

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.904 of 2018

Divisional Manager New India Assurance Company Ltd. Divisional Office
Podar Complex Club Road Mithanpura Muzaffarpur Through Deputy
Manager vith/vith Floor B.S.F.C. Building Fraser Road,Patna.

... .. Appellant/s

Versus

1. Nilam Kumari, W/o Late Vijay Kumar Jaiswal, Resident of Village/W No.12
PO Supaul,P.S. Supaul,Dist.Supaul
2. Nivedita, D/o Late Vijay Kumar Jaiswal, Resident of Village/W No.12 PO
Supaul,PS Supaul,Dist.Supaul
3. Divyansh, S/o Late Vijay Kumar Jaiswal, Resident of Village/W No.12 PO
Supaul,PS Supaul,Dist.Supaul
4. Krishna, S/o Surendra Ray, Resident of Village Sherpur PO MIC BELA
Dist. Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate
For the Respondent/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate

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

Date : 24-10-2024

Re: I.A. No.01 of 2019 (Limitation Petition)

1. This interlocutory application No.01 of 2019 has been filed for condonation of delay of 97 days in filing this miscellaneous appeal by the appellant.

2. This application is supported with the affidavit.

3. Learned counsel for the respondent has no objection to this application.

4. Having heard learned counsel for the parties and considering the averments made in the application and in the interest of justice, the I.A. No.01 of 2019 is allowed.



5. The delay in filing the instant Miscellaneous Appeal is condoned.

Re:-Miscellaneous Appeal No.904 of 2018

6. Heard the learned counsel for the appellant as well as the learned counsel for the respondents.

7. This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of New India Assurance Company Ltd., (hereinafter referred to as “Insurance Company”) against the Judgment dated 23.01.2018 and Award dated 31.01.2018 passed by learned Additional District & Sessions Judge VIII-cum-Motor Accident Claims Tribunal, Muzaffarpur (hereinafter referred to as “learned Tribunal”) in Claim Case No.161 of 2013.

8. The learned Tribunal held that claimants (respondent nos. 1 to 3) are entitled to receive Rs.65,48,760/- as compensation and accordingly appellant/ Insurance Company has been directed to make payment of the said compensation amount within two months from the date of order along with interest @ 6% *per annum* from the date of filing of the claim case i.e. 22.04.2013 till realization of the compensation amount.

9. The brief facts of this case are that on



19.06.2012 deceased Vijay Kumar Jaiswal was traveling from Muzaffarpur to Motihari on a Jeep bearing Registration no. BR-06PB-0315 (hereinafter referred as 'accidental vehicle'). Meanwhile, when he reached Muslim Tola Chap in front of Bajrang Line Hotel near N.H.-28, the aforesaid Jeep, being driven rashly and negligently by its driver Raj Kumar, dashed a J.C.B. which was standing on the side of the road due to which the deceased sustained grievous injuries, thereafter, he was sent to Sadar Hospital, Motihari for treatment where he succumbed to injuries and died. With respect to the said incident Pipra Muzaffarpur P.S. Case No.160 of 2012 was registered under Sections 279 & 304-A of the Indian Penal Code (I.P.C.). The age of the deceased at the time of the incident was about 43 years and he was employed as a teacher in Navodaya Vidyalaya, Purnia.

10. Claimant no.1 is the wife of the deceased wherein claimant nos. 2 & 3 are minor children of the deceased, being represented through their mother i.e. claimant no.1.

11. The owner of the accidental vehicle i.e., O.P. no.1/Respondent no.4 did not appear on notice thus, proceeded *ex-parte*. O.P. no.2/appellant appeared and filed the written statement on 08.07.2014 stating that the claim petition filed by



the claimants is not maintainable and the same is affected by mis-joinder and non-joinder of the parties. It is further stated that the accidental vehicle bearing registration No. BR-06 PB-0315 was duly insured by the insurance company bearing Insurance Policy no.54050031110100002782 valid from dated 21.02.2012 to 20.02.2013 in the name of the O.P. no.1 i.e., the owner of the aforementioned accidental vehicle. Furthermore, it was stated that it is a case of contributory negligence between J.C.B. Machine and the accidental vehicle so the insurance company is liable to pay only 50% of the compensation amount. It has also been stated that if valid driving license of the driver of the accidental vehicle and route permit not found valid or not submitted by the owner of the accidental vehicle then the Insurance Company is not liable to pay the awarded amount, if any.

