

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.502 of 2017

1. Renu Devi and Ors W/o Late Mukesh Pandit
2. Niraj Kumar S/o Late Mukesh Pandit
3. Dhiraj Kumar S/o Late Mukesh Pandit
4. Puja Kumari D/o Late Mukesh Pandit
5. Tulsi Pandit S/o Lochan Pandit, Appellant no 2 to 4 are minor under the legal guardianship of their mother, Appel All residents of Village - Chhata, P.S. - Masauri, District - Patna.

... .. Appellant/s

Versus

1. The Managing Director and Ors
2. Tathalli Chennayya Gopi S/o Chennayya Resident of Ganga House no. 109, Bandamma, Temple Stree, Mallikori Bhadravathi, District - Sumoga Karnataka.
3. The United India Insurance Company Ltd, through its Divisional Manager, Divisional Office - 1, Laxm

... .. 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: 01-05-2025

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 “M V Act”) on behalf of appellants for enhancing the compensation amount awarded to the appellants/claimants by the learned Additional District Judge-X cum-Motor Accident Claim Tribunal, Patna (hereinafter referred to as “learned Tribunal”) in Claim Case No. 3207 of 14 vide judgment dated



01.07.2016 and award dated on 22.02.2017.

3. The learned Tribunal held that the appellants are entitled to receive Rs. 5,41,000/- as compensation and accordingly the United India Insurance Company/respondent no. 3 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. 150/-*30	Rs. 4,500/-
2.	Annual Income	Rs. 4,500/-*12	Rs.54,000/-
3.	1/3 rd deduction towards personal and living expenses		Rs. 18,000/-
4.	Family contribution	Rs.54,000- Rs. 18,000	Rs. 36,000/-
5.	Deceased aged about 35 years Multiplier of 16 is applicable	Rs.36,000 x 16	Rs. 5,76,000/-
6.	Loss of estate		Rs.5,000/-
7.	Loss of Consortium		Rs.5,000/-
8.	Funeral Expenses		Rs.5,000/-
9.	compensation		Rs. 5,91,000/-
10.	Interim compensation received by the claimant		Rs. 50,000/-
11.	Total amount of compensation	Rs. 5,91,000/- – Rs. 50,000/-	Rs. 5,41,000/-



5. The brief facts of this case are that on 15.07.2013 the deceased was crossing the road at Khandavalli village in the meantime a bus bearing Registration No AP 29-TB 6330 came rashly and negligently from Vishakpattnam side and dashed the deceased as a result deceased Mukesh Pandit sustained multiple injuries and died due to sustained injuries. On the basis of report of the occurrence, Crime No.87 of 2013 under Section 304A of the IPC in Peravalli Police Station was registered and chargesheet was submitted against the Driver of the offending vehicle.

6. Moreover, notices against the opposite parties were issued and opposite party no. 3 United India Insurance Company Limited appeared and filed written statement. In the written statement it has been submitted that the claim petition filed on behalf of the claimants is not maintainable and fit to be dismissed, the claimants have got no valid cause of action. It is said that the cause and manner of accident is vague and the materials facts have been evident by the claimants that accident took place due to gross negligence of the deceased himself. It is further submitted that opposite party admits that the interest of Managing Director VRL Logistic Ltd. in the bus was covered at the material time under the liability policy of insurance subject



to the terms conditions, exceptions and limitations thereof. It is also submitted that the Insurance Policy is in the possession of insured and he may be directed to produce Original Insurance Policy. It is further submitted that the driver of the offending vehicle at the material time of accident was not having a valid and effective driving license to ply the said vehicle and opposite party no-1 and 2 did not appear in this case therefore, ex parte hearing proceed against opposite party No 1 and 2.

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

- i) Whether the compensation case as framed is maintainable?*
- ii) Whether the claimants have got valid cause of action for the compensation case?*
- iii) Whether the accident took place due to rash and negligent driving by the driver of offending Bus bearing Registration No AP 29-TB 63307*
- iv) Whether the offending vehicle was insured with the opposite party no 3 at the relevant time?*
- v) Whether the driver of the offending vehciel was having valid and effective driving licences and whether the owner of the offending vehciels was having valid route permit to ply the vehicles at the relevant time?*



vi) Whether the claimants is entitled for compensation, if so to what extent?

vii) Whether the claimants are entitled any other relief or reliefs?

