# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Miscellaneous Appeal No.1067 of 2017**

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1. Most. Usha Devi Wife of Late Ashok Mandal,
2. Ravi Kumar,
3. Nisha Kumari,
4. Niraj Kumari,
5. Sangita Kumari,
6. Deepak Kumar,
7. Amit Kumar,
8. Ankit Kumar, All are minor sons and daughters of Late Ashok Mandal under the Guardianship of their mother Usha Devi All the resident of Village and Post- Herudiara, P.S.- Kasim Bazaar, District-Munger.

... ... Appellant/s

Versus

1. Mr. Ashok Kumar Singh S/o Mr. Tribhuwan Singh, resident of Village- Baghera, Post- Purushottampur, P.S. Distt.- Mirzapur U.P. Pin 231001.
2. Himanshu Kumar Mishra, S/o Late Nageshwar Mishra, Resident of Village A- 317, Steel Chamber 3rd Floor, Kamberi, Nabi Mumbai Maharastra at present Anand Nagar Bagha, Post and P.S.- Bagha, District- West Champaran.
3. Chola Mandalam MS General Insurance Company Ltd., Head office at Dare House 2nd Floor No.- 2, N.S.C. Bose Road, Chennai-600001
4. Chola Mandalam MS General Insurance Company Ltd. Branch Office at Jabalpur Post and District- Jabalpur, at present Boring Kanal Road, Patna- 800001 (Bihar)

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Raj Kumar Choudhary, Advocate. |
| For the Res. Nos.3 & 4 | : | Mr. Durgesh Kumar Singh, Advocate. |
| | : | Mr. Abhijeet Kumar Singh, Advocate. |

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

**C.A.V. JUDGMENT**

**Date : 02-09-2024**

**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 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of the appellants/claimants for

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enhancing the compensation amount awarded to appellants/claimants by the learned M.A.C.T.-cum-District Judge, Munger (hereinafter referred to as "Learned Tribunal") vide Judgment dated 18.02.2015 and Award dated 02.03.2015 passed in Claim Case No.39 of 2013.

**3.** The learned Tribunal allowed the claim application and held that claimants are entitled to receive Rs.10,17,500/- as compensation and accordingly Chola Mandalam MS General Insurance Co. Ltd. (hereinafter referred to as "Insurance Company") has been directed to make payment of the compensation amount as per the order within two months from the date of passing of aforesaid order along with 9% simple interest *per annum* from the date of filing of the claim case till realization of the compensation amount after adjusting the amount already paid to the claimants amounting to Rs.50,000/- as interim compensation under Section 140 of the Act.

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

| **S.N.** | **Particular** | **Calculation** | **Net Amount** |
|---|---|---|---|
| 1. | Monthly income of deceased | Rs.300 x 30 | Rs.9,000/- |
| 2. | Income after 1/3rd deduction | Rs.9,000 -3,000 | Rs.6,000/- |

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| | towards personal expenses of the deceased. | | |
| 3. | Annual income | Rs.6,000 x 12 | Rs.72,000/- |
| 4. | For the age group of 45 years | Rs.72,000 x 14 | Rs.10,08,000/- |
| 5. | Loss of Funeral expenses | ---- | Rs.2,000/- |
| 6. | Loss of consortium | ---- | Rs.5,000/- |
| 7. | Loss of Estate | ---- | Rs.2,500/- |
| **8.** | **Total compensation amount** | | **Rs.10,17,500/-** |

**5.** The appellants/claimants being not satisfied and aggrieved by the impugned judgment dated 18.02.2015 and award dated 02.03.2015 passed by the learned Tribunal, filed the present appeal for enhancing the compensation amount.

**6.** It is submitted on behalf of Insurance Company that the Insurance Company has not challenged the impugned judgment and award.

**7.** The brief facts of this case is that the deceased Ashok Mandal having valid driving license was a heavy motor vehicle driver of truck bearing Registration No. BR-11-E-2171. While he was sleeping on the East-Side of crusher machine of Sushil Bhagat at Mathadih, P.S. Mirja Chowk, District-Sahabganj, the Truck bearing Registration No. UP-64H-7844 being driven rashly and negligently crushed the deceased to

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death. Thereafter, a case was registered on the basis of *Fardbeyan* of the informant Chandan Kumar owner of the Truck bearing Registration No. BR-11E-2171 vide Borio Mirja Chowki P.S. Case No. 191 of 2013 under Sections 279 & 304-A of the Indian Penal Code (I.P.C.) against the driver of the offending vehicle. The Police after investigation of the case submitted charge-sheet in the court under Sections 279 & 304-A of I.P.C. against the accused Himanshu Kumar Mishra, the driver of offending truck.