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

- i. Whether the claim case as framed maintainable?*
- ii. Whether the accident took place due to rash and negligent driving of the driver of accidental vehicle No. BR-06PB-0315 at villang Muslim Tola Chap near Bajrang Line Hotel, P.S. Pipra, District East Champaran?*
- iii. Whether the deceased Bijay Kumar Jaiswal died in Motor Accident and from which Pipra P.S.*



case No.160 of 2012 dated 28.06.2012 was registered?

iv. Whether the driver of the accidental vehicle had valid and effective driving license and other vehicular document permit, tax token at the time and date of accident?

v. Whether the accidental vehicle was insured with the New India Assurance C. Ltd. at the date and time of accident?

vi. Whether the applicants are entitled to get compensation what would be amount of compensation and from whom?

vii. Whether the applicants are entitled to get award or awards as prayed?

13. The claimants in support of their claim examined three witnesses i.e., CW-1 Arjun Mandal (eye-witness), CW-2 Dharmendra Kumar (eye-witness), and CW-3 Neelam Kumari (claimant no.1) and also file documentary evidence (Ext. 1 to 5) i.e., Matriculation Certificate of the deceased (Ext.1), Certificate of proceeding of *post-mortem* of deceased and *post-mortem* report (Ext.2&2/1), Last Pay Certificate of the deceased issued by Jawahar Navodaya Vidyalaya, Purnia (Ext.3), certified copy of F.I.R. of Pipra Muzaffarpur P.S. Case No.160 of 2012 under Section 279 & 304A of the Indian Penal Code against the driver of vehicle Rhino (Sonalika) Jeep Taxi registration No. BR-06 PB-0315 (Ext.4) and certified copy of charge-sheet in Pipra Muzaffarpur P.S. Case No.160 of 2012 (Ext.5) against the said driver of accidental vehicle.



14. No witness was adduced on behalf of the appellant/Insurance Company. However, in order to controvert the claim of the claimants, the Insurance Company adduced two documentary evidences namely, the verification report of permit of the accidental vehicle (Ext.A) and D.T.O. certificate with respect to the driving license of the driver of the accidental vehicle (Ext.B).

15. After hearing the parties and gone through the material on record, the learned Tribunal held that the deceased died due to accident caused by rash and negligent driving of the driver, who was holding valid driving license on the date of accident, of the aforesaid accidental vehicle. The vehicle in question was duly insured with the appellant/Insurance Company on the material date of the accident. Thus, the Insurance Company was made accountable to pay the compensation amount to the claimants under the following heads:

S.N.	Head	Calculation	Compensation (Rs.)
1.	Monthly salary of the deceased	----	Rs.39,173/-
2.	Net annual income of deceased	Rs.39,173/- x 12	Rs.4,68,876/-
3.	1/3rd deduction towards personal and living expenses.	Rs.4,68,876 – Rs.1,56,292	Rs.3,12,584/-
4.	Total Annual Income	----	Rs.3,12,584/-
5.	Multiplier (Age of the deceased being about 43 years)	15	----
6.	Loss of dependency	Rs. 3,12,584 x 15	Rs.46,88,760/-



7.	Future Prospects	----	Rs.15,00,000/-
8.	Loss of estate	----	Rs.1,00,000/-
9.	Loss of love and affection	Rs.50,000/- x 2	Rs.1,00,000/-
10.	Loss of Spousal Consortium	----	Rs.1,00,000/-
11.	Funeral expenses	----	Rs.10,000/-
12.	Total Compensation Amount		Rs.65,98,760/-
13.	Less <i>ad-interim</i> compensation u/s 140 of the Act		Rs.50,000/-
14.	Total compensation amount payable		Rs.65,48,760/-

16. It appears from the Tribunal Record that the interim award of Rs.50,000/- under Section 140 of the Act was allowed vide order dated 18.09.2014, which was paid to the claimant no.1 by the appellant/insurance company.

17. The appellants being not satisfied and aggrieved by the impugned judgment and award, filed the present appeal for setting aside the impugned Judgment dated 23.01.2018 and award dated 31.01.2018 passed by the learned Tribunal.

