

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.987 of 2016

1. Rubi Khatoon and Ors W/o Late Md. Hussain
2. Ashraf S/o Late Hussain
3. Arshaf S/o Late Hussain
4. Sajia D/o Late Hussain All Residents of Mohalla- Dullighat, P.S. Khajekaln, District- Patna

... .. Appellant/s

Versus

1. Muna Prasad and Anr S/o Sri Shnkar Prasad resident of Chauhatti gali Gurhth, Patn City, P.s.- Khajeklan, District- Patna
2. Divisional Manager D.O.-1 The United India Insurance CO. Ltd. Laxmi Aaprtment, Fraer Road, Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s : Mr. Ashok Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 06-05-2025

Heard Mr. Alok Kumar @ Alok Kumar Shahi the
learned counsel for the appellants as well as Mr. Ashok
Priyadarshi 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 “Act”) on behalf of appellants for enhancing the
compensation amount awarded to the appellants/claimants by the
learned Additional District Judge-I cum-Motor Accident Claim
Tribunal, Patna (hereinafter referred to as “learned Tribunal”) in
Claim Case No. 499 of 2008 vide judgment dated 05.04.2016



and award dated on 09.05.2016.

3. The learned Tribunal held that the appellants are entitled to receive Rs. 5,85,500/- as compensation and accordingly the United India Insurance Company/ respondent no. 2 has been directed to make payment of the compensation amount as per the order forthwith, along with simple interest 6% interest per annum from the date of filing of the claim petition within a month 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:

Sr. no.	Heads	Calculation	Net amount
1.	Monthly Income		Rs. 4,000/-
2.	Annual Income		Rs. 48,000/-
3.	Deceased aged about 30 years Multiplier of 18 is applicable	Rs. 48,000 x 18	Rs. 8,64,000/-
4.	1/3 rd deduction towards personal and living expenses	1/3 rd x Rs. 8,64,000	Rs. 2,88,000/-
5.	Loss of estate		Rs. 2,500/-
6.	Loss of Consortium		Rs. 5,000/-
7.	Funeral Expenses		Rs. 2,000/-
	Total compensation		Rs. 5,85,500/-



5. The brief facts of this case are that Md. Hussain/deceased did not returned his home from duty on 10.08.2008 and the family members thought that he might be on duty and he will return on next day. The relative of the deceased was informant by Athmalgola Police that a dead body was found near village neura road On getting this information the relatives of the deceased identified the dead body. The deceased was driver of Bajaj Auto Rickshaw BR-IN-8922. In course of driving the said rickshaw he was abducted by some miscreants and murdered. The deceased used to earn Rs. 4,000/- from driving the auto rickshaw. The deceased was aged about 30 years. On the basis of the fardbeyan of one Md. Shakil Athmalgola PS Case No. 99 of 2008 dated 11.08.2008 under Sections 302 and 201 of the IPC and Section 27 Arms Act was registered against unknown accused.

6. It has been argued by the counsel of the claimants that the deceased was killed by unknown miscreants while driving his auto rickshaw, so his death will cover as accident under the Motor Vehicle Act. He further argued that the offending auto rickshaw was insured with Opposite Party No. 2 the United India Insurance Company Ltd., Laxmi Apartment, Frazer Road, Patna and the policy was valid on the date and time



of the occurrence, so Opposite Party No.2 is liable to pay compensation amount to the claimant Opposite Party No.1 was the owner of the offending vehicle bearing Registration No. BR-IN-8922 appeared in this case and Written Submission was filed on his behalf in which it has been stated that the deceased was murdered by some unknown criminals during course of his employment as driver on 11.08.2008. The claimants have not filed any certificate of legal heir of the deceased issued by competent authority. The auto rickshaw was insured with Opposite Party No.2 and policy was valid and effective on the date of accident, so whole liability to pay compensation goes to Opposite Party No.2.

