

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.712 of 2018

Chairman, Reliance General Insurance Company Limited Appeal and Appellant through the Manager Legal and authorized signatory, Reliance General Insurance Company Limited, Himalaya House, 38B Jawahar Lal Nehru Road, Chaurangi, Kolkata West Bengal.

... .. Appellant/s

Versus

1. Kaushalya Devi and Ors w/o Lt. Sitaram Sah
2. Rita Devi w/o Lt. Saini Sah
3. Simpee Kumari d/o Lt. Saini Sah
4. July Kumari d/o Lt. Saini Sah
5. Sitaram Sah s/o Lt. Dorik Sah Res. No. 3 & 4 are Minor and under the guardianship of natural guardian mother Res All the above are resident of village - Baihri, P.S. - Singheshwar, Dist. Madhepura.
6. M/S Deol Tailor Service, Road No. 2, Transport Nagar, Tati Branch, Raipur, Chhatisgarh Owner of t

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Advocate
	:	Mr. Abhijeet Kumar Singh, Advocate
For the Respondent/s	:	Mr. Surya Narayan Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 24-06-2025

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

2. Miscellaneous Appeal No. 712 of 2018 has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of the appellants/Insurance Company against the judgment and award dated 28.02.2017 and 07.06.2017 passed by the learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Madhepura (hereinafter referred to as “Learned Tribunal”) in M.V. Claim Case No. 35 of 2011 (CIS No. 532 of 2013) wherein learned



Tribunal allowed the claim application and awarded Rs. 18,83,000/- as compensation along with 9% per annum as an interest from the date of filing of the claim case till realization of the compensation amount after adjusting the amount, if already paid to the applicants as interim compensation under Section 140 of the Act.

3. The learned Tribunal held that the appellants are entitled to receive Rs. 18,83,000/- as compensation and accordingly the Reliance General Insurance Company limited / respondent no. 2 has been directed to make payment of the compensation amount as per the order forthwith, along with simple interest 9% interest per annum from the date of filling of the case.

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

Sr. No.	Heads	Calculation	Net Amount
1.	Monthly income		Rs. 6000/-
2.	Annual Income	12 * 6000	Rs. 72,000/-
3.	1/4th deduction towards personal and living expenses		Rs, 18,000
4.	Future prospect Deceased aged about 30 years Multiplier of 18 is applicable	50% Rs. 81,000*18	Rs. 81,000/- Rs.14,58,000/-
6.	Los of consortium		Rs. 1,00,000/-
7.	Loss of Estate		Rs. 1,00,000/-



8.	Loss of Guardianship, love and affection		Rs. 1,00,000/-
9.	Loss of Funeral		Rs. 25,000/-
10.	Total amount of compensation		Rs.18,83,000/-

5. The brief facts of the case as per the claimants are that the deceased, Shaini Sah, was employed as a handyman (*khalasi*) under the Opposite Party No. 1. On 13.07.2011, while discharging his duties, he was accompanying a vehicle transporting EFSW pipes from Shivsagar to Duliaganj (Assam) via National Highway No. 37. During transit, the loaded pipes became loose and struck the driver's cabin with considerable force, resulting in the instantaneous death of both the driver, Raj Kishore Sah @ Kumar, and the handyman, Shaini Sah, near Tiloi, close to Kali Mandir (Assam). Further, the incident was reported and registered on dated 13.07.2011 bearing Moran P.S. Case No. 318 of 2011. The postmortem of the deceased was conducted at Assam Medical College, Dibrugarh, by an Assistant Professor from the Department of Forensic Medicine. The dead body was subsequently handed over to the family members. The Motor Vehicle Inspector (MVI) from the District Transport Office, Dibrugarh, conducted an inspection on the same day and confirmed the occurrence of the accident in his report dated 13.07.2011. Additionally, the Forensic Department



issued a certificate following the postmortem, and the Officer-in-Charge of Moran Police Station prepared an Accident Information Report, which recorded the particulars of the accident, vehicle involved, and identification details of the deceased.

6. Claimant No.1 (mother), Claimant No.2 (wife), Claimant No.3 and 4 (minor daughter of deceased) through their mother, and Claimant No. 5 (Father) have filed petition bearing M.V. Claim Case No. 35 of 2011 before Motor Vehicle Accident Claim Tribunal, Madhepura claiming that the accident took place due to rash and negligent driving which resulted in death of the deceased Shaini Sah. It is further claimed that the deceased has good sound health was aged about 30 years old, working as handyman and he had earning of Rs. 6,000/- per month by which he was maintaining his family. The claimants claimed Rs.13,96,000/- as loss of dependency, loss of love and affection, loss of consortium and funeral expenses along with interest @ 12% per annum.

