IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.442 of 2017

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1. Nirmala Devi W/o Late Gorakh Rai,
2. Pradum Kumar, S/o Late Gorakh Rai,
3. Sulekha Kumari, D/o Late Gorakh Rai,
   Appellant no.2 and 3 are minor under the legal guardianship of their mother, Appellant no.1.
   All resident of Village & P.O.- Bairiya, P.S.- Gopalpur, District- Patna.

... ... Appellant/s

Versus

1. Om Prakash Kumar @ Om Prakash S/o Parmanand Rai, Resident of Village- Shobhitaalab Bairiya, P.S.- Gopalpur, District- Patna. (Driver)
2. Avinash Kumar, S/o Shailesh Singh, Resident of Village- Laxmi Kirana Store, Bhagwat Nagar Main Road, P.S.- Agamkuan, District- Patna. (Owner)
3. National Insurance Company Ltd. through the Divisional Manager, Division Office-II, Arunachal Bhawan, Exhibition Road, Patna. (Insurer)

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Advocate.
For the Res. No.3	:	Mr. Sanjay Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 23-09-2024

Re:- Interlocutory Application No.01 of 2024

1. This Interlocutory Application No.01 of 2024 has been filed for condonation of delay of 330 days occurred in filing the present appeal by the appellants.

2. Learned counsel for the appellants submits that the impugned judgment was passed on 26.02.2016, however, the award was prepared only on 04.03.2017 and after taking certified copy of same, the appellants sent the same to the concerned Advocate for filing the present appeal and there is no deliberate delay or laches on the part of the appellants.

3. This application is supported with the affidavit of appellant no.1.

4. There is no objection to this application.

5. Having heard learned counsel for the parties and considering the averments made in the application, the I.A. No.01 of 2024 is disposed of.

6. The delay in filing the instant Misc. Appeal is hereby condoned.

Re :- Misc. Appeal No.442 of 2017

7. Heard Learned counsel for the appellants and learned counsel for the respondent no.3/Insurance Company.

8. This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act of 1988”) on behalf of the claimants for enhancing the compensation amount awarded to claimants/ appellants by the learned Additional District Judge-I-cum-M.A.C.T., Patna (hereinafter referred to as “Learned Tribunal”) vide judgment dated 26.02.2016 and award dated 04.03.2017 passed in Claim Case No.36 of 2015.

9. The learned Tribunal held that claimants are entitled to receive ₹4,39,500/- as compensation and accordingly respondent no.3, National Insurance Co. Ltd., has been directed to make payment of the compensation amount as per the order within a month from the date of receipt of the copy of the said order along-with 6% interest per annum from the date of filing of the claim case till realization of the compensation amount. Liberty has been given to the Insurance Company to recover the amount of compensation from the owner of the offending vehicle in accordance with law if at all they are entitled.

10. 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.5,000/-	Rs.5,000/-
2.	Annual income of deceased.	Rs.5,000/- X 12	Rs.60,000/-
3.	Multiplier.	16	
4.	Loss of income.	Rs.60,000/- X 16	Rs.9,60,000/-
5.	Deduction of 50% as the deceased was unmarried.	Rs.9,60,000 - 50 %	Rs.4,80,000/-
6.	Loss of consortium.	Rs.5,000/-	Rs.5,000/-
7.	Loss of estate.	Rs.2,500/-	Rs.2,500/-
8.	Funeral expenses.	Rs.2,000/-	Rs.2,000/-
9.	Total compensation amount.		Rs.4,89,500/-
10.	Less paid amount u/s 140 of M.V. Act as ad-interim compensation	Rs.4,89,500- Rs.50,000	Rs.4,39,500/-
11.	**Rest compensation amount.**		**Rs.4,39,500/-**

11. The claimants/ appellants being not satisfied and aggrieved by the impugned judgment dated 26.02.2016 and award dated 04.03.2017 passed by the learned Tribunal, filed the present appeal for enhancing the compensation amount.

12. The facts, in brief, of this case are that on

18.11.2014 at about 7.30 a.m., the deceased, namely, Dharmbir Kumar had gone to Bairiya market for bringing some articles, in the meantime near Bairiya bridge a pick-up van bearing Registration No. BR01-GD-4517 which was being driven rashly and negligently by the driver of the said offending vehicle dashed the deceased due to which he fell down and sustained serious injury and died on the spot. It is claimed that the deceased was aged about 20 years and was earning Rs.6,000/- per month from the work of labour.

13. National Insurance Company Limited, respondent no.3 is the insurer of the offending vehicle and it is admitted that the policy was valid on the date and time of the incident. In the written statement filed by the Insurance Company, the claim of claimant was denied and it was also alleged that the deceased himself was guilty and responsible for the said accident. It was also alleged that the driver of the offending vehicle was not possessing a valid driving license and the compensation amount as claimed is excessive and not in accordance with law.

14. The driver (respondent no.1) and owner (respondent no.2) of offending vehicle have not appeared and not contested the case.

15. Learned Tribunal after hearing the parties and considering the materials on record allowed the claim petition and ordered the National Insurance Co. Ltd. (respondent no.3) to pay compensation amount to the tune of Rs.4,39,500/- to the claimant no.1, namely, Nirmala Devi alongwith 6 % simple interest per annum from the date of filing of the claim petition till its realisation.

16. Despite service of notice upon respondent no.1 (driver of offending vehicle) and respondent no.2 (owner of the offending vehicle), no one appeared on their behalf in this appeal.

