IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.827 of 2014

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1. Ritu Agrawal W/o Late Chandrahas Kumar Agrawal @ Chandrahas Agrawal @ Pappu Jee
2. Pooja Agrawal D/o Late Chandrahas Kumar Agrawal @ Chandrahas Agrawal @ Pappu Jee
3. Krishna Agrawal D/o Late Chandrahas Kumar Agrawal @ Chandrahas Agrawal @ Pappu Jee
4. Hema Agrawal D/o Late Chandrahas Kumar Agrawal @ Chandrahas Agrawal @ Pappu Jee
5. Yash Agrawal minor son of Late Chandrahas Kumar Agrawal @ Chandrahas Agrawal @ Pappu Jee Serial No. 5 is minor son of Late Chandrahas Kumar Agrawal @ Chandrahas Agrawal @ Pappu Jee under the guardianship of their mother and natural guardian appellant No. 1. All are resident of Flat No. 502, Ashiana Vihar, Rajendra Path Near C.D.A. Building, P.S. - Gandhi Maidan, District - Patna.

... ... Appellant/s

Versus

1. Manager, Sriram General Insurance Company Ltd. Insurer of Truck No. AP - 28TA - 5466
2. Raoshank Chillure S/o Kamlakar Chillure Flat No. G-6, Vajreshwari Complex, Hal Colony Bus Stop, Old Bowenpally Quthumbullapur, Rangareddy, Hyderabad Pin 500072 Owner of the Truck
3. Guddu Choudhary S/o Ram Sarup Choudhary Village and P.S. - Mohaniya, District - Bhabhua.

... ... Respondent/s

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with

Miscellaneous Appeal No. 496 of 2015

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Shri Ram General Insurance Co Ltd,

... ... Appellant/s

Versus

1. Ritu Agrawal W/o Late Chandrabas Kumar Agrawal @ Chandra Has Agrawal @ Pappu Jee
2. Pooja Agrawal D/O Late Chandrabas Kumar Agrawal
3. Krishna Agrawal D/O Late Chandrabas Kumar Agrawal
4. Hema Agrawal D/O Late Chandrabas Kumar Agrawal
5. Yash Agrawal S/O Late Chandrabas Kumar Agrawal, All Resident of Village- 502 Ashiana Vihar, Rajendra Path Near CDA Building, P.S.- Gandhi Maidan, District- Patna.
6. Roshan Kumar Chillure S/O Kamlakar Chillure, Resident of Flat no- G 6,

Vajreshwari Complex, Hal Colony Bus Stop, Old Bowenpally Qutubullapur, Rangareddy, Hyderabad, Andhra Pradesh- 500072

7. Guddu Chaudhary S/O Ram Sarup Chaudhary, Resident of village P.S.- Mohaniya, District- Bhabhua.

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 827 of 2014)
For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 496 of 2015)
For the Appellant/s : Mr. Alok Kumar @ Alok Kr. Shahi, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 08-01-2026

Heard Mr. Mukesh Prasad Singh, learned counsel for the appellant in **MA. No. 827 of 2014** and Mr. Alok Kumar Shahi learned counsel for the appellant-company in **MA. No. 496 of 2015.**

2. Both MA. No. 827 of 2014 and MA. No. 496 of 2015 arises out of the Judgment and **order dated 20.09.2014** and **award dated 06.04.2015** passed by the **Additional District Judge-VII-cum-Motor Accident Claims Tribunal, Patna** (henceforth for short **'the Tribunal'**) in **Claim Case No. 98/2011** by which the claim put forward by the lady-appellant in MA No. 827 of 2014 was allowed with direction to the Insurance Company to pay compensation amount of **Rs. 25,19,616/-.**

3. Both the parties are aggrieved and have preferred

their respective appeal.

4. The ground taken in **MA No. 827 of 2014** by the claimant-appellants is/are that:

(i) 'the Tribunal' took into account the average of the income tax return of the two years instead of the last return while calculating the amount;

(ii) when the dependents were more than three, then the deduction should have been one-forth and not one-third, as such, the amount has to be enhanced.

