IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.749 of 2019

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1. The Branch Manager, Oriental Insurance Company Limited, Ranchi Road, Biharsharif.
2. The Branch Manager, Oriental Insurance Company Limited, Katchahry Road at P.O. and P.S.-Anchal, Sub Registry, Subdivision, District-Begusarai through Sri Niraj Kumar Deputy Manager cum and Duly constituted Attorney The Oriental Insurance Company Ltd. Regional Office Pir Mohani Kadam Kuan, Patna (Opp. Party No. 4).

... ... Appellant/s

Versus

1. Smt. Sushma Devi, Wife of Late Janardan Prasad Singh, R/o Mohalla Srikrishna Nagar, P.O. and P.S. Anchal, Sub Registry, Subdivision, District-Begusarai, Permanent Resident of Village-Samho, P.O. and P.S.-Samho, Subdivision, District-Begusarai (Claimant).
2. Manoranjan Kumar, Son of Ambika Jorain, Resident of Village and P.O.-Uttarnama, P.S. Rahi, Distt.-Nalanda (Opp. Party No. 1).
3. Naresh Prasad, Son of Doman Prasad, Resident of Nursarai, Biharsharif, District-Nalanda.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Ashok Priyadarshi, Advocate
For the Respondent/s : Mr.Rohitashwa Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

12 19-01-2024

Heard learned counsel for the appellants and learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed against the judgment and Award dated 30.04.2019 and 17.05.2019 respectively passed by the Motor Accident Claims Tribunal-cum-Additional District Judge-II, Begusarai (hereinafter referred to as 'the Tribunal') in Claim Case No. 4 of 2002 /51 of 2014, whereby the claimant was found entitled to get compensation for vehicular

accidental death of deceased and Insurance Company-appellant was directed to pay compensation amount of Rs. 13,80,000/- (thirteen lakh eighty thousand) with 9% simple interest over the same from 22.03.2005 till the realization from the Insurance Company and payment to the claimant.

3. The case of the claimant, in short, is that Brajesh Kumar, (deceased) aged about 28 years, on the alleged date of accident i.e. on 17-06-2001, while travelling on his own Maruti van bearing registration No. WNW-3343 met with an accident near Mohit Nagar School, due to rash and negligent driving of the driver of the truck bearing registration No. BR-21G-5961, on account of which, the driver of the Maruti van sustained grievous injury and Brajesh Kumar died instantaneously at the spot.

4. The First Information Report (for brevity 'FIR') bearing Kotwali PS Case No. 203 of 2001, Jalpaiguri, West Bengal was lodged under Sections 279, 338 and 304(A) of the Indian Penal Code. The said offending truck was insured with appellant-Oriental Insurance Company for the period from 27-05-2001 to 28-05-2002. The driver of the said offending truck had valid driving license for the period from 25-08-2000 to 24-08-2003 (Exhibits 7, 8 and 8/1).

5. It is contended that the deceased was founder and Managing Director of Ganga Dairy Limited Company. He was income tax payee. The claimant also submitted various documents with regard to Ganga Dairy Limited Company which shows that the Managing Director, namely, Akhilesh Kumar, was paid remuneration @ Rs. 1,20,000/- per annum.

6. On the other hand, Insurance Company has filed his written statement denying the claim of the claimant, raised objection with regard to non- joinder of necessary party, who was owner of Maruti van bearing registration No. WNW-3343 and driver of the said Maruti van. It is further contended that the vehicles were coming from the opposite direction and had met with an accident leading to death of the deceased Brajesh Kumar. It is a case of contributory negligence. It is submitted that the offending truck had no valid permit at the time of alleged accident. It is further contended that it is necessary for the owner of the vehicle to have a permit and fitness of the vehicle, if he is using the vehicle as a transport vehicle.

