

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.441 of 2017

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1. Jyoti Devi and Ors W/o Late Umesh Gandhi @ Umes Prasad Gandhi,
 2. Riya Kumari, Minor,
 3. Priya Kumari, Minor,
 4. Simaran Kumari, Minor,
 5. Ujjawal Kumar, Minor, All minor son and daughters of Late Umesh Gandhi alias Umes Prasad Gandhi, all minors son and daught
 6. Mahendra Prasad, S/o Late Sachida Nand Prasad,
 7. Uma Devi, W/o Mahendra Prasad, All resident of Village- Sakarpura, P.S.- Bakhari, Dist- Begusarai.

... .. Appellant/s

Versus

1. Lalan Kumar Rai and Ors resident of Village- Patpura, P.S.- Bibhutipur, Dist- Samastipur, Owner of Vehicle bearing its Registration No. BR 06 P/1721 Bus.
2. Legal Manager, ICICI, Lombad General Insuarance Co. Ltd Lacknow UP.
3. Smt. Shobha Mishra, null resident of Village- Deopura, P.S.- Naokothi, Dist- Begusarai. Owner of the Bolero bearing its registration No. BR 9G/4581.
4. Legal Manager, Reliance General Insuarance Company Ltd. Bandar Bagicha, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s :	Mr. Shailendra Kumar, Advocate
For the Respondent no.2 :	Mr. Durgesh Kumar Singh, Advocate
	Mr. Abhijeet Kumar Singh, Advocate
For the Respondent no.4 :	Mrs. Archana Shahi, Senior Advocate
	Mr. Alok Shahi, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 14-05-2025

Heard 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 for enhancing the compensation amount awarded to the appellants/claimants by



the learned Additional District Judge-II cum-Motor Accident Claim Tribunal, Samastipur (hereinafter referred to as “learned Tribunal”) in Claim Case No. 116 of 2010 vide judgment dated 28. 04. 2016 and award dated 14.12.2016.

3. The learned Tribunal held that the appellants are entitled to receive Rs. 4,00,000/- as compensation and accordingly the Legal Manager, ICICI Lombard General Insurance Company Ltd./ respondent no. 2 and Legal Manager Reliance General Insurance Company Ltd./ respondent no. 4 has been directed to make payment of the compensation amount as per the order forthwith, from the date of filing of the claim petition within three 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. 100/-*30	Rs. 3,000/-
2.	Annual Income	Rs. 3,000/-*12	Rs. 36,000/-
3.	1/3 rd deduction towards personal and living expenses		Rs. 12,000/-
4.	Deceased aged about 35 years Multiplier of 17 is applicable	Rs. 20,000 * 17	Rs. 3,40,000/-



5.	Total amount of compensation		Rs. 4,00,000/-
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5. The brief facts of this case are that on 08.07.2010 at 08:00 pm, on the Samastipur Rosda main road at Toofan Chowk under Rosda police station of district-Samastipur, the drivers of coach bus no.-BR06P/1721 and Bolero jeep no.-KRG/4581 caused an accident by driving their vehicles rashly and carelessly. As a result, one of the passengers of the Bolero jeep, Umesh Prasad Gandhi, was seriously injured and died on the same night during treatment in Sadar Hospital, Samastipur. A case related to this accident was registered in Angarghat police station case no.-31 of 2010 and the postmortem of the dead body of the deceased Umesh Prasad Gandhi was done in Sadar Hospital, Samastipur. The deceased was a 35-year-old educated person at the time of the alleged accident who used to run a coaching institute and earn Rs. 10,000 per month and since the deceased was a member of the Scheduled Caste and was educated, his future was bright and he was going to be appointed in the Bihar Police Service as his father was already a Sub-Inspector of Police. The claimants have suffered irreparable loss due to the death of the deceased. He alone has suffered loss of income of more than Rs. 10,000. Rs. 10,200 were spent on his treatment. Rs. 50,000 were spent on



bringing his body and funeral expenses. Rs. 50,000 have been claimed as consolation and compensation. Rs. 2.5 lakhs have been claimed for the compensation of the wife of the claimant and his children who became widows and orphans respectively, taking the total amount to Rs. 13,60,000/-. But in the event of court fee not being paid, a claim of only Rs. 5 lakh has been presented, for which it has been prayed that the compensation be given at the rate of 12% annual interest from the date of filing the suit.