7. O.P. No.1 is owner of the vehicle and O.P. No. 2 is the Insurance Company have not appeared in the case and they were proceeded *ex-parte*. On the basis of pleading and submissions advanced on behalf of the parties, the learned tribunal framed the following issues:



(i) Whether the claims filed is maintainable under Motor Vehicle Act. 1988?

(ii) Whether both deceased had died on 13.07.2011 at Tiloi, P.S. Moran, District-Dibrugarh (Assam) in an accident arising out of use of Motor Vehicle bearing registration No. CG-04-JA-0864 Tractor on duty under the employment of the O.P. No. 1?

(iii) What was the age and income of the deceased at the time of death?

(iv) Whether the O.P. No. 1 deserves to be indemnified by the O.P. No. 2 as per policy of insurance?

(v) How much compensation the applicants deserve to be granted on account of the death?

8. In support of the claim petition, the claimants has examined three witnesses and they have also filed documentary evidence in support of their claim petition i.e., accident information report (Ext.-1), postmortem report (Ext.-2), photocopy of death certificate (Ext.-3), photocopy of death certificate (Ext.-3/a), photocopy of police report (Ext.-4), photocopy of driving license (Ext.-5), photocopy of report of M.V.I. (Ext.-6), photocopy of certificate of registration (Ext.-7), photocopy of insurance paper (Ext.-8), photocopy of road permit for vehicle (Ext.-9), photocopy of authorization certificate of goods (Ext.-10) and photocopy of certificate of fitness (Ext.-11).



9. After hearing the claimant and the material available on record the learned tribunal held that the deceased died in an accident arising out of truck bearing registration No. CG-04JA-0867 due to breaking of chain by which pipes were tied loaded on the said truck and awarded the aforesaid amount of Rs. 18,83,000/- along with simple interest @ 9% per annum from the date of filing of the claim case i.e., 16.08.2011 till its realization to be paid by the appellant-Insurance Company to the handyman (Khalasi). The appellant being not satisfied and aggrieved by the impugned judgment and award filed the present appeal for setting aside the judgment/order dated 28.02.2017.

10. Learned Counsel on behalf of appellant-Insurance Company has submitted that save and except the oral evidence there is no material in respect to source of income. He further submitted that in those days compensation was being calculated taking into consideration the notional income of Rs. 3,000/- per month in view of the law laid down by the Apex Court in the case of *Laxmi Devi & Ors. v. Md. Tabbar and Anr.* reported in *2008 0 ACJ 1488* or at best it can be calculated taking into consideration the minimum wages which was less than Rs. 100/- per day for the handy man and less than Rs. 120 for the driver on the day of accident. The principle has been



reiterated by the Apex court in the case of ***Kirti and Anr. v. Oriental Insurance company Ltd.*** reported in ***2021 0 ACJ 1***. Hon'ble court in catena of decisions has held that in absence of any documentary evidence notional income or minimum wages would be taken into consideration for calculating compensation and some of those are ***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. He further contended that multiplier applied is incorrect and appropriate multiplier would be 17 instead of 18 as applied by the Learned Tribunal. The Learned Tribunal has wrongly applied Rs. 6000/- as income and has wrongly applied 50% under the head future prospect instead of 40%.

10.i. He further submitted that spousal consortium of Rs. One Lac has wrongly been allowed to the wife and Rs. One Lac in the name of Respondent 3 & 4 has wrongly been allowed under the head Loss of Estate. Rs. One Lac each has wrongly been allowed to Respondent 3 & 4 under the head loss of love and affection, guardianship. The future prospect as applied, loss of estate and love and affection allowed is against the mandate of Constitution Bench decision of the



Apex Court in the case of *National Insurance Company Ltd. v. Pranay Sethi 2018 SCC Online SC 1270*. Further, funeral expense allowed is on the higher side.

10.ii. It is well settled that compensation should be just and not a bonanza. It has been further 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.iii. He further submitted that, excess compensation would be calculated as Rs. 3000 * 12 = Rs. 36,000/-, Rs. 36,000 divided by $\frac{1}{4}$ = 27,000/-, Rs. 27,000 * 17 = Rs. 6,03,000, Rs. 6,03,000 + 40% = Rs. 8,44,200/-, Rs. 8,44,200 + Rs. 48,000/- (consortium) + Rs. 18,000/- (funeral expense) + Rs. 18,000/- (loss of Estate) = Rs. 9,28,600/-. The interest @ 6% would be applicable on Rs. 6,03,000/- and not on future prospect or amount under conventional head.

