

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.51 of 2019

Divisional Manager, United India Insurance Company Limited Aharaghat, Muzaffarpur, Represented through Mritunjay Kumar Roy, United India Insurance Company Limited, Regional Office, at Chanakya Commercial Complex 3rd Floor, Ner 'R' Block, Birchand Patel Marg, Patna-800001

... .. Appellant/s

Versus

1. Sarita Devi and Ors Wife of Late Baidyanah Ram Both Resident of Village Paithan Patti, P.S. Harsidhi, District-East Champaran
2. Saurabh Kumar Son of Late Baidyanath Ram Both Resident of Village Paithan Patti, P.S. Harsidhi, District-East Champaran
3. Prem Kumar Son of Nagina Ram Resident of Village- Chainpur, P.S. Katni, District-Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kumar No.1, Advocate
For the Respondent/s : Mr.Ravi Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 03-11-2022

The present appeal has been preferred by the appellant, United India Insurance Company Limited (henceforth for short 'the United India') through its Divisional Manager against the judgment and order dated 22.9.2018/award dated 3.10.2018 by the learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Muzaffarpur in Claim Case No. 321 ov 2017 (henceforth for short 'the Tribunal') by which compensation amount of Rs. 48,22,897/-was awarded to the claimant-respondent first set under Section 166 of the Motor



Vehicle Claims Act (henceforth for short 'the Act').

2. The matrix of facts giving rise to the present appeal is/are as follows:

3. The deceased, Baidhnath Ram on 19.2.2016, while returning to Motihari by his motorcycle and in order to avert accident with a grass-cutter, fell down on the road and was dashed by a vehicle. He was taken to Motihari Hospital from where he was shifted to private nursing home at Patna but died in course of treatment on 25.2.2016. Subsequently, his son Saurabh Kumar lodged FIR vide Harsidhi P.S. Case No. 84 of 2016 under sections 279 and 304(A) of the Indian Penal Code against unknown motor-cyclist.

4. The police investigated the matter whereafter it was found that the deceased Baidhnath Ram was actually hit by a Bolero vehicle bearing registration no. BR-06PB-4762. A host of witnesses to the occurrence supported the same before the police and accordingly charge-sheet was submitted against the Bolero driver under Sections 279, 304(A) of the Indian Penal Code vide charge-sheet No. 400/17 on 30.10.2017.

5. The deceased's wife Sarita Devi and son Saurabh Kumar thereafter preferred Claim Case No. 321 of 2017 under Section 166 of 'the Act' before 'the Tribunal',



Muzaffarpur against amongst other 'the United India' claiming compensation of Rs. 90,00,000/-

6. The submission of the claimant before 'the Tribunal' was that the deceased was an Assistant Teacher with the Government Upgraded Middle School, Gokhula under the State Government and was drawing salary of Rs. 46,916/- per month. He was 50 years, 9 months old at the time of accident/death and was survived by his wife, Sarita Devi and son Saurabh Kumar. The claim was made against the owner of the Bolero as also 'the United India'.

7. The owner of the vehicle appeared and contested the matter denying involvement of his vehicle in the accident. He further claimed that the vehicle in question was insured with 'the United India' with valid policy no. 2102013115P10955752 having validity period 19.11.2015 to 18.11.2016. Thus the policy was covering the risk of accident and as such the owner cannot be held liable to indemnify the compensation.

8. 'The United India' also contested the matter claiming amongst other that the FIR was lodged against unknown motor-cyclist but the charge-sheet was submitted against a Bolero vehicle and as such the claim is fit to be rejected.



9. 'The Tribunal' heard the matter where the independent witnesses AW-2 Kariman Ram, AW-3, Md. Naushad and AW-4 Amit Raj were examined/cross examined and they disclosed that on the fateful day the deceased in order to save grass-cutter fell on the road and was dashed by the Bolero vehicle bearing registration no. BR-06-PB-4762 resulting into serious injury and his subsequent death.

10. 'The Tribunal' thereafter vide an order and judgment dated 22.9.2018 held as follows:-

11. Thus considering the above oral and documentary evidences brought on record, it is clear that deceased Baidhnath Ram died in road accident due to rash and negligent driving of offending Bolero No. BR-06PB-4762 for which Harsidhi P.S. Case No. 84 of 2016 was lodged against the driver of Bolero No. BR-06PB-4762. Thus issue no.2 is decided in favour of claimants.

12. Issue no.3 as the offending Bolero No. BR-06PB-4762 was insured with United India Insurance Company Limited (O.P. No.2) vide policy 2102013115P10955752



valid from 19.11.2015 to 18.11.2016. Xerox copy of Insurance policy is available on the record which confirms validity of policy. Therefore, this issue is decided that Bolero No. BR-06PB-4762 was insured with United India Insurance Company Limited, on the date of accident on 19.2.2016.

