

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1036 of 2017

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1. Arti Devi Wife of Late Mukesh Paswan, Son of Uday Paswan, Resident of Ambedkarnagar, P.S. Zero Mile, Bhagalpur.
 2. Uma Devi Wife of Uday Paswan, Resident of Ambedkarnagar, P.S. Zero Mile, Bhagalpur.
 3. Mithun Kumar, Son of Late Mukesh Paswan, Resident of Ambedkarnagar, P.S. Zero Mile, Bhagalpur.
 4. Ava Kumari, Daughter of Late Mukesh Paswan, Resident of Ambedkarnagar, P.S. Zero Mile, Bhagalpur.

... .. Appellant/s

Versus

1. Mukund Choudhary Son of Prahlad Choudhary, Resident of Bikashnagar, P.O. Rangara, Purnia.
2. Smt. Saraswati Devi, Wife of Kedar Prasad, Resident of Ramnagar, Poltechnic Chowk, Purnia.
3. Branch Manager, New India Insurance Company Ltd, near bus stand, NH 31 Purnia.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Madan Mohan, Advocate.
For the Respondent/s : Mr. Bimlesh Kumar Jha, Advocate.

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

Date : 22-10-2024

Re :- I.A. No.01 of 2024 (Limitation Petition)

1. This Interlocutory Application No.01 of 2024 has been filed for condonation of delay of 7 months and 4 days occurred in filing the instant miscellaneous appeal by the appellants.

2. This application is supported with the affidavit.

3. Learned counsel for the respondent has made objection to this application stating that there is inordinate delay.



4. Having heard learned counsel for the parties and considering the averments made in the application, and in the interest of justice, the I.A. No.01 of 2024 is allowed.

5. The delay in filing the instant Miscellaneous Appeal is condoned.

Re :- Miscellaneous Appeal No.1036 of 2017

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

7. This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of appellants for enhancing the compensation amount awarded to the appellants/claimants by the learned District Judge-cum-Motor Accident Claim Tribunal, Bhagalpur (hereinafter referred to as “learned Tribunal”) in Claim Case No. 62 of 2014 vide Judgment dated 13.12.2016 and award signed on 25.01.2017.

8. The learned Tribunal held that the appellants are entitled to receive Rs.6,24,000/- as compensation and accordingly the New India Assurance Company Ltd has been directed to make payment of the compensation amount as per the order forthwith, along with 8% interest *per annum* from the date of filing of the claim case till its realization of amount. The



amount of Rs.50,000 paid by the Insurance Company as *ad-interim* compensation shall be deducted from the principal amount as on the date of its payment and interest would be recalculated on the balance amount of the principal sum from such date.

9. The details of the calculation of compensation amount made by the learned Tribunal are as under:

S.No	Heads	Calculation	Net Amount
1.	Monthly Income		Rs.4,500/-
2.	Annual Income	Rs.4,500/- x 12	Rs.54,000/-
3.	Deceased aged about 25 years Multiplier of 17 is applicable	17 x Rs.54,000	Rs.9,18,000/-
4.	1/3 rd deduction towards personal and living expenses	1/3rd x Rs.9,18,000/-	Rs.6,12,000/-
5.	Loss of estate		Rs.5,000/-
6.	Loss of Consortium		Rs.5,000/-
7.	Funeral Expenses		Rs.2,000/-
8.	Total compensation		Rs.6,24,000/-

10. The brief facts of this case are that Mukesh Kumar on 01.01.2014 at about 19:45 hours, after finishing his work while returning towards his house near *pipal* tree of Mushari *tola* a Bus bearing registration No. BR-11E-7227 coming form the LIC Office was driven rashly and negligently manner dashed him due to which he sustained fatal injury and succumbed to injuries and died at Mayaganj Hospital. The police registered F.I.R. vide Kotwali (Barari) P.S. Case No. 02



of 2014 on the basis of *fardbeyan* of Anil paswan against the driver of the offending Bus under Section 279 & 304 A of IPC. Further, postmortem of dead was held along with other legal formalities and after investigation police submitted charge sheet under Section 279 & 304 A of IPC against driver (Mukund Chaudhary) of the offending Bus.

11. Claimant no.1 (wife of deceased), claimant no. 2 (mother of deceased), Claimant Nos.3 and 4 are minor children of the deceased have filed a claim case bearing Claim Case No. 62 of 2014 before the learned Tribunal claiming that the offending vehicle was driven rashly and negligently by the driver of offending Bus, which dashed the deceased causing instant death to him. O.P. No.1 is the Driver, O.P. No.2 is owner and O.P. No. 3 is the Insurance Company of the offending Bus respectively who are respondent No. 1, 2 and 3 respectively herein.