10.iv. There is no LIS between claimant and insurance company. LIS is between claimant and owner. There is a difference when insurer is not a party and has been noticed by the Tribunal and when insurer is a party in the claim



application itself. **Nicolletta Rohatagi** case did not consider what will be the position when insurer is a party in the claim application itself. In the case of ***United India Insurance Company Ltd. v. Shila Dutta & Ors., 2011 (7) Supreme 129*** considered this issue and held that insurer would be permitted to contest all available grounds including quantum of compensation. The principle laid down in the case of ***Shila Datta (supra)*** was affirmed in ***Bajaj Allianz General Insurance Company Ltd. v. Kamla Sen*** reported in ***2014 0 ACJ 2369***, ***National Insurance Company Ltd. v. Manju Majumder & Anr.*** reported in ***Civil Appeal No. 7632 of 2012 & The New India Assurance Company Ltd. v. Krishna Sakharan Baing & Ors.*** reported in ***Civil Appeal No. 252 of 2025*** decided on 08.01.2025.

10.v. Learned counsel further submits that the tribunal has allowed future prospect @ 50% which is not in accordance with the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017)16 SCC 680***. His further submission is that tribunal had allowed excessive and higher sum of money on account of loss of love and affection and guardianship of minor applicants, loss of consortium, loss of estate and funeral expenses. It is his



submission that on all these counts the compensation allowed by the tribunal is liable to be interfere with.

11. Mr. Surya Narayan Yadav, learned counsel for respondents submitted that the Insurance Company has filed the appeal challenging quantum of compensation without the permission of tribunal under section 170 of the MV Act and has relied upon the judgments of three Judges Bench of Hon'ble Apex Court in *National Insurance Company Limited vs. Nicolletha Rohtagi and others* reported in *2002 ACJ 1950* has held that the insurance company cannot challenge the quantum of compensation unless they have obtained permission under Section 170 of M.V. Act. Another three Judges bench of Hon'ble apex Court in *United India Insurance Company Limited vs Shila Dutta and others* reported in *2011(7) SCC 129* has doubted on the *Nicolletta Rohtagi* judgment and Hon'ble Court has held that where the Insurance Company has been made party in claim petition the permission under 170 of the Act not required and also held that in Nicolletha Rohtagi case these points were not raised. It is relevant to mention here that in Nicolletha Rohtagi case this point was considered which is evident from Para-13, 14, 15, 16 of the judgment.

11.i. Learned Counsel further relied on the decision of Hon'ble Apex Court in *Shankarayya and another*



vs. United India Insurance Company Limited and another
reported **AIR 1998 SC 2968** has held that mere impleading the Insurance Company as a party in claim petition cannot have larger defence unless they have not obtained permission from the Tribunal under Section 170 of the Act. Consequently, in present case, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

11.ii. Learned Counsel also submitted that the Nicolleta Rohtagi Judgment approved the Shankarayya Case and further in Para-15 held that

"It is relevant to note that Parliament while enacting sub section (2) of Section 149 only specified some of the defenses which are based on conditions of the policy and therefore, any other breach of conditions of the policy by the insured which does not find place in Sub Section (2) of Section 149 cannot be taken as a defence by the insurer. If we permit the insurer to take any other defence other than these specified in Sub Section (2) of Section 149, it could mean we are adding more defenses to insurer in the statute which is neither found in the Act nor was intended to be included."

11.iii. He further submitted that section 149 (2) (7) of the M.V. Act clearly bars the insurance company to take larger defence unless they have obtained permission under



Section 170 of the Act. This Hon'ble Court in the ***Chairman I.C.I.C.I. Lombard General Insurance Company Ltd Vs Ranju Devi*** reported in ***2023 ACJ 363*** in Para 24 held that the Appeal is not maintainable without obtaining permission under Section 170 of the M.V. Act.

11.iv. He further submitted that a decision cannot be over ruled by equal strength of Bench. Coordinate bench has to respect the judgment and order passed earlier by another Coordinate Bench for this he relied on judgment of the Hon'ble Apex Court in state of ***Bihar Versus Kalika Kuer (2003)5 SCC 448*** held that:-

"The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per in curium is not permissible and the matter will have to be resolved only in two ways either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is left that earlier decision is not correct on merits."

11.v. He further submitted that the claim of appellant that no notice has been served ever is false, the order dated 12.03.2013 the learned Tribunal ordered to send notice and fixed the date for attendance on 12.04.2013 and transferred the case in learned A.D.J-4 Court which is evident from Lower



Case Record. Further on 13.03.2013 the case record was received in learned A.D.J.-4 Court and by order dated 12.04.2013 and 13.05.2013 the learned A.D.J.-IV Court put up the case for appearance of opposite parties but none of them has appeared. He also submitted that law on this point is very clear when notice has been served on the correct address by registered post and it has not been returned back, it will be deemed that service of notice has been served satisfactory.