13. Issue No. 4. The burden of proof lies on the Insurance company to prove that driver of offending vehicle Bolero No. BR-06PB-4762 was possessing any valid driving licence or not to drive the vehicle at the time of accident. O.P. No.2 has failed to bring this fact as to whether driver was holding driving licence or not at the time of alleged accident. Therefore, this issue is decided against O.P. no.2.

14. Issue No.5 Deceased Baidhnath Ram died in accident by Bolero No. BR-06PB-4762 and now it has to be decided as to what would be just and reasonable compensation in favour of the claimants. The doctor in P.M



report has assessed the age of 50 years but the service Book of deceased shows that deceased was aged about 50 years 9 months on date of accident. As per Ext 1 the monthly salary of deceased was Rs. 46916/-. The yearly income of deceased will be Rs. $46916 \times 12 = \text{Rs } 5,62,992/-$. 1/3rd amount towards personal expenses of deceased shall be deducted which comes to Rs 1,87,664/- and after deducting Rs 1,87,664 from Rs 5,62,992 and it comes to Rs 3,75,328/-. The deceased at the time of accident was aged about 50 years and 9 months old. At the time of argument of the case, the learned lawyer for claimants has relied upon the decision of Hon'ble Supreme Court passed in SLP (Civil) no. 25590/2014 with respect to computation of future prospect in which the Hon'ble Apex Court has held that "while determining the income an addition of 50% of actual salary to the income of the deceased towards future prospect, where the



deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30% if the age of the deceased was between 40-50 years. In case the deceased was between the age of 50-60 years, the addition should be 15%". As such in view of the above decision of Hon'ble Apex Court, the future prospect of 15% is permissible to deceased and it comes to Rs. 56,299/- and after adding it to Rs 3,75,328/- it comes to Rs 4,31,627/-. The multiplier 11 is given between the age group of 50-55 years in second schedule 163 A. M.V. Act, and after multiplying Rs. 4,31,627/-x11 it comes to Rs 47,47,897/-, besides RS, 25000/- towards consortium amount to which claimant no.1 is entitled to get and thus taking to total amount it comes to Rs. 48,22,897/-. the claimants have not fled petition u/s 140 of M.V. Act. Besides this the claimants are entitled to get interest 6[^] per annum from O.P. no.2 on the claimed



amount.

15. Issue no.1. Claimant no.1 is wife and son of deceased Baidyanath Ram. Baidyanath Ram died inroad accident due to rash and negligent driving of Bolero No. BR-06PB-4762 and on the relevant date and time of accident the offending Bolero No. BR-06PB-4762 insured with O.P. no.2 and vide its policy no. 2102013115P10955752 valid from 19.11.2015 to 18.11.2016. Therefore, the insurance policy is covering the date of risk of accident. Thus this issue is also decided in favour of claimants.

16. With the above findings recorded this claim application filed by the claimants stands allowed and it is here

ORDERED

that O.P. no.2 The United India Insurance Company Limited is directed to make payment of Rs. 48,22,897/- (Forty eight lakhs twenty two thousand eight hundred ninety seven) only along with interest @ 6%



thereon from the date of filing the claim application till its realisation to the claimants. In case failure in making payment of awarded amount the claimants shall be at liberty to realise the amount of compensation through the process of the court. The claimants are directed to open joint account in any nationalized bank/post office where they reside. Office is directed to prepare award forthwith.

11. Accordingly, 'the Tribunal' ordered 'the United India' to make payment of Rs. 48,22,897/- with 6 per cent interest from the date of filing of the application till the date of its realization.

12. Aggrieved, the present appeal has been filed by 'the United India'.

13. On 22.9.2022, a coordinate bench of this Court had directed the appellant to deposit a sum of Rs. 38 lakh before 'the learned Tribunal' in connection with Execution Case No. 38 of 2019 which however was directed not to be disbursed.

14. Heard learned counsel for the parties.

15. Mr. Raj Kumar Singh Vikram, learned counsel



for the appellant made two folds submissions:

(i) the FIR was lodged by the son of the deceased (respondent no.2 herein) against unknown motorcyclist and as such the involvement of Bolero vehicle could not have happened and thus 'the United India' has no liability to pay compensation;

(ii) the income tax deduction was not made while granting the compensation to the claimant'

16. Per contra, Mr. Ravi Ranjan, learned counsel representing the respondent no.1 submitted that the son was not an eye-witness to the occurrence and the police in course of the investigation found the actual truth that it was the aforesaid Bolero vehicle which had hit the deceased. It accordingly submitted charge-sheet. The Bolero owner/driver having not contested the implication of the vehicle in accident, the said objection raised by the counsel for the appellant is fit to be rejected.

