IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.707 of 2021

ICICI Lombard General Insurance Company Limited Off.- ICICI Lombard House, 414 Veer Sawarkar Marg, Near Siddhi Vinayak Temple, Prabhadevi, Mumbai, 400 025, Appeal and appellant through Manager (Legal), ICICI Lombard General Insurance Company Limited, 2nd Floor, Krishna Bhawan, Above Axis Bank, Near Dakbanglow Chauraha, Patna- 1.

... ... Appellant/s

Versus

1. Asha Devi wife of Late Subodh Mahto Resident of Village- Khopaiti, Tola- Koriyani, Ward No.- 14, P.O.- Balam, P.S.- Madhepura, District- Madhepura.
2. Sarwan Kumar son of Late Subodh Mahto minor and under the guardianship of mother, i.e. Respondent no. 1 Resident of Village- Khopaiti, Tola- Koriyani, Ward No.- 14, P.O.- Balam, P.S.- Madhepura, District- Madhepura.
3. Guriya Kumari daughter of Late Subodh Mahto minor and under the guardianship of mother, i.e. Respondent no. 1 Resident of Village- Khopaiti, Tola- Koriyani, Ward No.- 14, P.O.- Balam, P.S.- Madhepura, District- Madhepura.
4. Roshan Kumar son of Late Subodh Mahto minor and under the guardianship of mother, i.e. Respondent no. 1 Resident of Village- Khopaiti, Tola- Koriyani, Ward No.- 14, P.O.- Balam, P.S.- Madhepura, District- Madhepura.
5. Pappu Kumar son of Late Subodh Mahto minor and under the guardianship of mother, i.e. Respondent no. 1 Resident of Village- Khopaiti, Tola- Koriyani, Ward No.- 14, P.O.- Balam, P.S.- Madhepura, District- Madhepura.
6. Bechan Jha son of Sikendar Jha Resident of Village- Kahara, Dhabauli, P.O.- Kahra Bhabauli, P.S.- Saurbazar, District- Saharsa (Owner)
7. Ritesh Kumar Bharti son of Bechan Jha Resident of Village- Kahra, P.S.- Saurbazar, District- Saharsa (Driver)

... ... Respondent/s

Appearance :
For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate
For the Respondent/s : Mr. Amandeep Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 30-01-2026

1. Heard the learned counsel for the appellant 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 “Act”) on behalf of the appellant/ICICI Lombard General Insurance Company Limited against the compensation amount awarded to the respondent nos.1 to 5/claimants by the learned Court of District Judge-cum-Motor Vehicle Accident Claim Tribunal, Madhepura (hereinafter referred to as “Tribunal”) *vide* Judgment and Award dated 16.06.2021 passed in M.V. Claim Case No.13 of 2016.

3. The learned Tribunal allowed the claim application and held that claimants are entitled to receive Rs.16,93,160/- as compensation and accordingly the ICICI Lombard General Insurance Company Limited (hereinafter referred to as “Insurance Company”) has been directed to make payment of the compensation amount as per the order along with the interest @6% *per annum* from the date of filing the claim petition i.e., 02.08.2016 till its realization within 90 days. In case of failure, the claimants will be at liberty to realize the awarded compensation amount @9% interest *per annum*. It further held that in case there is violation of policy conditions, the Insurance Company will have liberty to recover the compensation amount from the owner of the vehicle (respondent no.6).

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

S.No	**Particulars**	**Calculation**	**Net Amount**
1.	Monthly Income	Rs.450 x 30	Rs.13,500/-
2.	Annual Income	Rs.13,500 x 12	Rs.1,62,000/-
3.	Addition: Future Prospects	10%	Rs.1,78,200/-
4.	1/5th deduction towards personal expenses of the deceased	1/5th of Rs.1,78,200/-	Rs.35,640/-
5.	Annual Income after deduction	Rs.1,78,200- Rs.35,640/-	Rs.1,42,560/-
6.	Multiplier (11)	Rs.1,42,560 x 11	Rs.15,68,160/-
7.	Loss of Consortium	------	Rs.1,00,000/-
8.	Funeral Expenses	------	Rs.25,000/-
9.	**Total Compensation**	------	Rs.16,93,160/-

5. The appellant/Insurance Company being not satisfied and aggrieved by the impugned judgment and award dated 02.08.2016 passed by the learned Tribunal, filed the present appeal for setting aside the impugned judgment.

