

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.420 of 2014

1. Bibi Basrun Nishan wife of Abdul Wakil
2. Abdul Wakil son of Late Abdul Jalil
3. Gulam Jilani son of Abdul Wakil (minor)
4. Gulam Yagdani son of Abdul Wakil (minor)

Appellant no. 3 and 4 both are minor are under the guardianship and next friend of their parents Appellant Nos. 1 and 2.

All R/o Village P.O. Ghordar Via Simri Bakhtiarapur, P.S.- Salkhua (Etahati), District- Saharsa. At present r/o village + P.O.- Pipra Latif, P.S.- Parbatta, District- Khagaria

... .. Appellant/s

Versus

1. The Managing Director, M/s Bihar State Road Transport Corporation, Parivahan Bhawan, Bir Chand Patel (B.C.P.) Marg, Patna
2. The Branch Manager, United India Insurance Company Ltd., South Gandhi Maidan, Patna. Insurer of the Bus No. BR05P/556 insured on 22.06.2006
3. The Branch Manager, United India Insurance Company Ltd., Harhar Mahadeo Chowk, N.H. 31, Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abdul Mannan Khan, Advocate Mr. Anamul Haque, Advocate
For Respondent No.1	:	Mr. P.K. Verma Sr. Advocate Mr. Arvind Kumar, Advocate Mr. Ram Chandra Lal Das, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 25-02-2019

Heard learned counsel for the parties.

2. Appellants are not satisfied with the quantum of award made by the 3rd Adhoc Additional District Judge-cum-Motor Vehicles Accident Claim Tribunal, Khagaria, in Motor Vehicles Claim Case No. 02 of 2008 by judgment and award dated 11.04.2004 and 25.04.2014 respectively.

3. The appellants are parents and two minor



brothers of deceased Shakeib Alam, aged about 22 years, who died in a motor accident on 11.05.2007 as rash and negligent bus on which the deceased was a passenger fell into a river. There is no dispute that bus bearing registration No. BR-05P/0556 was involved in accident and the same was insured with insurer United India Insurance Company Limited covering the period of accident.

4. The claimants had claimed compensation of Rs.13,64,500/- whereas the Tribunal awarded Rs.2,02,500/- along with interest of 7% per annum from the date of appearance of the opposite parties i.e., 04.08.2008. The award would reveal that learned Tribunal did not accept the letter of appointment of the deceased as evidence (Exhibit-1) as proof of salary of the deceased wherein it is shown that the deceased would receive Rs.10,000/- per month. The evidence was discarded for the reason that the same was not a salary slip and the Tribunal took notional income of Rs.3,000/- per month as multiplicand.

5. The Tribunal adopted multiplier of 11 taking into consideration the age of the claimants. 50% was deducted for personal expenses of the deceased as he was a bachelor. Rs.2,000/- for funeral expenses and Rs.2,500/- for loss to the



estate was also allowed.

6. Learned counsel for the appellants submits that the Court-below has ignored the well settled principles of calculation of loss of dependency and the well settled method of calculation under different heads. Contention is that there was no written statement filed on behalf of the insurer before the Tribunal challenging the income of the deceased and no contrary evidence was there on the record. Hence, the Tribunal should have accepted the income of the deceased as Rs.10,000/-.

7. Learned counsel for the respondent-insurer submits that the subsequent judgments of the Hon'ble Supreme Court wherein there is direction for payment of certain percentage for future prospect of the deceased besides other directions for application of the appropriate multiplier and multiplicand would not be applicable in the present case wherein the death was caused on 11.05.2007 and claim was decided on 11.04.2014.

8. It is well settled that appeal is continuation of the proceeding before the Court-below and the appellate Court has all the power to decide just and reasonable compensation on the date the matter is being decided considering the settled guidelines in the matter. Since the judgments of the Supreme



Court have laid down the consideration of different aspects for deciding just and reasonable compensation there is no reason to argue that the same would not apply to the accident which was caused prior to the judgments. Since the matter for payment of adequate compensation is still pending, the principles adopted for deciding adequate compensation in the subsequent judgments would be applicable at any level of the Court where the case is pending.

9. Since there was specific pleading and evidence that the victim of accident was an Electronic Engineer and he got service in Hamiltan Mechanical System, Jamshedpur on salary of Rs.10,000/- per month which is corroborated by Exhibit-1, the Tribunal should have adopted the same amount for assessing loss. The deceased was a bachelor. Hence, the Tribunal rightly deducted 50% of the aforesaid amount for personal expenses of the deceased in view of the judgment of the Hon'ble Supreme Court in **Sarla Verma and Others Vs. Delhi Transport Corporation and Another** reported in (2009) **6 SCC 121**. Therefore, the loss of dependency would be calculated on Rs.5,000/- multiplied by 12 months which comes to Rs.60,000/- per year. The aforesaid amount is fit to be added with 40% of the same in view of the judgment of the Hon'ble



Supreme Court in **National Insurance Company Limited V. Pranay Setthi** reported in **2017 (4) PLJR 261**. The appropriate multiplier would be of 18 which has wrongly been applied by the Tribunal as that of 11 for the reason that in **Reshma Kumari and Others V. Madan Mohan and Others** reported in **(2013) 9 SCC 65** the Hon'ble Supreme Court held that the multiplier is to be used with reference to the age of the deceased and not the age of the dependent.

10. The award of compensation against loss of parental consortium is also permissible in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. V. Nanu Ram @ Chuhru Ram & Others** reported in **2018 (4) PLJR 229**.

11. The total compensation payable to the claimant is computed below:

- Income: Rs.10,000/- per month
- Percentage increase towards future prospects: 40%
- Rs.10,000/- x 40% = 4,000/-
- Total income: Rs.14,000/-
- 50% deduction : 7,000/-
- Income after deduction: Rs.7,000/-
- Annual Income = Rs.7,000/- X 12 = Rs.84,000/-



- Multiplier Applied: 18 (since age of deceased was 22 years)
- Loss of dependency: Rs.84,000/- x 18 = Rs.15,12,000/-
- Loss of consortium: Rs.40,000/-
- Loss of estate: Rs.15,000/-
- Funeral expenses: Rs.15,000/-
- Total compensation: Rs.15,82,000/-

12. Thus the payable compensation would be Rs.15,82,000/- along with interest of 8% per annum from the date of application and not from any subsequent date as directed by the Tribunal till realization of the amount. The already paid amount, if any, shall be deducted from the total award.

13. The minor brothers of the deceased i.e., Claimant Nos.3 & 4 are dependents of claimant Nos.1 & 2 who are their parents. Hence, they are not entitled for any compensation in this matter. Hence, let the compensation be paid to claimant Nos.1 and 2 in equal proportion.

14. Accordingly, this appeal stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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