17. So far as the deduction of income tax from the compensation amount is concerned, he concedes that the income tax had to be deducted from the salary and the order can be modified to that extent.

18. Having heard the rival contentions, this Court observed that so far as the submissions put forward by the



learned counsel for the appellants is concerned, the same is fit to be rejected on the ground that not only the police investigated the matter and found the complicity of the Bolero vehicle, it actually submitted charge-sheet against the Bolero driver vide charge-sheet no. 400/2017 and the same having been accepted without any fuss by the concerned party, the question raised by the appellant is without any merit.

19. Further, as the involvement of the Bolero vehicle has come into picture, the fact remains that the vehicle with registration no. BR-06-PB-4762 was having valid insurance policy vide policy no. 2102013115P10955752 with 'the United India' with validity period between 19.11.2015 to 18.11.2016 while the accident took place on 19.2.2016. Thus, the appellant company cannot shrug off its liability in the matter. Further, 'the United India' has not brought anything on record to show that at the time of accident, the Bolero vehicle, insured with it was not having proper document to absolve the company from paying the compensation.

20. So far as the deduction of income tax is concerned, this Court holds that the same had to be deducted from the income of the deceased.

21. Thus, this Court had to check the correctness of



the compensation awarded by 'the Tribunal'.

22. In this connection, the Court is indebted to Mr. Alok Kumar Sahi and Mr. Madan Mohan, learned Advocates present in the Court room who on the request of the Court helped in preparation of the chart.

23. The salary of the deceased was Rs. 46,916/-. As the deceased was between the age of 50-60 years, an addition of 15% is to be made to the actual salary of the deceased towards the future prospects as his date of birth was 5.5.1965.

24. On future prospects that need to be added to the actual salary, it is further important to quote here another order of the Apex Court reported in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (4) PLJR (SC) 261** specially para-61 of the said order which read as follows:

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

*(i) The two-judge Bench in **Santosh Devi** should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in **Sarla Verma**, a*



judgment by a Coordinate Bench. It is because a Coordinate Bench of the same strength cannot take a contrary view than what has been held by another Coordinate Bench.

*(ii) As **Rajesh** has not taken note of the decision in **Reshma Kumari**, which was delivered at earlier point of time, the decision in **Rajesh** is not a binding precedent.*

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.



An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

*(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of **Sarla Verma** which we have reproduced hereinbefore.*

*(vi) The selection of multiplier shall be as indicated in the Table in **Sarla Verma** read with paragraph 42 of that judgment.*

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.



25. Thus Pranay Sethi (supra) case refers to another order of **Hon'ble Supreme Court** in **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another** reported in **2009(6) SCC 121** wherein paras -30 to 32 read as follows:

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent of family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to



bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on



the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

26. Further para-42 of **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another** (supra) read as follows:

42. We therefore hold that multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years,



*M-9 for 56 to 60 years, M-7 for 61 to 65 years
and M-5 for 66 to 70 years.*

27. As stated, the date of birth of the deceased was 5.5.1965 as per his service book. The accident occurred on 19.2.2016. Thus the age of the deceased at the time of the accident was 50 years, 9 months and accordingly the case will be guided by multiplier of 11.

28. In the light of the aforesaid orders of the Apex Court, it is observed as follows:

i) the deceased who was working as an Assistant Teacher with the Government School was drawing salary of Rs. 46,916/-. Adding 15 per cent as future prospect, it comes to Rs. 84,448/- totalling Rs. 6,47,440/-. Deducting tax amount of Rs. 56,123/-, it comes to Rs. 5,91,317/-.

ii) taking into account one third amount towards expenditure (Rs. 1,97,105) it comes to Rs. 3,94,212/-. Further, multiplier of 11 will be applicable in the case of the deceased who was 50 years and nine months at the time of accident/death and thus multiplying Rs. 3,94,212 x11, the amount comes to Rs. 43,36,332/-

29. Further, following para 61 (viii) of the **National Insurance Company Limited vs. Pranay Sethi and others**



(supra) Rs. 70,000/- has to be added towards conventional heads, namely, loss of estate, loss of consortium and funeral expenses (Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively). Again 10 % of the aforesaid amount (Rs.70,000/-) has to be enhanced after three years and thus the same will be Rs. 77,000/-. The grand total will be Rs. 43,36,332/- + Rs. 77000/- totalling Rs. 44,13,332/- only.

30. This Court thus holds that the respondent nos. 1 and 2 will be entitled to a sum of Rs.44,13,332/- with interest at the rate of 6 per cent per annum from the date of filing of the petition till the date of realization. The amount shall be transferred directly into the Bank account of the respondent nos. 1 & 2 through R.T.G.S. within a period of three months.

31. The appeal is allowed in part.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.11.2022
Transmission Date	