6. The brief facts giving rise to the present Miscellaneous Appeal are that on 04.05.2016 at about 08:00 PM, the deceased, Subodh Mahto, was returning to his home by an auto-rickshaw bearing Registration No. BR-43P-4110 (hereinafter referred to as "offending vehicle"). When the vehicle reached near *Sukhasan* Temple, the driver, owing to rash and negligent driving, lost control over the offending vehicle, as a result of which it overturned and fell into a nearby field. In the said accident, the deceased came under the overturned offending vehicle, sustained grievous injuries and subsequently succumbed to the same during treatment in the hospital. On the basis of the *fardbeyan* of the son of the deceased, namely Laloo Kumar Mahto, Madhepura P.S. Case No. 251 of 2016 dated 05.05.2016 was instituted under Sections 279, 337, 338 and 304-A of the Indian Penal Code. Upon completion of investigation, the police submitted charge-sheet against the owner of the offending vehicle, Bechan Jha (respondent no.6 herein) under Sections 279, 338 and 304-A of the Indian Penal Code, whereafter the learned Chief Judicial Magistrate, Madhepura, took cognizance of the offences accordingly.

7. Claimants/ respondent nos.1 to 5, namely Asha Devi, wife of deceased (claimant/respondent no.1); Sarwan Kumar, son of deceased (claimant/respondent no.2); Guriya Kumari, daughter of deceased (claimant/respondent no.3); Roshan Kumar, son of deceased(claimant/respondent no.4); and Pappu Kumar, son of deceased (claimant/respondent no.5) have filed the case bearing M.V. Claim Case No.13 of 2016 before the learned Tribunal. Moreover, O.P. no.1/respondent no.6 (Bechan Jha) is the owner of the offending vehicle; O.P.

no.2/appellant (Insurance Company) is insurer of the offending vehicle; and O.P. no.3/respondent no.7 (Ritesh Kumar Bharti) is driver of the offending vehicle.

8. It is further claimed that the deceased was aged about 49 years at the time of alleged occurrence, working as a kiln labourer wherein he was earning Rs.450/- per day by which he was maintaining the claimants. The claimants, who are widow and minor children of the deceased, have claimed compensation to the tune of Rs.25,78,325/-.

9. In the written statement filed on behalf of appellant/Insurance Company, it is stated that the case is suffering from mis-joinder and non-joinder of necessary party and the claimants have got no cause of action, therefore the case is not maintainable. It is further stated that the owner of offending vehicle be directed to produce and prove the policy of insurance. Furthermore, it is stated that neither the driver hold valid and effective driving license at the time of occurrence nor the offending vehicle was plying on the road with a valid road permit. Hence, the owner of the vehicle has violated the terms and conditions of the Insurance Policy and the Insurance Company is not liable to pay any compensation. Moreover, it is stated that besides other factors, the claimants have not proved the income and age of the deceased.

10. In written statement, filed jointly on behalf of the respondent nos.6 & 7/O.P. nos. 1 & 3, owner and driver of the offending vehicle respectively, it is stated that O.P. no.1 is the registered owner of the offending vehicle bearing Registration no. BR-43P-4110 and at the relevant time all the papers relating to the offending vehicle were valid and up-to-date and also the same was duly insured with the Insurance Company (appellant/O.P. no.2). The respondent no.7/ O.P. no.3 is the driver of the aforesaid offending vehicle and his license was also valid on the date and time of accident. Thus, accordingly the whole liabilities of payment of compensation lies on the insurer i.e., the Insurance Company. It is further stated that there is no violation of any terms and conditions of the Insurance Policy and the offending vehicle was not being driven rashly and negligently.

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

> ***(I)*** *Is the suit as framed and filed maintainable ?*
>
> ***(II)*** *Has the applicant any right or cause of action for filing this application ?*
> ***(III)*** *Is the story of the accident as said by*

the applicant correct?

