

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.233 of 2021**

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1. ICICI Lombard General Insurance Company Limited Zenith House, Keshav Rao, Khadya Marg, Maha Luxmy, Mumbai - 400034.
  2. ICICI Lombard General Insurance Company Limited thorough Manager Legal ELDECO Corporate Chamber- I, 4th Floor, Bibhute Khand, Gomate Nagar, Lucknow- 226024, Appeal and appellant through Manager (Legal), ICICI Lombard General Insurance Company Limited, 2nd Floor, Krishna Bhawan, Above Axis Bank, Near Dakbanglow Chauraha, Patna – 1.

... .. Appellant/s

Versus

1. Dr. Amar Kumar Son of Late Dr. Tapes Chandra Thakur Resident of House No. 80, Ward No. 24, R.N. Surya Nr. Singh Road, Khanjerpur, P.S. Barari, District – Bhagalpur.
2. Anjali Sandilya, daughter of Sri Dr. Amar Kumar, Resident of House No. 80, Ward No. 24, R.N. Surya Nr. Singh Road, Khanjerpur, P.S. Barari, District – Bhagalpur.
3. Aarohi Sandilya, daughter of Sri Dr. Amar Kumar, Resident of House No. 80, Ward No. 24, R.N. Surya Nr. Singh Road, Khanjerpur, P.S. Barari, District – Bhagalpur.
4. Krishna Mohan Sah, S/o Lt. Doman Sah Resident of Village – Marufchak, Katghar, P.S. - Mojahidpur, Dist. Bhagalpur (Owner).
5. Gore Lal Yadav, S/o Mangal Prasad Yadav, Resident of Ashok More, P.S – Poraiya Hat, Dist. - Godda (Driver).

... .. Respondent/s

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**Appearance :**

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For the Appellant/s  | : | Mr. Durgesh Kumar Singh, Advocate  |
|                      | : | Mr. Abhijeet Kumar Singh, Advocate |
| For the Respondent/s | : | Mr. Madan Mohan, Advocate          |
|                      | : | Ms. Pallavi Pandey, Advocate       |
|                      | : | Mr. Ritik Shah, Advocate           |
|                      | : | Mr. Rahul Raj, Advocate            |

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**

**CAV JUDGMENT**

**Date: 10.04.2025**

Heard the learned counsels for the appellant as  
well as the learned counsels for the respondents.

2. This Miscellaneous Appeal has been filed  
under Section 173 of the Motor Vehicles Act, 1988 (herein after



referred to as “Act”) on behalf of ICICI Lombard General Insurance Company Ltd., (hereinafter referred to as “Insurance Company”) against the Judgment dated 11.12.2020 and Award dated 11.12.2020 passed by learned Additional District & Sessions Judge II-cum-Motor Accident Claims Tribunal, Bhagalpur (hereinafter referred to as “learned Tribunal”) in Claim Case No.135 of 2011.

3. The learned Tribunal held that claimants (respondent nos. 1 to 3) are entitled to receive Rs. 95,52,620/- (Ninety five lakh fifty two thousand six hundred twenty only) as compensation and accordingly appellant/ Insurance Company has been directed to make payment of the said compensation amount within 30 days from the date of order along with interest @ 6% per annum from the date of filing of the claim case to the date of payment accordingly.

4. The brief facts of this case are that on 19.05.2011, Dr. Preeti Singhania (deceased), was going from Bhagalpur to Amarpur via Banka by her Maruti car bearing registration no. BR 10 E 2746 that was being driven by a driver. When the car reached near Sher-e-Bihar Hotel within Rajoun Police Station, a bus bearing registration no. BR 10P 3239 coming from Dhaka More side (Opposite side) being driven rashly and negligently by the driver dashed the Maruti car. The