7. The learned Tribunal, after analyzing the evidences adduced by the parties and materials on record, has held that the deceased Brajesh Kumar died in a vehicular accident due to rash and negligent driving of a truck bearing registration No. BR-21G-

5961, resulting in loss of life of Brajesh Kumar on 17-06-2001, and further held that the insurance policy was valid and effective on the date of alleged accident and driver of the offending truck has a valid driving license. On the basis of evidence adduced by the parties, it was held that the deceased was of 28 years of age at the time of alleged accident and he was founder and Managing Director of Ganga Dairy Limited Company. The documents in balance sheet shows that the Managing Director was being paid Rs. 1,20,000/- per annum. The assertion made with respect to the earning of the deceased was 20,000/- to 30,000/- has not been established by the claimant and, therefore, the learned Tribunal fixed notional income at the rate of Rs. 10,000/- per month. Since the deceased was married, hence out of total income claimed compensation shall be reduced to one-third (1/3rd) in consideration of expenses which victim would have incurred towards maintaining himself, if he would have been alive. Therefore, the annual income of the deceased after deducting his personal expenses to the extent of one-third (1/3rd) would become to Rs. 80,000/- (Rs. 1,20,000 - 40,000= 80,000/-). The deceased was 28 years and hence a multiplier of 17 will be applied for multiplying the income of the deceased and it will come to Rs. 13,60,000/-.

8. It is further held that the claimant will also get Rs. 10,000/- for loss of estate and Rs 10,000/- for funeral expenses. The total compensation amount is Rs. 13,80,000/-. Out of the same, Rs. 50,000/- has already been paid as an ad interim compensation.

9. The Insurance Company preferred an appeal before this Court challenging the impugned judgment and award of learned Tribunal. The Insurance Company did not dispute the quantum of compensation, but questioned the liability itself submitting that the driver of the vehicle was not having a valid permit to ply the vehicle on that day. It is also submitted that the learned Tribunal has erred in law by deducting one-third (1/3rd) under the head of personal expenses, which should have been one-half (1/2), as the mother is the only claimant. It is also submitted that the permit granted to the alleged vehicle was valid from 09-7-2001 to 08-07-2002, which does not show that on the alleged date of accident, i.e., on 17-6-2001, the vehicle was plying without permit. It is further submitted that fitness of the vehicle (Exhibit- B) was not valid on the date of accident. The two vehicles involved in the said accident leading to the death of Brajesh Kumar. It is a case of contributory negligence. Learned counsel for the Insurance Company further claimed right to recovery of the compensation

amount against the owner of the vehicle who breached the terms of the policy.

10. On the other hand, learned counsel for the respondent-claimant has challenged the quantum of the compensation awarded by learned Tribunal without filing cross-appeal placing reliance on a decision of the Apex Court in the case of ***Surekha and Ors. V Santosh and Ors.*** reported in ***2020 SCC Online SC 1312*** wherein, the Hon'ble Apex Court has held that *"the court should not take hypertechnical approach and ensure that just compensation is awarded to the affected person or the claimants*". The learned counsel for the respondent-claimant submits that the learned Tribunal has failed to consider the calculation of the compensation in terms of the settled principle laid down in the case of ***National Insurance Company Limited Vs Pranay Sethi & others*** reported in (***2017) 16 SCC 680***. It is further submitted that the learned Tribunal has failed to consider future prospect in calculating the quantum of compensation as per the case of ***Pranay Sethi*** (supra). The learned Tribunal has erroneously failed to add compensation for the loss of consortium as per the latest judgment of the Hon'ble Apex Court. It is further contended that defence taken by the appellant on merit of the case is not maintainable unless permission under Section 170 of the Motor Vehicles Act, 1988 is

granted by the Tribunal as held by this Court in the case of ***Chairman ICICI Lombard General Ins. Co. Ltd. Vs. Ranju Devi & Others*** reported in ***2023 ACJ 363.***

11. In the case of ***Ranjana Prakash and others Vs Divisional Manager and Anr.*** reported in ***(2011) 14 SCC 639,*** the Hon'ble Apex Court has held as under:-

> *"the principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objection".*

12. With regard to non-pecuniary loss, the Hon'ble Supreme Court in the case of ***Pranay Sethi*** (supra) has held as under:-

> *"It seems to us that a 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."*

13. The word consortium has further elaborated in the case of ***Magma Insurance Vs Nanu Ram*** reported in ***(2018) 18 SCC 130.*** wherein the Hon'ble Supreme Court has held as under:-

> *"In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help comfort, guidance, solace and affection of the deceased, which is a loss to his family."*

14. On analyzing the impugned judgment and award passed by the learned Tribunal, materials on record as well as submission of the parties, who have placed reliance on several decisions passed by the Hon'ble Supreme Court as well as the Hon'ble High Courts wherein, the determination of age, income of the deceased, addition of income to future prospect, deduction towards personal and living expenses, multiplier based on age, loss of estate, loss of consortium and funeral expenses are being considered.