12. It is further claimed that the deceased was aged about 25 years at the time of occurrence, working as a head Raj Mistri and use to earn Rs.8,000/- per month by which he was maintaining his family. The claimants have claimed compensation to the tune of Rs.17,75,000/- along with 9% interest from the date of filing till its realization.



13. O.P. No. 1, driver of the offending Bus and O.P. No. 2 owner of the offending Bus did not appear before the learned Tribunal, thereafter vide order dated 13.08.2015 the case was proceeded *ex-parte* hearing against them.

14. In written statement filed on behalf of the O.P.3/Insurance Company, it is stated that the claim case is not maintainable either on fact or in law. It was further stated that the claim case is barred by the principle of estoppel, waiver and acquiescence. The case is also hit by non-joinder and mis-joinder of necessary parties. It is further stated that the person driving the vehicle was not holding valid and effective driving license and the offending vehicle had no valid and effective permit. The claimants failed to produce any documentary evidence regarding income and occupation of deceased. The alleged accident occurred due to sole negligence on the part of the deceased himself and hence the insurance company is not liable to pay any compensation as the owner of the offending Bus breached the terms and conditions of Insurance policy hence the owner of the offending Bus is liable to pay the compensation as claimed by the claimant.

15. It appears from the Tribunal Record that the ad-interim compensation of Rs.50,000/- under the head of “No



Fault Liability” envisaged under Section 140 of the Act was allowed which was paid to the claimants.

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

- i) Whether the claim application as framed and filed is maintainable?*
- ii) Whether the claimants have any cause of action?*
- iii) Whether claimants are entitled to get compensation?*
- iv) What should be just compensation?*
- v) To what relief or reliefs?*

17. In support of the claim petition, claimants have examined five witnesses. The claimants have also filed documentary evidence in support of their claim petition i.e., C.W. - 1 Arti Devi (Claimant no. 1), C.W. - 2 Uma Devi (Claimant No. 2), C.W. - 3 Anil Paswan, C.W. - 4 Pankaj Paswan and C.W. - 5 Dhananjay Kumar Yadav. In addition to the above oral evidence, the claimants have also relied upon on some documentary evidence. Ext. 1 is the certified copy of FIR of Kotwali (Barari) P.S. Ext. 2 is the certified copy of charge sheet of Kotwali (Barari) P.S. Case No. 02/14, Ext. 3 is the photocopy of P.M. Report of deceased Mukesh Kumar, Ext. 4 is the photocopy of registration of Bus bearing no, BR-11E-7227,



Ext. 5 is the photocopy of tax token., Ext. 6 is the photocopy of fitness, Ext. 7 is the photocopy of insurance policy no. 54080431130100001099, Ext. 8 is the photocopy of authorization form. Ext. 9 is the photocopy of permanent permit, Ext. 10 is the original heir-ship certificate of Arti Devi, Ext. 11 is photocopy of driving license of Mukund Choudhary.

18. Insurance Company relied upon on some documentary evidence which are viz., Ext. A is the Final investigating report, Ext. B is the letter no.747 issued from the Office of DTO, Araria.

19. 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.6,24,000- along with the interest @ 8% per annum from the date of institution of the claim case till its realization to be paid by the Insurance Company.

20. The appellants being not satisfied and aggrieved by the awarded amount of compensation vide the impugned Judgment and Award, filed the present appeal for enhancement of the compensation amount by setting aside the Judgment and Award dated 13.12.2016 and 25.01.2017



respectively passed by the learned Tribunal.

21. Learned counsel for the appellants/claimants has submitted that the learned Tribunal erred in fixing the monthly income of the deceased at the time of occurrence. The actual income of the deceased was Rs.8,000/- which was corroborated by the witnesses and the same was not rebutted by the opposite party. It is further submitted that multiplier of 18 should be considered instead of 17 as the age of the deceased was 25 years. Moreover, it is submitted that the deduction towards personal and living expenses should be 1/4th in place of 1/3rd as there were four dependents on the deceased. The learned Tribunal had not awarded under the head of future prospects which should be 40% as the deceased was self employed. It is further submitted that the learned Tribunal had not awarded adequate amount under the conventional heads such as loss of consortium, funeral expenses and loss of estate in view of the direction of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

22. The learned counsel for the appellant further relied on the judgement held by the Hon'ble Supreme Court in **MCD v. Uphaar Tragedy Victims Association** reported in



(2011) 14 SCC 481 stated that the learned Tribunal should have granted interest at the rate of 9 % per annum instead of 8 % as granted by the learned Tribunal.