6. Moreover, the written statements have been filed on behalf of opposite party no. 2, 3 and 4. Opponent no. 3 has filed a written statement stating that he does not accept the claim of the claimants and has stated that his Bolero jeep was insured in favour of opposite party no. 4 on the date of the incident and the insurance was effective. The opposite party has also stated that the driver of the said vehicle was not at fault in the alleged accident and the driver of the said bus himself caused the Bolero jeep to crash by driving rashly and carelessly, due to which the opposite party's Bolero jeep was badly damaged and it has been stated that while this opposite party is not responsible for the accident, only opposite party no. 1 and 2 are responsible for the entire accident and they are responsible for paying any kind of compensation.



6.i. It has been submitted by the opposite party in his written statement that the claim is not tenable under any circumstances. This jeep has also admitted the alleged accident and stated that the accident occurred between his bus and a Bolero jeep. Therefore, the insurance companies of both these vehicles are entitled to pay half the compensation each. Opponent No. 4 has stated in his written statement that the claim of the claimants is not maintainable under any circumstances. This opponent has also admitted the alleged accident and stated that this accident occurred due to collision between the said bus and the Bolero jeep. Therefore, the insurance companies of both these vehicles are entitled to pay half the compensation each. No certificate of the age of the deceased has been submitted.

6.ii. As far as the income of the deceased is concerned, it has been stated about the deceased that he used to earn ten thousand rupees per month by running a coaching center. To prove the authenticity of such income, the claimants should have submitted the income tax return of the deceased related to his income. At the time of the alleged accident, the drivers did not have valid driving license, fitness and other necessary documents, which is a clear violation of the terms of insurance. If any order for compensation is passed, then if the accident is found to have been caused by driving the vehicle in



violation of the terms of insurance, an order should be made to recover the amount of compensation paid from the opponent vehicle owner. In the absence of any other documentary evidence, the age of the deceased as assessed by the doctor during postmortem shall be applicable. Opponent No. 2 has stated in his written statement that the claim is not maintainable in any way.

6.iii. The fact that the driver of the said bus of the deceased Umesh Prasad Gandhi caused the accident by driving the bus fast and carelessly has been denied. This opponent has also accepted that the responsibility of the drivers of both the vehicles charged is half-half as a result of the accident that occurred due to the joint negligence of the two vehicles. The driver of the bus that caused the accident has not been given a driving license, permit, fitness certificate etc. In such a situation, this opponent is not entitled to be paid any kind of compensation amount for the alleged accident. If any order for payment of compensation is given, then the amount paid as compensation should be recovered as a result of violation of the terms of insurance. Permission should be given to recover it from the owner of the vehicle that caused the accident. The deceased was an unemployed person. He had no means of income. The age and income of the deceased has been wrongly described and in



the absence of proof of such income, the indicative income will have to be chosen. It is also stated that the amount of compensation demanded by the claimants has been exaggerated.

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

i) Is the claim as framed sustainable?

ii) Whether the alleged accident was caused due to negligence, speeding and carelessness of the drivers of the said bus and the Bolero jeep separately or whether the alleged accident was caused due to joint negligence, speeding and carelessness of the drivers of both the vehicles?

iii) What was the income of the deceased and due to the death of the deceased what loss has been suffered by the claimants?

iv) Are the claimants entitled to get the demanded compensation amount along with interest? If yes, then how much and from whom?

v) Are the claimants entitled for any other relief?

8. The claimants in support of its case have submitted both oral and documentary evidences. As far as oral evidence presented on behalf of the claimants is concerned, evidence of four witnesses has been presented, out of which claimant witness no. 1 Vijay Kumar Poddar, claimant witness no. 2 Mohd. Maki Hasan, claimant witness no. 3 claimant Jyoti



Devi herself, claimant witness no. 4 Mahendra Prasad, claimant witness no. 7 father of the deceased. All these oral witnesses have certified the claim of the claimants in their evidence. As documentary evidence on behalf of the claimants, exhibits are- final certificate of Angarghat police station case 31 of 2010, exhibit-2 postmortem report, exhibit-3 certificate of the headman, exhibit-4 FIR, exhibit-5 and 5/1 copy of insurance policy of both the vehicles causing the accident, exhibit-7 identity card, exhibit-8 admit card of B.Sc., exhibit-9 certificate issued by Indian Scouts and Guides, Bihar, exhibit-10 mark sheet of I.A. and exhibit-11 certificate of computer education.

