

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 128 of 2016

ICICI Lombard General Insurance Company Limited, ICICI Lombard House no. 414, Veer Sawarkar Marg, Near Sidhi Vinayak Temple, Prabha Devi, Mumbai, through Legal Section/Manager, 4th Floor, Eldeco Corporate Chamber-I, Vibhuti Khand, Gomti Nagar, Lucknow, Appeal/Appellant through the Legal Manager/Authorized Signatory, ICICI Lombard General Insurance Compant Limited, Office at Uma Complex, Frazer Road, Patna-1.

... .. Appellant/s

Versus

1. Arti Devi @ Arti Kunwar, Wife of Late Anil Kumar Gupta.
2. Dilip Kumar Gupta, Son of Late Anil Kumar Gupta.
3. Jyoti Kumari, Daughter of Late Anil Kumar Gupta.
4. Priti Kumari, Daughter of Late Anil Kumar Gupta.
5. Anshu Kumari, Daughter of Late Anil Kumar Gupta.
6. Ajit Kumar Gupta, Son of Late Anil Kumar Gupta.
7. Lalmuni Devi, Wife of Sri Bahadur Sah.
Respondent nos. 2 to 6 are minor and are under the guardianship of natural guardian mother, (Respondent no. 1).
All the above are resident of village Sidhi, P.O. Gori, P.S. Kargahar, District-Rohtas (Bihar).

..... Claimant/s /Respondent/s

8. Ashok Singh, Son of Tulshi Singh, Resident of Village-Gangauli, P.O./P.S.-Dalmianagar, District- Rohtas, Bihar Pin-821385 (owner).

... .. O.P.-1/ Respondent/s

Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Advocate
	:	Mr. Abhijeet Kumar Singh, Advocate
For the Respondent/s	:	Mr. Rajesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 16-05-2025

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 “MV Act”) on behalf of appellants against the excessive compensation amount awarded to the claimants by the learned Adhoc. Additional District Judge-III cum-Motor Accident Claim Tribunal, Rohtas at Sasaram (hereinafter referred to as “learned Tribunal”) in Claim Case No. 156 of 2012 vide judgment and award dated 19.06.2015.

3. The learned Tribunal held that the appellants are entitled to receive Rs. 26,54,000/- as compensation and accordingly ICICI Lambard General Insurance Company Ltd./ respondent no. 2 has been directed to make payment of the compensation amount as per the order forthwith, along with simple interest 7% interest per annum within 3 months from the date of the order claim petition within two months from the receipt of the judgment of the learned Tribunal.

4. The details of the calculation of compensation amount made by the learned Tribunal are as under:

<i>Sr. no.</i>	<i>Heads</i>	<i>Calculation</i>	<i>Net amount</i>
1.	Monthly Income		Rs. 10,000/-
2.	Annual Income	Rs. 10,000/- * 12	Rs. 1,20,000/-
3.	Future Prospect	50% of the Rs. 1,20,000 + Rs. 1,20,000	1,80,000



4.	1/5 th deduction towards personal and living expenses		Rs. 36,000/-
5.	Deceased aged about 35 years Multiplier of 16 is applicable	Rs. 1,44,000 * 16	Rs. 23,04,000/-
6.	Loss of Consortium		Rs. 3,00,000/-
7.	Funeral Expenses		Rs. 50,000/-
8.	Interim compensation received by the claimant		Rs. 50,000/-
9.	Total amount of compensation		Rs. 26,54,000/-
10.	Net Amount	Rs. 26,54,000 – Rs. 50,000	Rs. 26,04,000

5. The brief facts of the present case according to the *fardbeyan* of the informant is that the deceased Anil Kumar Gupta with his cousin brother Krishna Kumar Gupta was going to Kargahar for marketing on 13.09.2012 at 10.00 hours by motorcycle and while they were returning to village at 12.30 PM and reached near Amolia Chowk school, a red color Tata Magic being no. BR-24G-4948 driven rashly and negligently by the driver dashed to motorcycle causing badly injuries to Anil Kumar Gupta and Krishna Kumar Gupta. After accident the villagers were carrying them for treatment to Sadar hospital,



Sasaram but, on the way for treatment Anil Kumar Gupta died.