23. On the other hand, learned counsel for the Insurance Company has raised the preliminary objection that instant appeal is not maintainable as Insurance Company has already complied with the judgment dated 13.12.2016 & Award dated 25.01.2017 and paid the entire compensation amount of Rs.6,24,000/- (Rupees Six Lakh Twenty Four Thousand only) along with interest which the appellants have already accepted and the claimants are estopped from making any further claim. He has relied upon the Judgment of Hon'ble Supreme Court in case of **Union of India & Ors. vs. N. Murugesan & Ors.** reported in **(2022) 2 SCC 25** in support of his argument that once the impugned judgment/order is complied with and accepted by the parties, the same cannot be challenged. Learned counsel for the Insurance Company has further submitted that law is well settled that no party can accept and reject the same judgment.

24. Learned Counsel for the Insurance Company further submitted that on the basis of the material on record it appears that the learned Tribunal on consideration of material on



record rightly passed the Judgment and award which is just and proper and is not liable to be interfered with by this Court. He has lastly submitted that the present appeal has no merit and prayed to dismiss the same with cost.

25. In reply to the said preliminary objection raised on behalf of Insurance Company, the learned counsel for the appellants has submitted that the Judgment in **N. Murugesan & Ors. (*supra*)** is related to dispute with respect to service matters and the same is not applicable in the facts and circumstances of this case. The Motor Vehicles Act is a beneficial legislation and the claimants are entitled for just compensation and mere taking the awarded amount cannot take away the right of the claimants to claiming the enhancement of the compensation. He has relied upon the Judgment of Hon'ble Supreme Court in **Smt. Meena Pawaia & Ors. vs. Ashraf Ali & Ors.** reported in **2021 SCC OnLine SC 1083** in support of his contention.

26. First of all, it is necessary to decide the preliminary objection raised by the Insurance Company that whether after accepting the awarded compensation amount, the claimants can be estopped from claiming the enhancement of compensation amount in appeal?

27. The contention of the Insurance Company that



the Insurance Company has complied with the judgment and award which the claimants/appellants have accepted and accordingly the appeal for enhancement of compensation amount is not maintainable is not tenable in view of the fact that taking the compensation amount by claimants cannot take away the right of the claimants to claim just compensation. Accordingly, the claimants are entitled to claim enhanced amount of compensation as the Motor Vehicle Act is a benevolent Act and in terms of Section 168 of the Motor Vehicle Act, 1988, it is the duty of the Tribunal to make an award determining the amount of compensation which appears to be just. When the statute provides and gives a right to claimants to claim just compensation, the claimants cannot be estopped from claiming higher compensation if the compensation so paid, is not just. The Hon'ble Supreme Court in case of **Smt. Meena Pawaia & Ors.** (*supra*) on this aspect held as under :-

“Now so far as the submission on behalf of the Union of India that as in the execution proceedings the claimants accepted the amount due and payable under the impugned judgment and order and accepted the same as full and final settlement, thereafter the claimants ought not to have preferred appeal for enhancement of the compensation is concerned, the aforesaid cannot be accepted. The claimants are entitled to just compensation. Merely because in the execution proceedings they might have accepted the amount as awarded by the High Court, may be as full and



final settlement, it shall not take away the right of the claimants to claim just compensation and shall not preclude them from claiming the enhanced amount of compensation which they as such are held to be entitled to. As such, the Motor Vehicles Act is a benevolent Act and as observed hereinabove the claimants are entitled to just compensation. As such, the Union of India ought not to have taken such a plea/defence.”

28. Accordingly, the preliminary objection raised by the Insurance Company is rejected and I find that this appeal is maintainable.

29. In the present case, the occurrence of the accident and liability of the Insurance Company is not in dispute. The only issue to be decided before this court is “whether the appellants/claimants are entitled for enhancement of compensation and if so, to what extent?”

30. 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.



31. The purpose of award of compensation is to put the dependents of a deceased, who had been bread winner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. But 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 Court or the Tribunal have to assess the damage objectively.

32. In **Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr.** reported in **(2009) 6 SCC 121**, the Hon'ble Supreme Court observed that the just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse, or source of profit.

33. The claim of the claimants is that the deceased who was working as Raj Mistry and contractor was used to earn Rs.8,000/- per month but no documentary evidence has been



brought on record regarding income of deceased. In absence of documentary evidence on record, some amount of guesswork is required to be done, but at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. In the given facts of the instant case, the pleadings & evidence on record, learned Tribunal determined the income of the deceased as Rs.4,500/- per month which requires no interference by this Court.