7. Opposite Party No.2 United India Insurance Company Ltd also appeared in this case and Written Statement was filed on its behalf in which it has been stated that from perusal of F.I.R of the accident it appears that this is case of murder and not accident under the M.V. Act as such this claim case under the M.V. Act is not maintainable. The deceased Md. Hussain was not having valid and effective driving license to drive auto rickshaw at the time of accident which is breach of terms and condition of insurance policy, so this opposite party no. 2 is not liable to pay compensation to the claimants. There is



no proof regarding the income and age of the deceased as such the entire claim case is imaginary and that the age and income of the deceased is denied by the Opposite Party.

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 case as framed is maintainable?

ii. Whether the deceased Md. Hussain died in an accident arising out of the use of Motor vehicle and it comes within the preview of Motor Vehicle Act, 1988?

iii. Whether the auto rickshaw No. BR-IN-8922 was insured with O.P. No.2 i.e. United India Insurance Co. Ltd on the alleged date and time of the accident?

iv. Whether the murder or assassination will come under the purview of the Insurance Act?

v. Whether the driving license of the driver was valid and effective at the time of accident?

vi. Whether the vehicle has a valid permit at the time of accident?

vii. Whether there have been breach of specified condition of the policy and what will be the proper compensation and who will pay the same?

9. The claimants in support of its case have altogether examined two witnesses. They have also filed certified



copy of FIR and charge-sheet of Athmalgola P.S. Case No. 99 of 2008 which has been marked Ext. I and 2 respectively. Postmortem report of the deceased has been marked Ext. X for identification.

10. Learned counsel for appellants submitted that two witnesses i.e Rubi Khatoon and Md. Shakil on behalf of the claimants were examined by the Tribunal. All witnesses supported appellants claim. That the Learned Tribunal ought to have allowed the benefit of future prospect as age of deceased was 30 years only and he was self earning person and the learned tribunal wrongly deducted 1/3rd towards personal expenses, correct deduction will be 1/4th as the total number of claimants are four. He also submitted that the learned Tribunal failed to award compensation toward loss of love and affection and also awarded very less amount toward Loss of Consortium, loss of Estate and funeral expenses. The learned Tribunal ought to have awarded 12% interest instead of 6% interest from the date of filing of the claim petition up to the date of payment.

11. Learned Counsel further submitted that the impugned Order is bad in law as well as on facts. The order passed by the learned tribunal below is against the settled principles for the grant of compensation in the cases of Motor



Accidents. The learned claims tribunal has not appreciated the evidences and documents on record in right prospective.

12. Learned counsel for respondents has not raised any objection and agreed to the point that future prospect should be allowed to the claimants.

13 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?

14. 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.

15. 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. With respect to future prospect, 40% of monthly income of deceased was added in his income and deduction of 1/4th 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.

16. In so far as conventional damage of claimants are concerned, the learned Tribunal has awarded loss of estate Rs. 2,500/-, funeral expenses Rs. 2,000/- and loss of consortium Rs. 5,000/- which is not a just compensation and required to be enhanced. The deceased left behind his wife and three children among them two are minor 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. 1,93,600/- (Rs. 48,400/- x 4)
3.	Funeral Expenses	Rs. 15,000/- Enhance 10% twice	Rs. 18,150/-

17. As the deceased was of 30 years (i.e. below 40 years) and was having fixed salary 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.	Heads	Compensation Awarded
1.	Annual Income	Rs. 48,000/-
2.	Addition of 40% towards future prospects	Rs. 67,200/-
3.	1/ 1/4th deduction towards personal and living expenses	Rs. 16,800/-
4.	Annual Income after deduction	Rs. 50,400/-



5.	Multiplier	17
6.	Loss of Dependency	Rs. 50,400 * 17 = Rs. 8,56,800
7.	Loss of estate	Rs. 18,150
8.	Loss of Consortium	Rs. 1,93,600
9.	Funeral Expenses	Rs.18,150
10.	Total Compensation	Rs. 10,86,700

19. The Judgment/Award dated 05.04.2016 passed by the learned Tribunal stands modified to the aforesaid extent with 6% interest only 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.

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)

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AFR/NAFR	AFR
CAV DATE	01.05.2025
Uploading Date	06.05.2025
Transmission Date	06.05.2025