15. It is admitted case of the parties that the deceased was married. The deduction towards personal and living expenses of the deceased should be one-third (1/3rd) . This aspect has been dealt with by the Hon'ble Apex Court in the case of ***Sarla Verma (Smt) & Others versus Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121*** in paragraph 30, which reads as under:-

> *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."*

16. I am of the opinion that the deduction of one-third (1/3rd) of the income on account of personal expenses would be appropriate. With regard to conventional heads in ***Pranay Sethi*** (supra), the Hon'ble Apex Court has recognized three categories of conventional heads- (i) funeral expenses at Rs.15,000/-, (ii) Estate loss at Rs. 15,000/-, (iii) loss of consortium at Rs. 40,000/-.

17. So far future prospect is concerned, learned Tribunal ought to have considered the future prospects of the deceased and while computing the compensation ought to have added additional 40 per cent on actual monthly income of the deceased which has been decided in case of ***Pranay Sethi*** (supra) in paragraph 59.4, which reads as under:-

> *"59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

18. On the point of future prospect, if it is added, as per the judgment of the Hon'ble Apex Court, while calculating the total loss of dependency, in absence of there being any mandate of the Apex Court on this point, ratio has been applied in the present case where the deceased was aged below 40 years, an additional 40 per

cent of the established income of the deceased should be awarded towards future prospect, which has been elaborated in paragraph '59.4' of ***Pranay Sethi*** (supra) case.

19. The age of the deceased was 28 years at the time of alleged accident, the learned Tribunal has rightly applied the multiplier as '17'. So far, income of the deceased is concerned, the learned Tribunal has rightly considered materials on record and has fixed notional income of Rs 10,000/- per month instead of Rs. 20,000/- to Rs 30,000/- as per the claimant's oral and documentary evidence. It is apparent from the impugned judgment that the Insurance Company did not produce any witness before the learned Tribunal to contradict the same.

20. So far, objections raised by the appellant that the offending truck had no valid permit and fitness and therefore, he may be given right to recover the award amount from the owner of the said offending vehicle.

21. On perusal of the impugned judgment, it appears that the learned Tribunal has held that the offending truck was duly insured with the appellant's company and the driver of the said truck was having a valid driving license to drive the vehicle. Considering all aspects of the matter, the details of compensation amount, under different heads, in the light of the aforesaid decisions of the

Hon'ble Supreme Court, the claimant is awarded compensation in the manner indicated in the chart mentioned below, and the judgment and award passed by the learned Tribunal is modified to the aforesaid extent:-

1.	Name	Brajesh Kumar
2.	Age	28 years
3.	Monthly Income	Rs. 10,000/- (Self Employed)
4.	Annual Income	Rs. 1,20,000/- (Rs. 10,000 x 12)
5.	Addition to income to future prospect @ 40% deceased being below than 40 years	Rs. 48,000/- (Rs. 1,20,000 + 48,000/-) = 1,68,000/-
6.	Deduction toward personal and living expenses (1/3)	Rs.56,000/- (Rs. 1,68,000 x 1/3)= 1,68,000-56,000=1,12,000/-
7.	Multiplier based on age of 28 years	17
8.	Amount of compensation	Rs. 19,04,000/- (Rs. 1,12,000 X 17)
9.	Loss of estate	Rs. 15,000/-
10.	Loss of consortium (mother only)	Rs. 40,000/-
11.	Funeral expenses	Rs. 15,000/-
12.	Total amount of compensation	Rs. 19,04,000/-

22. The total amount of compensation is Rs. 19,04,000/-. Out of the same, Rs. 50,000/- has already been paid as an ad interim compensation.

23. Accordingly, this Miscellaneous Appeal is hereby dismissed with modification in the quantum of compensation, as aforesaid.

24. The amount of compensation, as awarded by the learned Tribunal, is modified from Rs. 13,80,000 (thirteen lakh eighty

thousand) plus 9% interest per annum to Rs. 19,04,000/-(Nineteen lakh four thousand). The modified amount shall carry interest @ 9% per annum from the date of claim petition till realization. The due amount i.e., 19,04,000-50,000/- = Rs. 18,54,000/- be paid by the appellant i.e., the Branch Manager, Oriental Insurance Company Limited within a period of three (03) months.

25. Office is directed to return the statutory amount to the appellant- Insurance Company, which was deposited at the time of filing of this appeal.

(Khatim Reza, J)

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