34. The deceased was aged about 25 years as per the postmortem report (Ext. 3). Taking monthly income of deceased as Rs.4,500/- his annual income would be Rs.54,000/- and an addition of 40% of aforesaid income of Rs.54,000/- i.e. Rs.21,600/- as future prospects, net annual income of the deceased would be Rs.75,600/-. Out of the aforesaid amount, deduction towards personal and living expenses will be 1/4th as the deceased left behind his mother, wife and two minor children as dependent, which amounts to Rs.56,700/-. Considering the age of the deceased between 25 years, multiplier 18 shall be applied. The total loss of dependency on account of the deceased income is calculated to the tune of Rs.10,20,600/- (Rs.56,700 x 18).

35. The Hon'ble Supreme Court in **New India**



Assurance Company Ltd. v. Somwati and Ors. reported in **(2020) 9 SCC 644** referred various Judgments including the Judgment of Constitution Bench of Hon'ble Supreme Court in **Pranay Sethi (*supra*)**, wherein in para 52, it has been opined that reasonable figures on conventional heads, namely, "loss of estate", "loss of consortium" and "funeral expenses" should be Rs.15,000/-; Rs.40,000/-; and Rs.15,000/-respectively. In para 59.8, the Hon'ble Supreme Court further held that the amount of conventional head should be enhanced @10% every three years. The Hon'ble Court further referred a two-judge bench Judgment in **Magma General Insurance Co. Ltd. v. Nanu Ram** reported in **(2018) 18 SCC 130**, wherein the amount of Rs.40,000/- each was awarded to father and sister of the deceased for loss of filial consortium considering the principles laid down in **Pranay Sethi (*supra*)**. Then, Judgement of a three-judge bench in **United India Insurance Company Limited v. Satinder Kaur @ Satwinder Kaur & Ors.** reported in **(2021) 11 SCC 780** has been referred wherein the view of Magma General Insurance (*supra*) was reaffirmed and approved the comprehensive interpretation given to the expression "consortium" to include spousal consortium, parental consortium as well as filial consortium and in para 87 there in "consortium" to all the three



claimants was thus, awarded. The Hon'ble Court in Somwati Case (*supra*) observed that the Judgment of Pranay Sethi (*supra*) cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife. The Hon'ble Court further observed in Satinder Kaur (*supra*) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable and the Judgment of three-judge bench is binding.

36. In case of **Janabai v. M/S I.C.I.C.I. Lambord Insurance Company Ltd.** reported in **(2022) 10 SCC 512**, the Hon'ble Supreme Court has awarded Rs.40,000/- each on account of spousal and parental consortium.

37. In so far as conventional damages of the claimants are concerned, the learned Tribunal has awarded loss of estate at Rs.5,000/-; Funeral expenses at Rs.2,000/-; and loss of consortium at Rs.5,000/- which is not just compensation and required to be enhanced. The deceased Mukesh Kumar left behind his wife, mother, and two minor children as his dependents. On basis of the Judgment delivered by Hon'ble Supreme Court in Pranay Sethi (*supra*), Magma General Insurance Co. Ltd. (*supra*), Satinder Kaur (*supra*), and **Rojaline Nayak and Ors. v. Ajit Sahoo and Ors.** reported in **2024 SCC**



OnLine SC 1901, the following amounts are awarded compensation under the conventional heads:

S.No	Heads	Calculation	Compensation Amount
1.	Loss of Estate	Rs.15,000/- + Enhance 10% twice	Rs.18,150/-
2.	Loss of consortium	(Rs. 40,000/- + Enhance 10% twice) each	Rs.1,93,600 (48,400x 4)
3.	Funeral Expenses	Rs.15,000/- + Enhance 10% twice)	Rs. 18,150/-

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

S.No	Heads	Amount
1.	Loss of Dependency	Rs.10,20,600/-
2.	Loss of Estate	Rs.18,150/-
3.	Funeral Expenses	Rs.18,150/-
4.	Loss of Consortium	Rs.1,93,600/-
5.	Total Compensation	Rs.12,50,500/-

39. The appellants/claimants stand entitled for a total compensation to the tune of Rs. 12,50,500/- deducting Rs.50,000/- already paid under Section 140 of the Act, with simple interest at the rate of 8% *per annum* from the date of filing of the claim case till its realization to be paid by the Insurance Company. The amount already paid by the Insurance Company shall be adjusted.

40. 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.

41. There shall be no order as to costs.

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

43. The Insurance Company is directed to make the payment of dues amount in terms of the aforesaid Order within two months from today.

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

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	AFR
CAV DATE	08.10.2024
Uploading Date	22.10.2024
Transmission Date	NA