(IV) *Whether the deceased Subodh Mahto died due to rash and negligent driving of the driver of auto-rickshaw bearing No. BR 43 P 4110 on 04.06.2016 ?*

(V) *Whether the auto-rickshaw bearing No. BR 43 P 4110 was insured on the date of accident with I.C.I.C.I. Lombard General Insurance company ?*

(VI) *Whether the petitioner is entitled for the compensation if any to what extent?*

12. In support of the claim petition, claimants have examined four witnesses mentioned hereinunder:

C.Ws.	**Names**
C.W.-1	Asha Devi (wife of the deceased)
C.W.-2	Laloo Kumar Mahto (son of the deceased)
C.W.-3	Upendra Mahto (co-worker)
C.W.-4	Ravindra Yadav (passenger of different *auto-rickshaw* and a co-worker at the same kiln)

The claimants have also filed documentary evidence in support of their claim petition. i.e., certified copy of F.I.R. (Ext.1), certified copy of of charge-sheet (Ext.2), certified copy of bail-bond (Ext.3), certified copy of indemnity bond (Ext.4), photo copy of *post-mortem* report (Ext.5), photo copy of permit (Ext.6), photo copy of insurance policy (Ext.7), inquest report of deceased Subodh Mahto (Ext.8), photo copy of Aadhaar Card of deceased Subodh Mahto (Ext.9) and photo copy of voter identity card of deceased Subodh Mahto (Ext.10).

13. No oral or documentary evidence have been produced by the appellant/O.P. no. 2 in rebuttal of the claim. However, O.P. Nos. 1 & 3 exhibited photocopy of driving license of the driver Ritesh Kumar Bharti and examined Bechan Jha (D.W.-1) in support of their case.

14. After hearing the parties and considering the materials on record, the learned Tribunal held that the death of deceased was caused in the motor vehicle accident due to rash and negligent driving by the driver of the offending vehicle which was insured with the Insurance Company at the relevant period of time and the said Insurance Company is liable to pay the amount of compensation to claimants who are wife and minor sons and daughter of the deceased. The learned Tribunal has held that the claimants are entitled for compensation to the tune of Rs.16,93,160/- along with simple interest as stated above.

15. Learned counsel for the appellant/Insurance Company has submitted that the claimants have not produced any chit of paper to prove regarding income of the deceased, hence, the calculation on monthly income of the deceased is improper and unjustified in facts and circumstances of the case and the same requires interference by this Court. It is submitted that the deceased was working as a labourer at a brick kiln and this type of work cannot be classified as semi-skilled or skilled, as it does not require any technical expertise in brick making. It is further submitted that the income assessed by the learned Tribunal is on a very high side and the same may be calculated as per the notified minimum wages of Bihar Government (w.e.f. 01.04.2016) which was prevailing on the date of occurrence. Moreover, it is submitted that the learned Tribunal has deducted 1/5th instead of 1/4th towards personal and living expenses which is not in compliance with the law. Therefore, the impugned judgment and award is fit to be set aside.

16. Per contra, learned counsel for the respondents/claimants has submitted that the learned Tribunal considering the materials on record has rightly fixed the monthly income of the deceased to grant the just compensation which the appellant/Insurance Company is liable to pay which requires no interference by this Court. However, it is submitted on behalf of the claimants that the age of deceased as per the Aadhaar Card and the Voter Identify Card was 49 years at the time of accident but in the Inquest *panchnama* and the postmortem report, his age was wrongly mentioned to be 55 years and the learned Tribunal has accepted the age of the deceased on the basis of the postmortem report of the deceased which is erroneous. He further submitted that for the compensation under conventional heads, the learned Tribunal has not awarded just compensation and the same has not been calculated as per the settled principle of law as held by the Hon'ble Supreme Court in the cases of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680; United India Insurance Company Limited v. Satinder Kaur*** @ ***Satwinder Kaur and Others*** reported in ***(2021) 11 SCC 780;*** and ***Rojaline Nayak & Ors. v. Ajit Sahoo & Ors.*** reported in ***2024 SCC OnLine 1901*****,** and the same are required to be enhanced, accordingly.