17. Learned counsel for the appellants submits that the learned Tribunal has not awarded the just compensation as envisaged under Section 168 of the Act of 1988 and has not followed to well settled principle on the point of future prospects, conventional heads of loss of estate, funeral expenses and loss of consortium and multiplier in computation of compensation amount.

18. Learned counsel for the appellants relying upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** specially paragraph no.59.4 of the judgment has submitted that since the deceased was aged about 20 years and was self employed as a labour, the addition of 40 % of the established income as future prospects is warranted for computation of compensation, however, the learned Tribunal has not awarded the same.

19. Learned counsel for the appellants further submitted that the learned Tribunal erred in applying multiplier 16 instead of 18 in view of the fact that admittedly the deceased was aged about 20 years at the time of occurrence. Accordingly, he submits that multiplier of 18 may be applied in this case.

20. Learned counsel for the appellants submits that the claimants/appellants are entitled to loss of estate Rs.18,150/-, loss of filial and parental consortium Rs.48,400/- each and funeral expenses Rs.18,150/- in place of compensation awarded under conventional heading i.e. funeral expenses Rs.2,000/-, loss of estate Rs.2,500/- and loss of consortium Rs.5,000/- in view of the Judgment of Hon'ble Supreme Court in **Pranay Sethi** (supra) and in various subsequent judgments including recent Judgment in **Rojaline Nayak & Ors. vs. Ajit Sahoo & Ors.** reported in **2024 SCC OnLine 1901.**

21. *Per contra*, learned counsel for the respondent/Insurance Company submits that in view of the facts and circumstances of the case the learned Tribunal has passed the reasoned judgment and award which requires no interference of this Court. He further submits that the Insurance Company has already made the payment of awarded amount. He has conceded that the Insurance Company has not filed any appeal against the impugned judgment and award.

22. Having heard the learned counsel for the parties and considering the submissions made on behalf of the parties and on perusal of the impugned judgment and award, it appears that the learned Tribunal has not awarded the amount with respect to future prospects as the deceased was aged about 20 years and was working as labour, therefore, he is entitled to 40 % in the head of future prospects. It also appears that the multiplier of 16 has been taken by the learned Tribunal considering the age of the mother of deceased for calculating the multiplier instead of age of the deceased. Since the age of deceased was 20 years, therefore, the appropriate multiplier should be 18.

23. The deceased was not a salaried person but was engaged in labour work. The mitigating circumstances are also to be taken into consideration while fixing the notional income. The place of working, nature of job whether skilled or unskilled, age of the person as well as other mitigating factors from part of consideration for the purpose of fixation of notional monthly income for grant of compensation under the Motor Vehicle Act, 1988.

24. Fixation of monthly income of Rs.5,000/- in the present case is appropriate warranting no interference by this Court. It is well settled that assessment of compensation cannot be done with mathematical precision. The Motor Vehicle Act, 1988 also provides for assessment of just and fair compensation. It is not necessary to go into the quantum of compensation under various heads and ultimate order of the learned Tribunal.

25. In so far as the conventional heads are concerned, the deceased Dharambir Kumar left behind his widow mother, minor brother and minor sister as his dependents. On the basis of the Judgments in Pranay Sethi ***(Supra)*****, Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130, United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur and Others (2021) 11 SCC 780** and Rojaline Nayak ***(Supra)*** the following amounts are awarded compensation under the **conventional heads:**

S.No.	**Heads**	**Calculation**	**Compensation Amount**
1.	Loss of Estate	Rs.15,000 + 10% enhanced twice	Rs.18,150/-
2.	Loss of consortium to each of the dependents	Rs.40,000 + 10% enhanced twice	Rs.1,45,200/- (Rs.48,400 X 3)
3.	Funeral expenses	Rs.15,000 + 10% enhanced twice	Rs.18,150/-

26. So far as the head of future prospect is concerned, admittedly, in view of paragraph 59.4 of the Judgment in case of Pranay Sethi (***Supra***), since the deceased was aged about 20 years i.e. below the age of 40 years, an addition of 40% of the notional salary is warranted. There is no dispute with respect to application of multiplier as 18 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 in Pranay Sethi ***(Supra)***.

27. Thus, in view of the facts stated herein above, in opinion of the Court, the computation of the total amount of compensation payable will be as follows:-

S.N.	**Head**	**Compensation awarded**
1.	Income	Rs.5,000/- per month
2.	Future prospects	Rs.2,000/- (i.e. 40 % of the income)
3.	Deduction towards personal and living expenses	Rs.3,500/-(i.e. 50% of Rs.5,000+2,000)
4.	Total annual income	Rs.42,000/- (Rs.3,500 x 12)
5.	Multiplier	18
6.	Loss of dependency	Rs.7,56,000/- (42,000 x 18)
7.	Funeral expenses.	Rs.18,150/-
9.	Loss of Estate	Rs.18,150/-
10.	Loss of Consortium.	Rs.1,45,200/-
11.	Total compensation	Rs.9,37,500/- (7,56,000+1,81,500)
12.	Less: ad-interim compensation already paid.	Rs.50,000
13.	**Total compensation payable**	**Rs.8,87,500/-** (Rs.9,06,000 – Rs.50,000)

28. The claimants/appellants stand entitled for a total compensation to the tune of Rs.8,87,500/-. The Insurance Company (respondent nos.3) will 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 aforesaid dues amount shall be deposited within two months from today and to be paid to the appellants according to law.

29. The Judgment dated 26.02.2016 and award dated 04.03.2017 passed by the learned Tribunal in Claim Case No.36 of 2015 stands modified to the aforesaid extent. Accordingly, this appeal is disposed of 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.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2024
Transmission Date	NA