8. The claimants in support of its case have altogether examined two witnesses CW-1 Renu devi and CW-2 Sohrai Pandit and they have also filed documentary evidence in support of their claim marked as exhibits Ext 1. Photocopy of FIR, Ext. 2 Police Report of Crime no 87 of 2013 under Section 304A of the IPC in Peravalli police station dated 04.10.2013, Ext. 3 Photocopy of Postmortem Report, Ext. 4 Insurance Paper. On the behalf of opposite party neither oral nor documentary evidence has been produced.

9. Learned counsel for appellants submitted that Learned tribunal has not given the benefit of future prospect as the age of deceased is 35 years so 40% future prospect should be given as per Hon'ble Apex court decision given in ***Pranay Sethi Case(2017) 16 SCC 680***. He further submitted that the personal expense deduction was taken as 1/3rd which is not in accordance with settled principle of law in this regard, as number of claimants are five, so personal expense deduction will be 1/4th.

10. He also submitted that the learned tribunal



has given Rs 5000 for loss of Consortium, which is very inadequate amount, appellant no.1 are entitled for Rs 40000 +10% increase every 3 years as per ***Pranay Sethi (supra)*** as loss of Spousal consortium and appellants no 2 to 4 are entitled for Loss of Parental consortium as per ***Magma GIC Ltd v/s Nanu Ram reported in (2018) 18 SCC 130*** per head of Rs 40000+ 10% increase every three year, appellants are also entitled for funeral expense of Rs 15000+10% increase every 3 year and loss of Estate of Rs 15000+ 10% increase every 3 year.

11. Learned counsel for respondents submitted that the present memo of appeal is not maintainable the appeal is preferred on wrong and misconceived notions. He further submitted that the statements which are not specifically admitted by the respondent no. 1 shall be deemed to have been denied by the answering respondent and the answering respondent is mere a pro-forma party to this miscellaneous appeal as the impugned judgment and decree is not directed against the respondent no. 1 rather it is directed specifically against the respondent no. 3 i.e. the Insurance Company.

12. He further submitted that the Respondent No. 3 is solely liable to pay the compensation amount as a judgment debtor and the learned court below has rightly decided and held



the insurance company solely liable. The respondent no.1 has paid all the requisite premium on time to the Respondent No. 3 and the insurance is completed and without any breakage hence the respondent No. 1 is not liable to pay the appellants a single penny and it can be realized from the respondent No. 3.

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 35 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 (31 to 35) of deceased would be 16. With respect to future prospect, 40% of monthly income of deceased was added in his income and deduction of $\frac{1}{4}^{\text{th}}$ 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.5,000/-, funeral expenses Rs.5,000/- and loss of consortium Rs.5,000/- which is not a just compensation and required to be enhanced. The deceased left behind his wife, three children among them two are minor and father 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. 2, 42,000/- (Rs. 48,400/- x 5)
3.	Funeral Expenses	Rs. 15,000/- + Enhance 10% twice	Rs. 18,150/-

17. As the deceased was of 35 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 *Pranay Sethi (supra)*.

18. Thus, the total amount of compensation payable will be as follows:

Sr. no.	Head	Compensation Awarded
1.	Annual Income	Rs.54,000/-(Rs.4,500 X 12)
2.	Addition of 40% towards future prospects	Rs.75,600/- (Rs.21,600 + Rs.54,000)
3.	1/4 th deduction towards personal and living expenses	Rs.18,900/-
4.	Annual income after deduction	Rs.56,700/-
5.	Multiplier	16.
6.	Loss of Dependency	Rs.9,07,200/- (Rs.56,700 X 16)
7.	Loss of Estate	Rs.18,150/-
8.	Loss of Consortium	Rs.2,42,000/-
9.	Funeral Expenses	Rs.18,150/-
10.	Total Compensation	Rs.11,85,500/-



19. The Judgment dated 01.07.2016 and Award dated 22.02.2017 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)

Sunnykr/-

AFR/NAFR	NAFR
CAV DATE	01.05.2025
Uploading Date	09.05.2025
Transmission Date	09.05.2025