17. In reply to the aforesaid submission on behalf of the respondent nos.1 to 5/claimants, learned counsel for the appellant/Insurance Company submitted that the claimants have not challenged the impugned judgment and award by filing cross-appeal or cross-objection. It is submitted that the Hon'ble Supreme Court relying on ***K.S.Puttaswamy v. Union of India,*** reported in ***(2019) 1 SCC 1*** in ***Saroj & Ors. v. IFFICO-TOKIO General Insurance Company & Ors.,*** reported in ***2024 SCC OnLine SC 3038*** observed that an Aadhaar Card can be used to establish identity, it is not *per se* proof of date of birth.

18. Having heard the learned counsel for the parties, on perusal of the materials available on record and considering the submissions made, it appears that, in the present case, there is no dispute as to the occurrence of accident in question in which deceased lost his life and liability of the appellant/Insurance Company to pay the compensation to the claimants. The only question that remains to be decided by this Court is on the aspect of the quantum of compensation awarded.

19. Law is well settled that the appellate court under Order XLI Rule 33 of the Code of Civil Procedure, 1908 has power to make an order to enhance the compensation even though the claimant has not filed any cross-appeal or cross-objection. 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.

20. The proceeding in a claim petition for compensation before the learned Tribunal is neither suit nor an adversarial *lis* and the claimant is not required to prove his case as required in a criminal trial. In the present case, the respondent nos.1 to 5/claimants have not submitted any document on record to specifically prove the earning of the deceased but C.W.-3 and C.W.-4 who were co-workers of the deceased have deposed in their examination that the deceased was earning Rs.450/- per day and considering the nature of his job as a kiln labourer, it is reasonable to rely on the statement of the above C.Ws. It is not practical to expect from the claimants in the facts and circumstances of the case to produce documentary evidence in order to substantiate the income of the deceased who was working as daily worker and there is no evidence on record contrary to the claim made by the claimants. The notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate the monthly income of the deceased where positive evidence has been led, no reliance on notification could be placed [*refer*:***Gurpreet Kaur and Ors. v. United India Insurance Company Limited and Ors.***, reported in ***2022 SCC OnLine SC 1778***]. Therefore, fixation of monthly income of Rs.13,500/- in the present case is appropriate and cannot be regarded as disproportionate or arbitrary and the same requires no interference by this Court. It is well settled that assessment of compensation cannot be done with mathematical precision. The Act is a beneficial and welfare legislation which also provides for assessment of just and fair compensation. It is the duty of the Court to award 'just compensation'.

21. The multiplier factor is dependent on the age, and there is sufficient indication that the deceased was aged about 55 years as in accordance with the *post-mortem* report which is a scientific assessment of the age of the deceased. The

Hon'ble Supreme Court in ***Sunita and Ors. v. Vinod Singh and Ors***., reported in ***2025 SCC OnLine SC 586*** observed that in the absence of material indicating to the contrary, there is no inhibition to accept the age of the deceased as per the *post-mortem* report.

22. The learned Tribunal has considered the age of deceased to be 55 years based on the *post-mortem* report and accordingly, applied the multiplier of 11. In view of the judgment of the Hon'ble Supreme Court in ***Saroj & Ors v. IFFICO-TOKIO General Insurance Company & Ors. (supra)*** wherein it has been observed that an Aadhaar Card is not *per se* proof of the date of birth and observation of the Hon'ble Supreme Court in ***Sunita and Ors. v. Vinod Singh and Ors***. ***(supra)*** that in the absence of material indicating to the contrary, there is no inhibition to accept the age of the deceased as per the *post-mortem* report, the finding of the learned Tribunal cannot be said to be perverse. There is no infirmity in finding of the learned Tribunal that the deceased was aged about 55 years.

23. The five-judge bench of the Hon'ble Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi (supra)*** affirmed the principle laid down in ***Sarla Verma v. Delhi Transport Corporation***, reported in ***(2009) 6 SCC 121***

concurred the principle with respect to future prospects and deductions. With respect to deductions towards personal and living expenses of the deceased, the Hon'ble Supreme Court in the aforesaid case, *inter alia*, held that where the deceased was married, the deductions towards personal and living expenses of the deceased should be one-fourth (1/4th) where the number of dependent family is four to six. In the present case, the dependents of the deceased are five i.e. claimant nos.1 to 5. Accordingly, the applicable deduction shall be 1/4th instead of 1/5th taken by the learned Tribunal which requires modification in the computation of compensation.