**8.** It is further claimed that the deceased was aged about 45 years and his monthly income was about Rs. 9,000/- per month. The claimant further claimed that the offending truck was insured with Insurance Company having its Head Office at Dare House N.S.C. Bose Road, Chennai and Branch office at Boring Canal Road, Patna (Bihar).

**9.** In written statement filed on behalf of the respondents/opposite party nos. 1 & 2, owner and driver of the offending truck respectively, it is stated that respondent/opposite party no.1 is the registered owner of the offending truck bearing Reg. No. UP-64H-7844 and at the relevant time all the papers relating to the truck were valid and up-to-date and also the truck was duly insured with insurer Insurance Company

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(respondent/opposite party no. 3). The respondent/opposite party No. 2 is the driver of the aforesaid offending truck and his license was also valid on the date and time of accident. Thus, accordingly the whole liabilities of payment of compensation lies on the insurer i.e., respondent/opposite party nos. 3 & 4. It is further stated that the amount of compensation as claimed is exaggerated and it is for the claimants to prove the same.

**10.** Respondent/opposite parties nos.3 & 4, the Insurance Company, have appeared and filed written statement stating that the claim case is not maintainable and the claimants have got no cause of action to bring the suit against the respondents/opposite parties. The deceased was not the driver of the offending truck rather he was helper. He further contended that the alleged income of the deceased which was Rs. 9,000/- per month, is also out of imagination as the deceased was not a permanent driver of the said truck and the accident took place due to negligence of the deceased itself. The insurance Company is not able to assert whether the vehicle was insured or not at the time of accident. It is further contended that the deceased was victim of murderous assault but the police registered case under Sections 279 & 304-A due to collusion of driver. The deceased driver had no valid and effective driving

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license at the time of accident and as such owner of his truck was solely liable so far as the amount is concerned, thus, respondents/opposite parties are not liable to pay any compensation to the claimants.

**11.** On the basis of pleadings and submissions advance on behalf of the parties, the learned Tribunal framed following eight issues:-

*I. Whether the case as framed is maintainable?*

*II. Whether the claimants have got any cause of action for the present case?*

*III. Whether the accident took place due to rash and negligent driving by the driver of the truck bearing Reg. No. UP-64H-7844?*

*IV. Whether the Truck bearing Reg. No. UP-64H-7844 was validly insured with the insurer O.P. No. 3 and 4?*

*V. Whether the deceased was heavy truck driver of truck bearing Reg. No. BR-11V-2171?*

*VI. Whether the claimants are entitled to get compensation as claimed?*

*VII. Whether the deceased was the only earning member of his family?*

*VIII. Whether the claimants are entitled to get any other relief of reliefs?*

**12**. The law is now well settled that the proceeding in a claim petition for compensation before the learned 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

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documentary evidence in support of their claim petition. i.e., copy of payment certificate (Ext.1), Original Heirship Certificate (Ext.2), Certified Copy of F.I.R. (Ext.3), Certified copy of Chargesheet (Ext.4), photo copy of *post-mortem* report (Ext.5), photo copy of death certificate (Ext.6), photo copy of owner book (Ext.7), photo copy of Insurance policy (Ext.8), photo copy of R.C. (Ext.9), photo copy of certificate of fitness (Ext.10), photo copy of driving license of the deceased (Ext.11), certified copy of Order sheet of G.R. Case no. 440 of 2013 dated 24.09.2013 (Ext.12), and photo copy of driving license of O.P. no. 2 (Ext.13).

**14.** No oral or documentary evidence have been produced by the respondents/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 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 minor Sons and Daughters of the deceased. The learned Tribunal has held that

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the claimants are entitled for compensation to the tune of Rs.10,17,500/- along with simple interest as stated above.

**16.** Learned counsel for the appellants has submitted that the learned Tribunal has not awarded just compensation as envisaged under Section 168 of the Act and has not complied with the well settled principle on point of deduction towards personal expenses of the deceased, future prospects, conventional heads of loss of estate, funeral expenses, loss of consortium in computation of compensation amount and very less amount has been awarded which ought to be increased in view of the well settled principle of law.

**17.** Learned counsel for the appellants has submitted that the learned Tribunal erred while fixing the monthly income of the deceased. The learned Tribunal had deducted 1/3rd in place of 1/5th as living expenses from the salary of the deceased, as the numbers of claimants is more than six. He has further submitted that the learned Tribunal ignored to add the future prospects in the award. Multiplier of 14 for the age group of 41 to 45 should be considered as per decision of the Hon'ble Supreme Court in the case of **Sarla Verma vs. Delhi Transport Corporation**, reported in **AIR 2009 SC 3104; (2009) 6 SCC 121** which has been approved by the Constitution

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Bench of Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**. It is next submitted that the loss of estate and funeral expenses be determined @ Rs.15,000/- each where as the claimants are entitled for consortium of Rs.40,000/- each in view of the compensation amount in these conventional head settled by the Hon'ble Supreme Court in Pranay Sethi (***Supra***) and which has been applied in subsequent judgments. It is further submitted that the said amount under the said head should also be enhanced twice at the rate of 10 % as the enhancement is required in every three years in view of the direction in Pranay Sethi (***Supra***) which was delivered on 31.10.2017 i.e. more than 6 years (two times of three years) has already completed.