9. Learned counsel for appellants submitted that the Learned tribunal awarded inadequate compensation to the claimants/appellants and not which they are entitled under law therefore, impugned Judgment and Award so far related to quantum of compensation, rate of interest and are bad in law and on facts require enhancement of compensation mentioned the fact and circumstances. Further he submitted that the learned court below has erred in holding that deceased was earning Rs. 30,000/- P.A. ignoring the certificate issued by Anchal Office, Teghra in which it has been mentioned that the earning PA of deceased was Rs. 96,000/- which is on the record. It is also submitted that there is no occasion for the learned court below to



discredit the certificate issued by Anchal office and the learned court below while calculating the amount of compensation should have relied upon the certificate issued by the Anchal Office Teghra. Moreover all the witnesses have categorically been stated that deceased was computer operator and was earning Rs. 10,000/- Per month.

9.i. Further it is submitted that the learned court below should not have gone into the technicality of Evidence Act rather should consider that while deciding the claim case it is beneficial legislation. learned court below should have considered while awarding just and proper compensation is a welfare legislation and the hyper technicalities, mystic maybes, procedural wrangles and tangles have no role to play and can not be ground to defeat the social purpose of granting just and proper compensation It is also submitted that the learned court below while deciding claim Case under the Motor Vehicle Act should have taken into consideration that granting of just and proper compensation is just to ameliorate the misery of the victim of the vehicular accidents and to save them from succumbing to the social evils. It is just a source of aid to the claimants who have lost their bred earner.

9.ii. It is further submitted that the learned court below should have appraise that strict proof and strict links are



not required. It is also submitted that learned court below should have relied upon Ext-1 Certificate granted by the Anchal Office, Teghra mentioning therein that the earning of the deceased was Rs. 96,000/- per annum. It is also submitted that learned court below did not consider the future prospects of the deceased nor dealt with in impugned Judgment. It is well settled law that due to escalation of price index, the future prospect of the deceased has to be taken into consideration. It is further submitted that at the time of an accident the age of the deceased was 35 years as per Postmortem report, in this view of the matter the future prospect of the deceased has to be taken into consideration by adding 50% of the original income of the deceased as the age of the deceased at the time of accident was 35 years.

9.iii. Learned tribunal has not given the benefit of future prospect as the age of deceased is 35 years so 40% future prospect should be given as per Hon'ble Apex court decision given in *Pranay Sethi Case(2017) 16 SCC 680*. He further submitted that the personal expense deduction was taken as 1/3rd which is not in accordance with settled principle of law in this regard, as number of claimants are five, so personal expense deduction will be 1/5th.

9.iv. He further submitted that learned trial Court ought to have allowed interest at the rate of 9% per annum from



the date of the filing of the claim case i.e., 17.08.2010. In view of the decision of Apex court reported in ***A.C.J.-2594 Kishan Gopal and others Versus Lala and others***. In the aforesaid case no interest has been awarded which is against the law and violation of Section 171 of the M.V. Act. Further, the learned court below did allow the statutory pecuniary damages as held by the Apex court in the case of ***Rajesh Versus Rajbir Singh and others*** as such as funeral expenses, loss of consortium and loss of love and affection to the Parent, wife and minor children.

10. Learned counsel for respondents submitted that the present memo of appeal is not maintainable the appeal is preferred on wrong and misconceived notions. He further submitted that income and source of income as claimant has not been proved by claimants as such income has been disbelieved. The author of the certificate in respect to income and education has not examined as such income and source of income has not been proved in accordance with law. Learned counsel relied upon the judgment of ***Shyam Nath Sah v. Shankar Kumar Gupta 2019 6 BLJ 628; 2018 0 Supreme (Pat) 987*** decided by this Hon'ble court for the above mentioned point.

10.i. He further submitted that the income of Rs. 96,000/- as claimed has been disbelieved in want of legal evidence. The case has to be allowed taking into consideration



the minimum wages prevalent during the period for which learned counsel relied upon the case of *Laxmi Devi & Ors. v. Md. Tabbar and Anr.* reported in *2008 0 ACJ 1488* and *Kirti and Anr. v. Oriental Insurance company Ltd.* reported in *2021 0 ACJ 1*. The case of the claimant has been disbelieved as material on record is not consistent in respect to age which would precisely mean that claimants are not coming with a clean hand. The date of accident is 08.07.2010 and on that time Rs. 87/- was the income under the Minimum Wages Act.