24. With regard to the loss of love and affection, ***Pranay Sethi (supra)*** grant of Rs.40,000/- per head with escalation of 10% every three years as loss of consortium which has been interpreted in ***Magma General Insurance Company Ltd. v. Nanu Ram***, reported in ***(2018) 18 SCC 130*** to include spousal, parental and filial consortium.

25. The three-judge bench of the Hon'ble Supreme Court in ***Satinder Kaur (supra)***, approved comprehensive definition given to the expression 'consortium' and laid down that consortium is not only limited to spousal consortium but it also includes parental as well as filial consortium.

26. In so far as the conventional heads are concerned, the deceased Subodh Mahto left behind his widow and four minor children as his dependents. On the basis of judgments of the Hon'ble Supreme Court in ***Pranay Sethi (supra); Magma General Insurance Co. Ltd. v. Nanu Ram (supra); Satinder Kaur @ Satwinder Kaur and Others (supra);*** and ***Rojaline Nayak & Ors. v. Ajit Sahoo & Ors. (supra)***, the following amounts are awarded compensation under the **conventional heads:**

S.No.	**Heads**	**Calculation**	**Compensation Amount**
1.	Loss of Estate	Rs.15,000 + 10% enhanced twice	Rs.18,150/-
2.	Loss of Consortium (Rs.48,400 x 5)	Rs.40,000 + 10% enhanced twice	Rs.2,42,000/-
3.	Funeral expenses	Rs.15,000 + 10% enhanced twice	Rs.18,150/-
4.	**Total**	---------	**Rs.2,78,300/-**

27. Thus, in view of the facts stated herein above, in opinion of this Court, the computation of the total amount of compensation payable will be as follows:-

S.No.	**Heads**	**Calculation**	**Amount**
1.	Monthly Income	Rs.450 x 30	Rs.13,500/-
2.	Annual Income	Rs.13,500 x 12	Rs.1,62,000/-
3.	Addition: Future Prospects (10%)	Rs.16,200 + Rs.1,62,000	Rs.1,78,200/-
4.	1/4th Deduction towards personal and living expenses	1/4th of Rs.1,78,200	Rs.44,550/-
5.	Annual Income (after 1/4th deduction)	Rs.1,78,200 - Rs.44,550	Rs.1,33,650/-
6.	Multiplier (11)	Rs.1,33,650 x 11	Rs.14,70,150/-

7.	Compensation under conventional heads	*As per calculation chart in para 26*	Rs.2,78,300/-
8.	**Total Compensation**	Rs.14,70,150 + Rs.2,78,300	**Rs.17,48,450/-**

28. The claimants/respondent nos.1 to 5 stand entitled to a total compensation to the tune of Rs.17,48,450/- which is in the interest of just compensation is rounded off to Rs.17,50,000/- with simple interest at the rate of 9 % *per annum* calculated from the date of filing of the claim case till its realization. The appellant/Insurance Company shall pay the said compensation amount to the claimants/respondent nos.1 to 5 deducting any amount which has already been paid to the them. The amount shall be deposited within two months from today and to be paid to the respondent nos.1 to 5 according to law.

29. It is clarified that the rate of interest would be *pro rata*, if any amount has been paid for the period for which such interest is to be paid, taking into consideration the date on which such interim or part payment has been made by the appellant/Insurance Company to the claimants.

30. The Judgment and Award dated 16.06.2021 passed by the learned Tribunal in M.V. Claim Case No.13 of 2016 stands modified to the aforesaid extent. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned Judgment and Award.

31. There shall be no order as to costs.

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

33. Let the Trial Court Records be returned forthwith to the Court concerned.

34. The office is directed to return the statutory amount to the appellant/Insurance Company, if deposited at the time of this appeal.

(Sunil Dutta Mishra, J)

harish/-

AFR/NAFR	AFR
CAV DATE	16.01.2026
Uploading Date	30.01.2026
Transmission Date	