doctor as well as the driver were seriously injured. They were taken to Referral Hospital, Rajoun, where the doctors after examination, referred them to Bhagalpur, where the driver of the car died during the course of treatment and Dr. Preeti Singhania was referred to Siliguri, but she also succumbed to her injuries and died during the course of treatment on 24.05.2011. The Police reported the said accident and registered an FIR vide Rajoun P.S Case no. 92 of 2011 against the Driver of the offending Vehicle i.e. Bus under sections 279, 337, 338, and 304-A of Indian Penal Code and after completion of investigation submitted a charge sheet against the driver of the Bus under the said offenses. Dr. Preeti Singhania (deceased) was a 39 year old doctor (Gynecologist) by profession and was in a permanent job. She was a Specialist Surgeon in the Department of State of Bihar and was posted in Amarpur and she was getting a salary of Rs. 36,015/- per month. She also had a private practice and was earning an average sum of Rs. 2,18,376/- per year. She used to file Income Tax Return every year and was regularly paying her income Tax. Dr. Preeti Singhania died leaving behind her husband and two minor daughters as her Legal Representatives.

5. The Claimants filed a Claim Case before the MACT, Bhagalpur, for grant of an Award to the tune of Rs.1,04,30,896/- with 12 % pendente lite interest and future



cost. The breakup of the claim amount is given here under:-

|                                                        |                   |
|--------------------------------------------------------|-------------------|
| Loss of earning including Advancement in future career | Rs. 1,04,08,896/- |
| Funeral expenses                                       | Rs. 2000/-        |
| Loss of estate                                         | Rs. 10,000/-      |
| Loss of Consortium                                     | Rs. 10,000/-      |

6. During the trial the claimants altogether examined 4 witnesses, i.e.

|      |                                                                                               |
|------|-----------------------------------------------------------------------------------------------|
| CW-1 | Dr. Amar Kumar (Husband of the deceased and Claimant No. 1)                                   |
| CW-2 | Kaushal Kumar Thakur (Passenger of the offending vehicle, who is an eye-witness)              |
| CW-3 | Punit Chowdhary (CA of the deceased)                                                          |
| CW-4 | Dr. Fuleshwar Jha (Authority under whose signature salaries were disbursed in the department) |

6.i. The documentary evidence produced by the claimants are as follows:-

|          |                                                   |
|----------|---------------------------------------------------|
| Ext. 1   | Income Tax Return for the Assessment year 2010-21 |
| Ext. 1/1 | Income Tax Return for the Assessment year 2009-10 |
| Ext. 1/2 | Income Tax Return for the Assessment year 2008-09 |
| Ext. 2   | Salary certificate of Deceased.                   |
| Ext. 3   | F.I.R                                             |
| Ext. 4   | Charge-Sheet                                      |
| Ext. 5   | PM report                                         |
| Ext. 6   | Certificate of Registration of bus                |



|        |                                                 |
|--------|-------------------------------------------------|
| Ext. 7 | Insurance policy of bus.                        |
| Ext. 8 | Original Matriculation certificate of deceased. |
| Ext. 9 | Heir-ship certificate issued by C.O.            |
| Ext.10 | Photo copy of P/L of Gorelal Yadav              |

7. Before the Tribunal, Opp. No. 1 & 2 examined one witness, O.P.W-1 Krishna Mohan Sah whereas Opp. No.-3 examined two witnesses, O.P.W-1 Gorelal Yadav and O.P.W-2 Ravindra Choudhary. Opp. No.-3 also produced document art evidence which were Ext-A/1 DTO Certificate regarding the license, Ext-A/2 Photo copy of police case dairy and Ext-A/3Photo copy of police case dairy.

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

- i. Is the claim case maintainable?*
- ii. Has the claimant any cause of action of file this suit?*
- iii. Did the accident take place due to rash and negligent driving of bus driver or car driver also contributed the accidents, what would be percentage of contribution amongst the two tort-feasors.*
- iv. Who is liable to pay compensation owner or insurer?*
- v. Is the amount of claim excessive if yes what would be the just compensation to be payable to the claimants?*
- vi. Are the claimants entitled to get other relief as prayed for?*



9. 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 husband and children of the deceased. The learned Tribunal has held that the claimants are entitled for compensation to the tune of Rs.95,52,620/- along with simple interest @ 6% per annum from the date of filing to the date of payment accordingly.