6. Upon the *fardbeyan* of the informant, Bahadur Sah, Kargahar P.S. Case no. 175 of 2012 was registered and after investigation charge sheet under Sections 279, 337, 304 of the IPC against driver Vinod Kumar was submitted. Claimant has filed the case against the Ashok Singh owner Opposite Party. No.1 and ICICI Lambard General Insurance Company Ltd through legal section Manager, ICICI Lambard General Insurance Company Ltd. Vibhuti Kahnd, Gomti Nagar, Lucknow by Arti Devi widow, Dilip Kumar, Jyoti Kumari, Priti Kumari, Anshu kumari and Ajit Kumar Gupta all are minor children, Lalmuni Devi mother of the deceased. Claimants have submitted that deceased was teacher and earns Rs. 10,000/- per month. Further claimants have claimed Rs. 4,00,000/- compensation. Claim case has been filed by claimant on her behalf and on behalf of minor children of the deceased through their mother and legal guardian.

7. Moreover, Learned Tribunal called for Saristedar report and afterward case was admitted and summon was served upon the Opposite party. no.1 but Opposite party no.1 has not appeared, hence ex-parte proceeding started against the Opposite party no.1. The Opposite party. no.2 ICICI General



Insurance Company Ltd had appeared.

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

i. Whether the claim application is maintainable?

ii. Whether the accident took place on 18.9.12 at near Amoliya Chowk school Sasaram Chausa Path, P.S. Kargahar, District Rohtas, due to rash and negligent driving of the vehicle Regd. No. BR-24G/4998 Tata Magic by its driver and resulting thereby Man Which caused the deceased Anil Kumar Gupta was died in the Rolyan 1967 accident?

iii. Whether the claimants are entitled for compensation and from whom?

iv. Whether the claimants are entitled to any other relief or reliefs?

9. The claimants in support of their claim case have altogether examined three witnesses. They are CW-1 Babloo Kumar, CW-2 Bharat Sah and CW-3 Arti Devi widow @ Arti Kuer had been examined. On behalf of claimants some documents have also been marked as exhibits. They are Ext.-1 pedigree certificate, Ext.-2 driving license of the deceased, Ext-3 and 3/1 mark sheet of Matriculation and graduation of the deceased, Ext-3/2 Mark sheet of M.A, Ext-4 certified copy of



charge sheet Ext.-5 FIR, Ext.-X photo copy of Postmortem report, Ext-X/1 photo copy of insurance certificate and Ext.-X/2 registration of vehicle. Opposite party Insurance Company has examined OPW-1 Subarto Kumar Sahoo and upon identification of OPW-1, Ext-X/1 and A has been marked.

10. Learned counsel for the appellant submitted that the impugned judgment/award is bad in the eyes of law, bad in the facts and circumstances of the case and against the law settled by the Hon'ble court. Further learned counsel submitted that the learned Tribunal failed to appreciate that absolutely no income proof has been brought on record and except oral evidence there is no material on record which disclose that the deceased was a teacher. The learned Tribunal has even assessed the age of the deceased in a very casual and hypothetical manner.

10.i. He further submitted that the earning decided by the Tribunal is on the basis of assumption. The deceased was unemployed. Learned counsel also submitted that it has been assumed that the deceased was educated as such would earn Rs. 10,000/- per month. He further submitted that the learned Tribunal failed to appreciate that so many persons holding masters degree are unemployed. Even persons holding



technical degree are unemployed. So in the present claim case Rs. 100/- per day is taken as income and compensation is calculated taking Rs. 3000/- as income of the deceased. Even if notional income of Rs. 3000/- as taken as income and future prospect is added then compensation would be calculated taking Rs. 4500/-per month and not Rs. 15,000/- per month. Rs. 100/- per day as income would be taken in the light of ***Laxmi Devi & Ors. v. Md. Tabbar and Anr.*** reported in ***2008 0 ACJ 1488*** decided by the Apex Court. He further submitted that in want of evidence or at just extend the calculation taking into consideration, the minimum wages would be Rs. 151 for unskilled, Rs. 158 for semi-skilled and Rs. 192 for skilled and it would be for 26 days in a month as per minimum wages act. This principle has been reiterated by the Hon'ble Apex Court in the case of ***Kirti & Anr. v. Oriental Insurance company Ltd.*** ***(2021) 1 SCR 989.***