5. The Insurance Company on the other hand has preferred the appeal **(MA. No. 496 of 2015)** on the ground that the motorcycle met with an accident but the owner of the said motorcycle was not made party nor the insurance company was impleaded in the said case. Another ground has been taken that it was negligence on the part of the deceased that led to the accident.

6. The short fact of the case is that the claimant's husband, **Chandrahas Kumar Agrawal** was moving alongwith a pillion rider from **Mokama to Lakhisarai** on **13.02.2011** on a **Pulsar motorcycle** (**Reg. No. BR-28C-4358**) when a **Truck**

(**Reg. No. AP-28TA-5466**) overtook them and from the backside of the said truck, they were hit. The claimant's husband died on the spot while the Pillion rider, who survived, lodged the FIR.

7. 'The Tribunal' took up the matter and issues were framed as under:

> *"I- whether the claim case is maintainable or not?*
>
> *II- whether the accident took place due to rash and neglivent driving of the driver of the alleged vehicle?*
>
> *III- whether the alleged vehicle involved in the accident was insured by Opposite Party No. 1 Shri Ram General Insurance Co. Ltd. at the alleged date and time of occurrence?*
>
> *IV- whether the driving licence of the alleged driver and permit of the alleged vehicle was effective at the date and time of occurrence?*
>
> *V- whether the monthly income of the deceased is genuine?*
>
> *VI- whether the Opposite Party No. 1 Shri Ram General Insurance Co. Ltd or owner of*

the alleged vehicle is liable to pay compensation amount to the claimants?

VII- whether the claimants are entitled for other relief or reliefs?"

8. 'The Tribunal' went into the matter and having found the claim to be genuine/maintainable further held that it was due to the negligent driving of the truck driver which was insured with the Shri Ram General Insurance Co. Ltd. (henceforth for short 'the Insurance Company') that the accident took place leading to the unfortunate death. Further, the truck was having a valid driving license and permit of the vehicle at the time of the occurrence. It accordingly, held 'the Insurance Company' liable for payment.

9. So far as the misjoinder and non-joinder of necessary party is/are concerned, 'the Tribunal' held that the same is not maintainable in the eyes of law as it has been proved that the accident took place due to rash and negligent driving of the truck driver which was having valid document and further was insured with 'the Insurance Company'.

10. So far as the calculation is concerned, it took the two calender years of the income tax return of the deceased who was a businessman and came to the conclusion that taking the

average of the same coupled with the expenses that may have taken place, it held that the claimant is entitled to **Rs. 25,69,616/- only**. As the interim compensation of **Rs. 50,000/-** was paid, direction was given to pay **Rs. 25,19,616** alongwith interest of 7**% from the date of filing of the claim till its realization**. This order came to be passed on **20.09.2014**.

11. Aggrieved, as recorded earlier, both the parties preferred the appeal as recorded above.

12. Learned counsel for the appellant-claimant submits that:

> *"(i) 'the Tribunal' erred in taking the average of the two calender years of the IT returns and it should have taken the last enhanced return while calculating the amount;*
>
> *(ii) further submission is that following the case of **National Insurance Company Limited vs. Pranay Sethi and Others reported** in **(2017) 16 SCC 680**, as the family of the claimant consisted of five persons, the calculation should have been one-fourth and not one-third."*

13. In support of the first contention, the learned counsel for the appellant provided the order of the **Hon'ble**

Apex Court in the case of Nidhi Bhargava & Ors. vs. National Insurance Company & Ors. [Special Leave Petition (CIVIL) No. 10664 of 2019] wherein the High Court having ignored the last income tax return and reduced the amount that was directed to be paid by 'the Tribunal', came to the conclusion that though the last return was filed after the death, it was for the period 01.04.2007 to 31.03.2008 and as such, the same should have been taken into account.