10. Learned counsel for the appellants/ Insurance Company submitted that the Income Tax Return (ITR) for Assessment year 2010-11 for financial year 2009-10 was filed and the date of receiving is 10.09.2010 which shows income of deceased as Rs. 2,18,608/ per annum from salary of private practice (Ext.1). He further submitted that Ext.2 is the salary certificate effective from 09.05.2011 and from perusal of the same yearly income is Rs. 4,17,432/- and the same would be taxable. He further submitted that income from salary (Ext.2) never came into existence and no payment even for single month was paid as the said certificate was effective from 09.05.2011 and the deceased met with an accident on 19.05.2011. He



submitted that the ITR of Assessment Year 2011-12 was deliberately not brought on record as the it would have been the deciding factor but the same has deliberately been concealed due to a lower income than the ITR (Ext.1) of previous year. ITR of three years have been filed but only one ITR (Ext.1) for Assessment Year 2010-11 has been marked as Ext. He submitted that normally average of ITR of three years is taken for calculating compensation.

**10.i.** He further submitted that the Learned Tribunal committed an error in computing compensation and added ITR of Assessment Year 2010-11 and salary of Ext.2 (Rs. 4,17,432/- + Rs. 2,18,076 = Rs. 6,35,508/-) whereas computation of ITR of Assessment Year 2010-11 included the salary. He submitted that Ext. 1 and Ext. 2, both cannot be taken into consideration for calculating compensation.

**10.ii.** Learned counsel further submitted that claimant no.1 (Dr. Amar) is a doctor by profession and is employed and as such he cannot be said to be dependent on his wife. Their two daughters can be said to be dependent, but they can well be said to be dependent on their father (Dr. Amar, claimant no.1) to at least 50% thus dependency would be 50% and not 2/3rd. He relied on the decision of Apex court in the case of *Sarla Verma v. DTC, (2009) 6 SCC 121* where it has been



held that unmarried/sons/daughters would be dependent on her father. Learned counsel further relied on the decision of Apex Court in ***Bijoy Kumar Dugar v. Bidya Dhar Dutta, (2006) 3 SCC 242*** wherein the Apex court upheld the deduction of 50% from the income in the case of contributory negligence in cases of head-on-collision. It is submitted that while compensation can be claimed by either of the two tort-feasors but apportionment would be required to be done in the ratio of 50-50. He further submitted that the bus was insured by appellant and being heavier vehicle 60% would be the liability of appellant and with respect to the vehicle in which the victim was traveling, it was a smaller vehicle as such liability would be 40% and that as the concerned of the car has/have not been impleaded as party as such 40% of the total income/ compensation amount would not be payable. He further submitted that in-spite of pleading that two vehicles were involved in the accident and there was head-on collision, the issue of composite negligence or contributory negligence which was necessarily required to be framed has not been framed.

**10.iii.** He further submits that Ext. C proves that the life could have been saved had the driver of the victim acted promptly. He further submitted that the driver of the Bus was not authorized to drive heavy vehicle with Public Service Vehicle



(PSV) endorsement at the time of accident and that it is not the case of the owner that he took all necessary steps before handing over the vehicle to the driver of the Bus and as such liability whatever would be that of the owner. In the light of evidence of District Transport Officer (DTO), liability whatever, would have been that of the owner and not the appellant but the issue pay and recover was allowed by the learned Tribunal. It is submitted that the DTO has been examined and as such the appellant has successfully proved that the driver was not duly licensed.

**10.iv.** Learned counsel for appellant lastly submitted that the learned Tribunal failed to appreciate that the income claim from the private practice will not be sustainable as being a government doctor and that the deceased was not entitled to private practice.

**11.** Learned counsel for the respondents submitted that with respect to the issue whether a husband who is earning can be considered as 'dependents', relied on the decision in *National Insurance Company Ltd. v. Birender*, AIR 2020 SC 434, 2020 (11) SCC 356 where a major son who was earning well and was not dependent on his family was also considered as legal representative. The Apex Court held:

*11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person,*



*and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.*

*Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).*

*15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only.”*

**11.i** The learned counsel further relied on the decision of the Hon'ble Apex Court in the case of ***Smt. Manjuri Bera v. The Oriental Insurance Co. reported in (2007) 10 SCC 643*** where the Apex Court had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. The Apex Court has noted that the expression "legal representative" has not been defined in the Act. In ***Manjuri Bera*** the Hon'ble Court observed:



*“9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.*

*10. The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same...*

*12. As observed by this Court in **Custodian of Branches Of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275]** the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative".*