**18.** On the other hand, learned counsel for the Insurance Company has submitted that the learned Tribunal considering the material on record has granted the just compensation which the Insurance Company has not challenged and the same requires no interference by this Court. He has further submitted that in view of the Judgment of Pranay Sethi (***Supra***) 'consortium' is only payable to wife and the amount of consortium could not be more than Rs.40,000/- and each of the

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claimant is not entitled to consortium @ Rs.40,000/-.

**19.** In the present case, the occurrence of the accident and liability of the Insurance Company is not in dispute. The only question that would arise for consideration before this court is *"whether the appellants/claimants are entitled for enhancement of compensation as claimed? And if so, to what amount?"*

**20.** The loss of life and limb can never be compensated in an equal measure. The claimants are entitled for just compensation which is to be equitable and fair. The Hon'ble Supreme Court in **Sarla Verma** (*supra*) observed that just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss, 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.

**21.** As noted by the learned Tribunal that the witnesses on behalf of claimants have stated that the deceased was getting Rs. 200/- per day as his wages and Rs.100/- per day for his meal. Therefore, the deceased was getting Rs. 300/- per day but he used to spend Rs. 100/- (i.e. 1/3$^{rd}$ of the total wages) as his personal expenses and was giving Rs.200/- to his wife to

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meet out the expenses of his family. Accordingly, monthly income after deduction of his personal expenses was Rs.6,000/- (Rs.9,000 - Rs.3,000) cannot be faulted with in the facts and circumstances of the case and the same is not required to be interfered.

**22.** Since, the deceased at the time of incident was aged about 45 years i.e. between the age group of 40 to 50 years and having fixed salary, therefore, an addition of 25% of the said income is warranted as future prospects in the view of paragraph 59.4 of the Judgment of the Hon'ble Supreme Court in the case of **Pranay Sethi** (*supra*), therefore, 25% of Rs. 6,000/- will be equal to Rs.1,500/-. Thus, the annual income of the deceased is Rs.90,000/- [(Rs.6,000 + Rs.1,500) x 12] and after applying multiplier of 14, the loss of dependency stands at Rs.12,60,000/- (Rs. 90,000 x 14).

**23.** 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 a just compensation and required to be enhanced since, the deceased Ashok Mandal left behind his wife and minor children as his dependents.

**24.** The three-judge Bench of the Hon'ble Supreme

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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.

**25**. 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 spousal and parental consortium (48,400 x 8) | 40,000 + enhance 10% twice | Rs. 3,87,200/- |
| **3.** | Funeral expenses | 15,000 + enhance 10% twice | Rs.18,150/- |
| **4.** | **Total** | ----- | Rs.4,23,500/- |

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**26.** The total compensation amount payable to the appellants/claimants shall be Rs.16,83,500/- i.e. Rs.12,60,000/- (loss of dependency) + Rs.4,23,500/- (compensation under conventional head). Thus, the total enhancement of the compensation amount is Rs.6,66,000/- (Rs.16,83,500 – Rs.10,17,500).

**27.** The claimants/appellants stand entitled to a total compensation to the tune of Rs.16,83,500/-. The insurance company (respondent nos.3 & 4) 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 9 % *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.

**28.** It is to clarify that as this appeal has been filed by the appellants/claimants after delay of 2 years 6 months and 10 days, therefore, the interest for that period, i.e. from the date of Award (18.02.2015) till the date of filing of this appeal (29.11.2017), is not payable by the Insurance Company to the appellants/claimants on the enhanced amount.

**29.** The Judgment dated 18.02.2015 and Award

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dated 02.03.2015 passed in Claim Case No.39 of 2013 by the learned Tribunal stands modified to the aforesaid extent. Accordingly, this appeal is **allowed** with the aforesaid modification in the impugned Judgment and Award.

**30**. There shall be no order as to costs.

**31.** Pending applications, if any, shall stand disposed of.

**32.** Let the Trial C ourt Record of this case be returned back forthwith to the concerned Court/ Tribunal.

**(Sunil Dutta Mishra, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | 30.07.2024 |
| **Uploading Date** | 03.09.2024 |
| **Transmission Date** | NA |

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