10.ii. Learned counsel further contended that the income certificate issued has to be disbelieved and in absence of any documentary evidence notional income or minimum wages would be taken into consideration for calculating compensation and relied upon judgment passed by Hon'ble Supreme Court in *Sanichari Devi & Anr. v. Sanjay Kumar Yadav & Anr.* *2012 4 BBCJ 429*; *2012 0 Supreme (Pat) 685* & *Dukhni Devi v. Branch Manager, National Insurance Company Ltd.* *2019 0 ACJ 2691*. As per the case of the claimant the deceased at best would be an unskilled labour.

10.iii. The learned counsel further submitted that the multiplier applied is incorrect and appropriate multiplier would be 16 and claimants have also claimed amount under conventional head, interest and future prospect. It also has been



submitted that it is well settled that compensation should be just and not a bonanza and it has been held that no interest can be awarded on the amount under the head future prospect. He relied upon the judgment passed by the Hon'ble Apex Court in ***United India Insurance company Ltd. v. Inderjeet & Ors., 2024 0 Supreme (J&K) 170*** & judgment passed by Gauhati High Court in ***Oriental Insurance Company Ltd. v. Smt. Rumi Barman & Ors., MAC App. 77 of 2017.***

10.iv. He further submitted that interest 6% would be applicable on the principal compensation amount already paid and not on the amount under the head future prospect or amount under conventional head. The constitution Bench in the case of ***Pranay Sethi (Supra)*** has allowed on three conventional head under which compensation can be allowed. Learned counsel for the respondent no. 4 has adopted the argument of the Respondent no. 2 i.e., ICICI.

11. 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 appellants/claimants are entitled for enhancement of compensation and if so, to what extent?

12. 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.

13. The learned tribunal held that the age of deceased was 35 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 (31 to 35) of deceased would be 16. 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.

14. 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:

<i>Sr. no.</i>	<i>Heads</i>	<i>Calculation</i>	<i>Compensation amount</i>
1	Loss of Estate	Rs. 15,000/- + Enhance 10% twice	Rs. 18,150/-
2.	Loss of Consortium	Rs. 40,000/- + Enhance 10% twice	Rs. 3,38,800/- (Rs. 48,400/- x 7)
3.	Funeral Expenses	Rs. 15,000/- + Enhance 10% twice	Rs. 18,150/-

15. As the deceased was of 35 years and it was not established that he was not 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)*. Further, it is observed that the fact and circumstances of present case is different from that of the case referred by the learned counsel for the respondents as in present case the income certificate has been issued by the Circle Officer (Gazetted Officer) of the area of the deceased which is reliable and cannot be disbelieved. As per mandate of Bihar government, the income certificate, residence certificate and EWS certificate all are issued by the Circle Officer and Block Officer which is foremost reliable and



as per law which cannot be disbelieved.

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

<i>Sr. no.</i>	<i>Head</i>	<i>Compensation Awarded</i>
1.	Annual Income	Rs. 96,000/- (Rs. 8,000 X 12)
2.	Addition of 40% towards future prospects	Rs. 1,34,400/- (Rs. 38,400 + Rs. 96,000)
3.	1/5 th deduction towards personal and living expenses	Rs. 26,880/-
4.	Annual income after deduction	Rs. 1,07,520/-
5.	Multiplier	16.
6.	Loss of Dependency	Rs. 17,20,320/- (Rs. 1,07,520 * 16)
7.	Loss of Estate	Rs. 18,150/-
8.	Loss of Consortium	Rs. 3,38,800/-
9.	Funeral Expenses	Rs. 18,150/-
10.	Total Compensation	Rs. 20,95,420/-

17. The Judgment dated 28.04.2016 and Award dated 14.12.2016 passed by the learned Tribunal stands modified to the aforesaid extent with 6% interest only on income from the date of the filing of the claim petition. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned Judgment and award.



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

19. 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)

Harshita/-

AFR/NAFR	AFR
CAV DATE	28.04.2025
Uploading Date	14.05.2025
Transmission Date	N/A