14. This Court has taken note of the observation made by the **Hon'ble Apex Court** in **paragraph-15** of the same order which read as follows:-

> *"**15**. The High Court interfered and reduced the compensation as awarded by the Tribunal only on the ground that Return for the Assessment Year 2008-2009 had to be excluded from consideration. It is not in dispute that the deceased was a businessman. The relevance of the Income Tax Return stems, in the context of the Act, for the period which it relates to i.e., the Financial Year concerned, and not on the date on which it is filed with the Income Tax Department. **When faced with Returns for different Assessment Years, it would be upto the Tribunal concerned to adopt either the average***

income therefrom or choose an Assessment Year to rely upon. There is good reason to leave judicial discretion on the Tribunal to adopt one of the afore-noted two courses of action, bearing in nature the social purpose and object behind the Act, which is a beneficial legislation*. It is quite unfortunate that the High Court in the present case has dealt with the matter in such a casual and superficial way where the rightful claim of the appellants under a welfare legislation has been drastically reduced without any cogent reason on a very tenuous ground, which we find to be totally unjustified. As pointed out in Shivaleela v Divisional Manager, United India Insurance Co. Ltd., 2025 SCC OnLine SC 563:*

(emphasis added)

'13.... In K Ramya v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, after taking note of, inter alia, Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710, the Court held that the .... <u>Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially</u>

> *forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future....'...*[2]
>
> *(underlined in original)*

15. The appellant-claimant clearly missed the said observation in paragraph 15 of the order.

16. This Court is also of the opinion that when faced with returns for different Assessment Years, it would be for 'the Tribunal' to adopt either the average income therefrom or choose an assessment year to rely upon. This judicial discretion is better left upon 'the Tribunal' to adopt one of the afore-noted two courses of action. Certainly this is a beneficial legislation.

17. As recorded above, 'the Tribunal' has taken the average of the two years while calculating the compensation amount and as such, so far as the first contention of the appellant-claimant is concerned, the same is rejected.

18. So far as the second contention is concerned, learned counsel for the appellant-claimant has taken this Court to the case of **National Insurance Company Limited vs. Pranay Sethi and Others reported in (2017) 16 SCC 680**

wherein taking into account the order of the **Hon'ble Apex Court in Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121** where it has been recorded that in case of dependents being four to six, one-fourth ratio has to be applied. The submission is that 'the Tribunal' clearly erred in taking the one-third into account while direction for making payment as such, thus, at least the deduction should be one-forth and not one-third.

19. Learned counsel, Mr. Shahi on the other hand, representing the appellant-company opposes the prayer submitting that the facts of the case do not clearly show who was at fault, the truck driver or the motorcycle owner (deceased) and in that background, directing 'the Insurance Company' with whom the truck was insured to make the payment is/was not justified.

20. He, however, concede to the fact that in view of the judgments of the Hon'ble Apex Court (as recorded above) where the dependent family members are between four to six, one-fourth ratio has to be applied.

21. This Court has taken note of the submissions put forward by the parties as also the decision of the **Hon'ble Apex Court** both in **Sarla Verma (supra)** as also **Pranay Sethi**

(supra). Learned counsel for the claimant-appellant submits that it will be suffice if following the Hon'ble Apex Court order, the one-fourth ratio is applied in the present case.

22. This Court must put on record its word of appreciation for Mr. Alok Kumar Shahi who assisted the Court in recalculating the amount taking into account the one-fourth ratio in terms of decision of the Hon'ble Apex Court (as recorded above in the aforesaid two orders).

23. The recalculated amount (taking one-fourth ratio into account) is as follows:

Income – 295398

Less ¼th – 73849
221548

Multiplier – 13
2880124

Future Prospect 25% – 7,20,031
36,00,155

Other Head (Funeral Exp. + Loss of Estate + Loss of consortium) -- 70,000
36,70,155

Less – amount Paid – 50,000
36,20,155/-

24. In that background, the order passed by 'the Tribunal' in **Claim Case No. 92 of 2011 (Ritu Agrawal & Ors. vs. Manager, Sriram General Insurance Company Ltd. &**

Ors.) disposed of on **20.09.2014** is modified to the extent that the appellants in the **MA No. 827 of 2014** shall be entitled to **Rs. 36,20,155/-** instead of **Rs. 25,19,616** which shall be paid alongwith interest of 7% *per annum (as per the direction given by 'the Tribunal')* from the date of the filing of the claim till the actual payment is made.

25. Both **MA. No. 827 of 2014** and **MA. No. 496 of 2015** stand disposed of with aforesaid observation.

26. The statutory amount of Rs. 25,000/- deposited by 'the Company' has to be returned.

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.01.2026
Transmission Date	N/A