10.ii. Learned counsel further submitted that it has been held that no interest can be awarded on the amount under the head of future prospect for which he relied upon the judgment passed by Hon'ble High Court of Jammu & Kashmir & Ladakh in ***United India Insurance Company Ltd. v. Indrajeet*** ***2024 0 Supreme (J&K) 170*** and the judgment passed



by Gauhati High Court in ***Oriental Insurance Company Ltd. v. Smt. Rumi Barman & Ors.*** passed in ***MAC App. 77 of 2017.***

10.iii. Learned counsel further submitted that Hon'ble Supreme Court in catena of decisions held that in absence of any documentary evidence notional income or minimum wages would be taken into consideration for calculating compensation and for this submission he relied upon the judgments passed by Hon'ble Patna High Court in ***Sanichari devi & Anr. v. Sanjay kumar Yadav & Ors. 2012 4 BBCJ 429; 2012 0 Supreme (Pat) 685*** and ***Dukhni Devi v. Branch Manager, National Insurance Company Ltd. 2019 0 ACJ 2691.***

10.iv. Learned counsel further submitted that though it appears that permission under Section 170 of the MV Act was allowed by the Tribunal but it will be relevant to mention here that in the facts and circumstance permission under Section 170 of the MV Act would not be required in the light of the ruling in the case of ***United India Insurance Company Ltd. v. Shila Dutta & Ors., 2011 (7) Supreme 129.***

Learned counsel also submitted that due to non production of the driving license, non production of permit and non impleadment of driver as party in the case has deeply prejudiced



the interest of the appellant and failed to appreciate the case of the appellant.

11. Learned counsel on the behalf of claimants/ respondents vehemently opposed the appeal and submitted that the present memo of appeal is not maintainable the appeal is preferred on wrong and misconceived notions. He further submitted that learned tribunal has rightly passed the judgment as per the settled law laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* and in *Sarla Verma (supra)*. On point of compensation and other heads enhanced, learned counsel relied upon the judgment passed by Hon'ble Supreme Court in *Sunita & Ors. v. Vinod Singh & Ors. 2025* in *SLP Civil Appeal No. 114 of 2019*.

12. In the present case, the occurrence of the accident and liability of the Insurance Company is not in dispute. The only issue to be decided before this court is whether the compensation awarded by the learned tribunal to the claimants is just and reasonable or excessive?

13. The term compensation is a comprehensive term which includes a claim for the damages. The claimant in a claim for award of compensation under Section 166 of the Act, is entitled for just compensation which has to be equitable and



fair. The loss of life and limb can never be compensated in an equal measure but the Act is a social piece of legislation with object to facilitate the claimants to get redress the loss of the member of family, compensate the loss in some measure and compensate the claimants to a reasonable extent.

14. The learned tribunal held that the age of deceased was 36 years at the time of his death accordingly in view of *National Insurance Co. v. Pranay Seti & Ors.* reported in *(2017) 16 SCC 680* and *Sarla Verma and Ors v. Delhi Transport Corporation and Anr.* reported in *(2009) 6 SCC 121* the multiplier applicable according to his age range (36 to 40) of deceased would be 15. With respect to future prospect, 40% of monthly income of deceased was added in his income and deduction of 1/5th of his actual income has been taken. There is no dispute in this regard on behalf of the parties. It is now well-settled and not disputed that loss of consortium would be awarded to each claimants.

15. In so far as conventional damage of claimants are concerned, the learned Tribunal has awarded loss of funeral expenses Rs. 50,000/-, in lieu of love and affection to minor children Rs.1,00,000/- and also Rs.1,00,000 to the wife of deceased in lieu of love and affection and loss of consortium Rs.



