

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.502 of 2018

1. Pramod Ram son of Late Ram Bihari
2. Rita Devi wife of Sri Pramod Ram
Both resident of Mohalla - Salempur, P.S. - Pirpainti, District - Bhagalpur.
... .. Appellant/s
- Versus
1. Rajeev Kumar son of Ram Chandra Yadav resident of Alampur, P.S. - Kahalgaon, District - Bhagalpur (Owner of Vehicle Truck No. BR 10GA 4025)
2. Bajrang Paswan son of Bhagwan Paswan resident of Harichak, P.S. - Kahalgaon, District - Bhagalpur (Driver of Vehicle Truck No. BR 10 GA 4025)
3. Manager, National Insurance Company Ltd., Kahalgaon, Bhagalpur (Insurer of Truck No - BR 10 GA 4025)
4. Manager, National Insurance Company Ltd, Sumrit Mandal Complex, Tilkamanjhi, Bhagalpur.
... .. Respondent/s
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Appearance :

For the Appellant/s : Mr. Vivekanand Vivek, Advocate
For the Respondent/s : Mr. Sanjay Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 23-09-2024

Heard Learned counsel for the appellants and learned counsel for the respondent nos.3 & 4 /Insurance Company.

2. 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, Bhagalpur (hereinafter referred to as “Learned Tribunal”) vide judgment dated 16.12.2017 and award dated 16.01.2018 passed in Claim



Case No.196 of 2015 (Trial No.62 of 2016).

3. The facts, in brief, are that Dilkhush Kumar, who was the son of the claimants/appellants died in motor accident on 28.07.2015 at 10:30 a.m. near Pakhariya village, Prvauti Dharmkanta, Main Road, Pirpathi P.S., District Bhagalpur by the offending Truck bearing Registration No.BR-10GA-4025. It is alleged that the driver of the offending vehicle was driving it rashly and negligently. Respondent no.1 is the owner and respondent no.2 is the driver of the offending vehicle and respondent nos.3 and 4 are officials of National Insurance Company Limited. It is claimed by the appellants that the deceased aged about 18 years having income of Rs.10,000/- per month was employed as seller of pant and shirt. The deceased was unmarried and the appellants were dependents on him.

4. Respondent nos.3 and 4 appeared in the case and denied the claim stating that since the deceased was 18 years old and he was not an earning member, the claims of the claimants/appellants are excessive.

5. After hearing the parties the learned Tribunal allowed the claim of the claimants and the Insurance Company has been directed to pay Rs.5,03,700/- within sixty days from the date of preparation of award 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. The calculation of the awarded amount made by the learned Tribunal which is as follows: :-

S.N.	Particular	Calculation	Net Amount
1.	Monthly income of deceased.	Rs.5,200/-	Rs.5,200/-
2.	Less personal expenses	Rs.5,200 x 1/2	Rs. 2,600
3.	Annual Income	Rs.2,600 x 12	Rs.31,200/-
4.	Multiplier	16	
5.	Actual loss of income.	Rs.31,200 x 16	Rs.4,99,200/-
6.	Loss of estate.		Rs.2,500/-
7.	Funeral Expenses.		Rs.2,000/-
8.	Total compensation amount.		Rs.5,03,700/-

6. The claimants/ appellants being not satisfied and aggrieved by the impugned judgment dated 16.12.2017 and award dated 16.01.2018 passed by the learned Tribunal, filed the present appeal for enhancing the compensation amount.

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

8. 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.

9. Learned counsel for the appellants submits that the learned Tribunal has not considered the fact that the deceased was 18 years, accordingly, the multiplier of 18 would be



appropriate instead of multiplier 16. He further submits that in view of the judgments of Hon'ble Supreme Court in the cases of **National Insurance Company Limited vs. Pranay Sethi**, reported in (2017) 16 SCC 680, **Sarla Verma & Ors vs. Delhi Transport Corp.& Anr** reported in (2009) 6 SCC 121, **United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors.** reported in AIR 2020 SC 3076 and **Rojalini Nayak and Others vs. Ajit Sahoo and Ors.** reported in 2024 SCC OnLine SC 1901 the claimants are also entitled for future prospects but the learned Tribunal failed to grant the said award under the head of future prospects. He next submits that the learned Tribunal erred in awarding less compensation towards loss of estate, funeral expenses and also erred in not providing loss of consortium. Learned counsel for the appellants also submits that the learned Tribunal has awarded 6% interest although it was claimed for 9%. On the basis of the said arguments, learned counsel for the appellants submits that the judgment and award is liable to be modified.

10. On the other hand, learned counsel for the National Insurance Company submits that the learned Tribunal considering the facts and circumstances of the case passed the judgment and award which requires no interference by this



Court. He further submits that the Insurance Company has already made payment of the awarded amount.

11. 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 awarded less amount with respect to funeral expenses, loss of estate but did not grant award with respect to compensation under the head of loss of consortium. As the deceased was aged about 18 years and was working as seller of pant and shirt, he is entitled to future prospects which the learned Tribunal failed to provide. It also appears that the learned Tribunal has erred while applying the multiplier of '16' wherein the age of the deceased was 18 years.

12. 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 Act of 1988.

13. Fixation of monthly income of Rs.5,200/- 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 Act of 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 Tribunal.

14. In so far as the conventional heads are concerned, the deceased Dilkhush Kumar, who was unmarried, left behind his mother and father 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 as 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 filial consortium to each of the dependents	Rs.40,000 + 10% enhanced twice	Rs.96,800/- (Rs.48,400 X 2)
3.	Funeral expenses	Rs.15,000 + 10% enhanced twice	Rs.18,150/-

15. 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 18



years i.e. below the age of 40 years, an addition of 40% as future prospects 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)**.

16. 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 follows:-

S.N.	Head	Compensation awarded
1.	Income	Rs.5,200/- per month
2.	Future prospects	Rs.2,080/- (i.e. 40 % of the income)
3.	Deduction towards personal and living expenses	Rs.3,640/- (i.e. 50% of Rs.5,200+2,080)
4.	Total annual income	Rs.43,680/- (Rs.3,640 x 12)
5.	Multiplier	18
6.	Loss of dependency	Rs.7,86,240/- (43,680 x 18)
7.	Funeral expenses.	Rs.18,150/-
8.	Loss of Estate	Rs.18,150/-
9.	Loss of filial Consortium.	Rs.96,800/-
10.	Total compensation	Rs.9,19,340/- (7,86,240+1,33,100)
11.	Total compensation payable	Rs.9,19,340/-

17. The claimants/appellants stand entitled for a total compensation to the tune of Rs.9,19,340/-. The National Insurance Company 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 amount shall be deposited within two months from today and to be paid to the appellants according to law.

18. The Judgment dated 16.12.2017 and award dated 16.01.2018 passed by the learned Tribunal in Claim Case No.196 of 2015 stands modified to the aforesaid extent. Accordingly, this appeal is **disposed of** with the aforesaid modification in the impugned Judgment and award.

19. There shall be no order as to costs.

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

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.09.2024
Transmission Date	