**11.ii.** Learned counsel further relied on *Gujarat SRTC v. Ramanbhai Prabhat-hai*, (1987) 3 SCC 234 where the Apex Court held:

*“that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.”*

**11.iii.** Learned counsel further submitted that from perusal of Ext. 1 which is the ITR it appeared that the said return was filed on 10.09.2010 wherein at the last but one page of the said Return it has been mentioned as INCOME UNDER THE HEAD BUSINESS AND PROFESSION (Private Practice) -  $\geq$  Rs. 2,18,376 and from Ext. 2 (Salary Certificate Duly Proved by CW-4) it is clearly seen that from 09.05.2011 the salary to be given to the deceased was Rs. 34,786/-, so Dr. Priti Singhania (deceased) was getting a salary of Rs. 34,786/- at the time of accident i.e. on 19.05.2011. Thus, learned Tribunal rightly calculated the amount of compensation on the basis of Income Tax Return (Ext.1) and Salary Certificate (Ext. 2).

**11.iv.** With respect to the third issue i.e. whether there was a head on collision of the offending vehicle and the maruti car in which the deceased was traveling and thus the said case is of composite negligence learned counsel for respondent submitted that after the completion of investigation, the police



submitted its charge-sheet against the driver of the bus and the police did not find any guilt of the car driver. Furthermore, CW-2 Kaushal Kumar Thakur, who was the passenger in the bus and an eyewitness to the said accident has deposed about the manner of the occurrence, and has stated that the bus driver was driving the bus in a rash and negligent manner and when the bus crossed the Katoriya bridge, in order to save the bus from going into the ditch on the road, the driver of the bus crossed the divider and dashed against the Maruti Car. Hence, it is evident that the accident took place due to the rash and negligent driving of the bus driver and thus the learned Tribunal rightly decided Issue No. 3 after going through the evidence on record.

**12.** Having heard the learned counsels for the parties, considering the rival submissions made by the parties and the materials on record it appears that there is no dispute as to the occurrence of accident in question in which the deceased lost her life and liability of the Insurance Company to pay the compensation amount to the claimants. The FIR was lodged against the driver of the offending vehicle and on completion of investigation the charge-sheet has also been filed against the driver of offending vehicle which was also proved by the claimants witnesses.

**13.** After perusal of memorandum of appeal and



hearing both the parties and the material evidences on record, the main point of determination are:

- i. Whether the sources of income of the deceased from her private practice and her government job, both should be considered in determining the quantum of compensation payable to the claimants.*
- ii. Whether the Respondent No.1, i.e. husband of the deceased is entitled to claim compensation as a legal representative of deceased?*

**13.i.** With respect to the first issue it appears that till the claimant filed the ITR, she was in private job. The argument raised by the appellant that the Learned tribunal erred in calculating the ITR filed by the deceased by taking into consideration both the Salary from her private job and government job is not sustainable. The deceased filed the ITR for the Financial Year 2010-11 and in the Assessment Year 2011-12, she was appointed as Specialist Surgeon in the Department of State of Bihar and was posted in Amarpur as well. Before she could file the ITR for the Financial Year 2011-12, she died in the road accident. The Claimants-Respondents had filed Ext. 1 i.e. the Income Tax Return for the Assessment Year 2010-2011. From perusal of the said Ext. 1 it appeared that the said return was filed on 10<sup>th</sup> September 2010 wherein at the last but one page of the said return it has been mentioned as INCOME UNDER THE



HEAD BUSINESS AND PROFESSION (Private Practice) -  $\geq$  Rs. 2,18,376 and from Ext. 2 (SALARY CERTIFICATE DULY PROVED BY CW-4) it is clearly seen that from 09.05.2011 the salary to be given to the deceased was Rs. 34,786/- from her government practice, so Dr. Priti Singhania (deceased) was getting a salary of Rs. 34786/- at the time of accident i.e. on 19.05.2011. The calculation of ITR by the Learned Tribunal is thus correct in law.

**13.ii.** Lastly with respect to the submission of the appellant that the income claim from the private practice of the deceased will not be sustainable as being a government doctor and that the deceased was not entitled to private practice, it is observed that CW-4 who is the Authority under whose signature salaries were disbursed in the department has stated in Para-4 of his examination that government doctors are allowed to conduct their own private practices too. Thus, the submission of the appellant does not sustain in the eye of law.