11.vi. He further submitted that the deceased Shaini Sah was engaged by opposite party no. 1 as Khalasi and for this he was paid Rs.6,000/- per month remuneration and this fact has been supported in the deposition of CW-1, CW-2 and CW-3. The oral evidence of these claimant witnesses has not been discarded by the appellant. The appellant Insurance Company only denied that the deceased was not Khalasi but has brought nothing on record to prove this. On the point of income of the deceased he rely on the judgment of Hon'ble Apex Court in **Sanjay Kumar Versus Ashok Kuamr 2014(1) BBCJ 273 (SC)** held in Para 8 that:-

"The minimum wages in Delhi for a skilled worker as on 01.08.2005 was 3589.90 per month. The appellant has claimed that he was earning Rs. 4500/- per month from his work as an embroiderer. We will accept his claim as it is not practical to expect a



worker in the unorganized sector to provide documentary evidence of his monthly income."

11.vii. Further in the said decision referring its earlier judgment of ***Ramchandrapa v. Manager Royal Sundaram Alliance Insurance Company Limited (2011) 13 SCC 236*** the Hon'ble court quoted the findings as follows:-

"In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs. 4500 per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs. 3000 only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004 was Rs. 100/-per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs. 3000 per month. Secondly the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim, in our view in the facts of The present case. The tribunal should have accepted the claim of the claimant."

11.viii. He further submitted that Hon'ble apex Court in the case of ***Chameli Devi v. Jivrail Mian*** reported in **2019 ACJ 3011** while considering the income of a carpenter



held that:

“The tribunal and high Court held that no proof of income has been produced to show that the deceased was alleged to be a carpenter. We failed to understand what proof a carpenter can lead except to lead oral evidence.”

12. Having heard learned counsel for the parties and perused the records. In the present case the appellant is not seeking to avoid or exclude its liability but merely wants determination of the extent of the liability. The restrictions imposed upon the insurers will apply only if it wants to file an appeal to avoid liability and not when it admits its liability to pay the amount awarded. Thus, this Court finds that the present appeal is maintainable. 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 quantum of compensation awarded by the Learned Tribunal is rightly awarded or liable to be set aside or modified?

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. In the present case the employer of deceased has not been examined with respect to the employment and monthly income of the deceased, the monthly income of the deceased which has been claimed to be Rs. 6,000/- per month is not proved. It is well settled law that if income of the deceased is not established, the loss of dependency can be calculated as per the minimum wages law fixed for unskilled labors which appears to be approximately Rs. 3,000/- per month. The submission made by the learned counsel for the respondent and the judgement refereed by him on regard to salary of the deceased khalasi is not relevant as in the said judgment of ***Chameli Devi v. Jivrail Mian (supra)*** the deceased was a skilled person i.e. carpenter but in the present case the deceased is an unskilled person and his employment is also not sufficiently proved by the prosecution and his salary was also not proved by the prosecution that he was getting Rs. 6,000.

15. Considering the monthly income of the deceased to be Rs. 3,000/-, the annual income of the deceased shall be calculated to be Rs. 36,000 (Rs.3,000 x 12). As the deceased was of 30 years 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 *National Insurance Co. v. Pranay Seti & Ors* reported in (2017) 16 SCC 680. Since, there were five dependents, 1/4th of the calculated annual income shall be deducted towards personal and living expenses. The learned tribunal held that the age of deceased was 30 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 (26 to 30) of deceased would be 17.

16. Further, there is no dispute in this regard on behalf of the parties and it is now well-settled and not disputed that loss of consortium would be awarded to each claimants. The deceased left behind his wife, two minor children, mother and father as his dependents. On basis of the judgments delivered by 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 each multiplied by No. of Dependents	Rs.2,42,800/- (Rs.48,400/- X 5)
3.	Funeral Expenses	Rs. 15,000 + enhance 10% twice	Rs.18,150/-

17. Thus, total amount of compensation payable are as follow:

Sr. no.	Heads	Compensation Awarded
1.	Annual Income	Rs. 36,000/- (Rs. 3000/- * 12)
2.	Addition of 40% towards future prospects	Rs.50,400/- (Rs.14,400 + Rs.36,000)
3.	1/4 th deduction towards personal and living expenses	Rs. 12,600/-
4.	Annual income after deduction towards personal and living expenses	Rs.37,800/- (Rs.50,400 – Rs.12,600)
5.	Multiplier	17.
6.	Loss of Dependency	Rs.6,42,600/- (Rs.37,800 X 17)
7.	Loss of Estate	Rs.18,150/-
8.	Loss of Consortium	Rs.2,42,800/-
9.	Funeral Expenses	Rs.18,150/-



10.	Total Compensation	Rs.9,21,700/-
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18. The Judgment dated 28.02.2017 and Award dated 07.06.2017 passed by the learned Tribunal stands modified to the aforesaid extent with 9% 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.

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

20. 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)

Sunnykr/-

AFR/NAFR	NAFR
CAV DATE	14.05.2025
Uploading Date	24.06.2025
Transmission Date	24.06.2025