1,00,000/- which is not a just compensation and required to be enhanced. The deceased left behind his wife and five minor children as his dependents. On the basis of judgments delivered by the Hon’ble Supreme Court in *Pranay Sethi (supra) Magma General Insurance Co. Ltd. v. Nanu Ram* reported in (2018) 18 SCC 130, *United India Insurance Company Ltd. v. Satindar Kaur @ Satwinder Kaur and Ors.* reported in (2021) 11 SCC 780 and *Rojline Nayak and Ors. Ajit Sahoo and Ors.* reported in 2024 SCC OnLine SC 1901, the following amounts are awarded as compensation under the conventional head:

Sr. no.	Heads	Calculation	Compensation amount
1.	Loss of Estate	Rs. 15,000/- + Enhance 10% twice	Rs. 18,150/-
2.	Loss of Consortium	Rs. 40,000/- + Enhance 10% twice	Rs. 3,87,200/- (Rs. 48,400/- x 8)
3.	Funeral Expenses	Rs. 15,000/- + Enhance 10% twice	Rs. 18,150/-

16. The judgments upon which the learned counsel for the appellant has relied that in absence of any documentary evidence notional income or minimum wages would be taken into consideration for calculating compensation and no interest can be awarded on the amount under the head of



future prospect are not in support of the appellant. As Hon'ble Apex court in the case of **Kirti (supra)** stated in para 12, 13 and 14:

“12. Second, although it is correct that the claimants have been unable to produce any document evidencing Vinod's income, nor have they established his employment as a teacher; but that doesn't justify adoption of the lowest-tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence on-record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving the existing standard of living of a deceased's family is a fundamental endeavor of motor accident compensation law.

13. Third and most importantly, it is unfair on part of the respondent insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of the Pranay Sethi (supra) reference. Nevertheless, the law on this point is no longer res integra, and stands crystallized, as is clear from the following extract of the afore-cited Constitutional Bench judgment⁵:

“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.” [Emphasis supplied]

14. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in **Hem Raj v. Oriental Insurance Co. Ltd.**, as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case:

“7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made..” [Emphasis supplied]

17. As per the principle laid down by the Supreme Court in the aforesaid judgments, it is concluded that the contention of the Learned Counsel for the appellant has no



legal force and as per Article 141 of the Constitution of Indian, 1950 all the High Court and this court is bound by the ratio of Hon'ble Supreme Court. On perusal of aforesaid judgments it is evident to note that if the deceased was employed but the claimants are not able to prove his actual income before the Learned tribunal, the Court "guesses" the income of the deceased on the basis of the evidence on record, like the quality of life being led by the deceased and her family, the general earning of an individual employed in that field, the qualifications of the deceased, and other considerations. As from perusal of deposition of entire witnesses and material evidences produced by the claimants in support of their claim, it is evident that all witnesses in their deposition that deceased was earning about Rs. 10,000 – Rs. 14,000 from private tuition and their such statement has not been challenged or suggested by the opposite party/appellant during the time of cross-examination of said witnesses. It is also apparent from the depositions and exhibits that the deceased was comparatively more educationally qualified as the deceased completed his M.A. in History and was well skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. So, it is clearly established



that deceased was earning minimum Rs. 10,000 at the time of accident. On perusal of Ext.-2 that the date of birth of the deceased is 17.03.1977 and the age of the deceased was approximately 36 years at the time of accident and it was not established that he was a permanent employee, hence, future prospects to the tune of 40% must be paid as in accordance with para 59.4 of *Pranay Sethi (supra)*.

18. Thus, the total amount of compensation payable will be as follows:

Sr. no.	Head	Compensation Awarded
1.	Annual Income	Rs. 1,20,000/-(Rs. 10,000 * 12)
2.	Addition of 40% towards future prospects	Rs. 1,68,000/- (Rs. 48,000 + Rs. 1,20,000)
3.	1/5 th deduction towards personal and living expenses	Rs. 33,600/-
4.	Annual income after deduction	Rs. 1,34,400/-
5.	Multiplier	15.
6.	Loss of Dependency	Rs. 20,16,000/- (Rs. 1,34,400 * 6)
7.	Loss of Estate	Rs. 18,150/-
8.	Loss of Consortium	Rs. 3,87,200/-
9.	Funeral Expenses	Rs. 18,150/-
10.	Total Compensatio	Rs. 24,39,500/-



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19. The Judgment and Award dated 19.06.2015. passed by the learned Tribunal stands modified to the aforesaid extent with 6% interest only on income within three months from the date of the order. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned Judgment and award. All compensation amount shall be payable be electronic mode.

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

21. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	08.05.2025
Uploading Date	16.05.2025
Transmission Date	N/A

