,591(1/4th of Rs.2,78,364)]

25. There is no dispute that the age of the deceased was 40 years at the time of accident and accordingly, the multiplier to be used would be 15 (for 36 to 40 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*). Accordingly, the multiplier applied in the award requires to be modified from 16 to 15.

26. Applying the multiplier of 15, the total loss of dependency on account of the Deceased income is calculated at Rs.31,31,595/- (Rs.2,08,773 x 15).

27. In so far as conventional damages, the claimants are concerned, the learned tribunal has awarded only loss of estate at Rs.5,000/- and Funeral expenses of Rs.5,000/-



which is not just compensation and required to be enhanced.

28. The Law is well settled that claimant is entitled for just compensation and this court in the exercise of the appellate powers can enhance the amount of compensation even in the absence of appeal or cross-examination.

29. It is a settled proposition that compensation under the Motor Vehicle Act must be fair, reasonable and equitable. There is concept of 'just compensation' under the Section 168 of the Act. Compensation is a more comprehensive form of pecuniary relief which involves a broad based approach unlike damages. The Tribunals under the Act have been granted reasonable flexibility in determining 'just compensation' and are not bound by any rigid arithmetic rules or strict evidentiary standards to compute loss unlike in the case of damages which is chiefly concerned with making up for the past and reinstating a claimant to his original position whereas the compensation under the Act is concerned with providing stability and continuity in peoples' live in the future.

30. Order XLI, CPC is the normal rule which applies to appeal before the High Court. Order XLI, Rule 33 CPC, empowers the appellate court to make whatever order it thinks fit. It is an enabling provision and the power is very wide.



In **Pannalal Vs. State of Bombay & Ors.** reported in **AIR 1963 SC 1516**, it was observed that Order XLI, Rule 33 empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal, but also to give such other relief to any of the respondents as “ the case may be required”.

31. In Chaya & Ors. Vs. Bapusaheb & Ors. reported in **1994 (2) SCC 41** of the Hon'ble Supreme Court held that order XLI, Rule 31, CPC is based on a statutory principle that the appellate Court should have the power to do complete justice between the parties. The rule confers a wide discretionary power on the appellate Court to pass such decree or order as ought to have been passed or as the case may require, notwithstanding the fact that Appeal is only with regard to a part of the decree or that the party in whose favor the power is proposed to be exercised has not filed any appeal or cross-objection.

32. The claimants/ respondent nos.1 to 4 are the wife and three minor children of deceased and for them Rs.40,000/- each would be appropriate as spousal and parental consortium respectively in view of the decision in the case of **Satinder Kaur @ Satwinder Kaur Vs. United India**



Insurance Co. Ltd. reported in **AIR 2020 SC 3076** and **Magma General Insurance Company Vs. Nanu Ram @ Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130**. For funeral expenses and loss of Estate Rs.15,000/- each would be appropriate.

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

S.No.	Heads	Amount
1.	Loss of Dependency	Rs.31,31,595
2.	Loss of Estate	Rs.15,000
3.	Loss of Expenses	Rs.15,000
4.	Loss of Consortium	Rs.1,60,000
5.	Total Compensation	Rs.33,21,595

The claimants stand entitle for a total compensation to the tune of Rs.33,21,595/- with simple interest at the rate of 6% *per annum* form the date of filing of the claim case i.e. 27.07.2012 till its realization to be paid by the appellants.

34. The appeal filed by the Bihar State Road Transport Corporation is thus partly allowed and impugned Judgment/Order is modified to above extent. The rest of the impugned Judgment/Order passed by the learned Tribunal remains unaltered.

35. There shall be no order as to costs.

36. Pending applications, if any, stand disposed of.

37. The appellants are directed to deposit the



aforesaid compensation amount alongwith interest, less any amount already deposited, before the learned Tribunal, within a period of six weeks from the date of this judgment/order.

38. Let record of the claim case be transmit back to the concerned Tribunal forthwith.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	29.07.2024
Uploading Date	28.08.2024
Transmission Date	NA