**14.** It is further observed that the Memo of appeal filed by the appellant/Insurance Company does not contain any averment or pleading with respect to incorrect calculation of ITR by the learned Tribunal but still the learned counsel for the appellant has raised the issue in his arguments. The appellant has nowhere contented that the salary certificate issued by the Govt.



Hospital to the deceased is forged or that the deceased did not work in government service or that the ITR furnished is not genuine. It is pertinent to refer to the decision of the Hon'ble Apex Court in the case of ***Union of India v. Ibrahim Uddin, (2012) 8 SCC 148***, wherein it was held that any relief not founded on the pleadings cannot be granted. The Court held as follows:

*77. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.*

*85.6. The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the court, it is just to be ignored.*

**15.** With respect to the second issue, the position of law has been established by the Apex Court that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. It is



established that a legal representative under Section 2(11) CPC is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

16. On perusal of the impugned order it appears that the Learned Tribunal calculated the future advancements at 50% with respect to both the jobs of the deceased. In the case of ***National Insurance Co. Ltd. v. Pranay Sethi, 2017 SCC OnLine SC 1270*** the Apex Court laid down the standard parameters for determining the future prospects. The Apex Court held as follows:

*59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

*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.*

17. Thus, in light of the above stated precedent the correct calculation of compensation for the claimants in the



instant case would have been as follows:

|                                                          |                                                                              |
|----------------------------------------------------------|------------------------------------------------------------------------------|
| <i>Income from salary certificate (Ext. 2)</i>           | <i>Rs. 34,786/ month thus Yearly income= Rs. 34,786 x 12 = Rs. 4,17,432.</i> |
| <i>Annual Income from private practice</i>               | <i>Rs. 2,18,076.</i>                                                         |
| <i>Since the deceased was less than 40 years of age,</i> | <i>40% of Rs. 2,18,076 + 50% of Rs. 4,17,432 = Rs. 3,05,306/-.</i>           |
| <i>The computation of future prospects would be-</i>     | <i>Rs. 3,05,306 + Rs. Rs. 2,18,076+ Rs. 4,17,432 = Rs. 9,31,454/-</i>        |

17. The trial Court committed an error in the calculation of the amount to be paid as compensation towards future prospects. Following the ratio laid down in ***Pranay Sethi (supra)*** and ***Sarla Verma (supra)*** where the number of dependent family members is in between 2 and 3, the deduction towards personal and living expenses of deceased should be 1/3<sup>rd</sup>. The deduction of 1/3<sup>rd</sup> from the income of deceased towards personal and living expenses by the learned Tribunal is appropriate and no fault is found in this regard. Further since the deceased was 39 years of age at the time of death, the multiplier to be used for calculating total compensation would be 15. Thus, the total compensation would be calculated as follows:

|                                        |                                              |
|----------------------------------------|----------------------------------------------|
| <i>Deduction for personal expenses</i> | <i>1/3rd of Rs. 9,31,545= Rs. 3,10,484/.</i> |
| <i>Contribution towards</i>            | <i>Rs. 9,31,545 -Rs. 3,10,484</i>            |



|                                                    |                                                                                            |
|----------------------------------------------------|--------------------------------------------------------------------------------------------|
| <i>the family</i>                                  | <i>= Rs. 6, 20,970/.</i>                                                                   |
| <i>Total compensation payable to the claimants</i> | <i>Since multiplier for the age of 39 years is 15, Rs.6, 20,970 X 15= Rs. 93,14,550/-.</i> |

**18.** The Judgment and Award dated 11.12.2020 in Claim Case No.135 of 2011 stands modified to the extent of amount of compensation payable to the claimants/respondents. The findings of the Tribunal with respect to the issues framed are correct and thus the judgment is upheld. The claimants are entitled to compensation to the amount of Rs. 93,14,550/- and not Rs.95,52,620/-. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned Judgment and award and accordingly point of determination is deemed to disposed off.

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

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

**(Ramesh Chand Malviya, J)**

Mayank/-

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|-------------------|------------|
| AFR/NAFR          | AFR        |
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