18. Learned counsel for the appellant/Insurance Company has submitted that the learned Tribunal erred while passing the impugned judgment by ignoring the F.I.R. wherein it has been stated that it was a case of collusion. Learned counsel has further submitted that learned Tribunal erred by ignoring the fact that it is a case of contributory negligence and the entire compensation cannot be imposed on one vehicle insured with the Insurance Company. He has further submitted that the



learned Tribunal ignored Ext.-A wherein it has been stated that the permit as deposited with respect to the vehicle in question was fake as in verification it was found not to be genuine by the issuing authorities and similarly, ignored the fact that the driver was also not authorized to drive commercial vehicle. Accordingly, learned Tribunal ought to have granted recovery right in favour of Insurance Company. He has further submitted that the learned Tribunal erred while considering the actual salary of the deceased by taking his gross salary without deducting tax for calculating the award amount. The learned Tribunal also made a mistake while granting 50% as future prospects considering the age of the deceased to be 43 years, is not tenable in accordance with law. Furthermore, he has submitted that learned Tribunal has erred in granting large amount under the conventional heads such as love and affection, consortium & funeral expenses which should not be more than Rs.70,000/-.

19. Learned counsel on behalf of respondent nos.1 to 3 has submitted that the learned Tribunal has rightly awarded the compensation amount *vide* the judgment dated 23.01.2018 considering the material on record including the FIR, charge-sheet, *post-mortem* report and salary certificate of the deceased.



He has further submitted that the accidental vehicle was duly insured with the appellant/ Insurance Company at the material date and time of the accident and the same has been admitted by the Insurance Company in their written statement filed before the learned Tribunal. The learned Tribunal has rightly held that the driver of the accidental vehicle possessed valid driving license at the date and time of the accident. Learned counsel has further submitted that the deceased was a Government servant and was employed as a Teacher at Jawahar Navodaya Vidyalaya, Purnea, therefore, the learned Tribunal has rightly calculated the loss of dependency and the other amount within the ambit of conventional heads.

20. Having heard the learned counsel for the parties, considering the rival submissions made by the parties and the materials on record it is proved that the deceased lost his life due to rash and negligent driving of the accidental vehicle which was insured with the Insurance Company at the relevant time of occurrence. The FIR has been lodged against the driver of the accidental vehicle and on completion of investigation the charge-sheet has also been filed against the driver of accidental vehicle which was also proved by the claimants witnesses. It is to be noted that CW-1 and CW-2 were eye-witnesses of the



occurrence. The factum of an accident could also be proved from the FIR. The proof of rashness and negligence on the part of driver of the vehicle is *sine qua non* for maintaining an application under Section 166 of the Act. It is well settled that if any evidence before learned Tribunal runs contrary to the contents of the FIR, the evidence which is recorded before the learned Tribunal has to be given weightage over the contents of the FIR. Where the driver has been charge sheeted under Section 173 of Cr.P.C., it is safe to conclude that *prima facie* the accident occurred on his rash and negligent driving. There is no contrary evidence on record. The question of any contributory negligence by any other vehicle or person does not arise in this case and the argument of contributory negligence is not tenable in the facts and circumstances of this case.

21. With respect to 'Pay and Recover Principle', the Hon'ble Supreme Court in **Shamanna and Anr. v. Divisional Manager Oriental Insurance Co. Ltd.** reported in **(2018) 9 SCC 650** held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'Pay and Recover' can be ordered to direct to the Insurance Company to pay the victim, and then recover the amount from the owner of the offending vehicle.



22. The Hon'ble Supreme Court in the case of **Parminder Singh v. New Indian Assurance Company Ltd. & Ors.** reported in (2019) 7 SCC 217 and in the case of **Kurvan Ansari Alias Kurvan Ali v. Shyam Kishore Mummu** reported in (2022) 1 SCC 317 has also followed the principle of 'Pay and Recover' in such case where driver of the offending vehicle had not possessed valid driving license.

23. In **National Insurance Co. Ltd. v. Swaran Singh and Ors.** reported in (2004) 3 SCC 297, a three Judge Bench of the Hon'ble Supreme Court dealt with the interpretation of Section 149 of the Act. It was observed that an Insurance Company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149(2)(a) and (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provision. It must prove a willful violation of the law by insured. It is further observed that the proposition of law is no longer *res integra* that the person who alleges breach must prove the same, the insurance breach by cogent evidence and in the event an



Insurance Company fails to prove that there has been breach of the conditions of the policy on the part of insured, such as Insurance Company cannot be absolved of its liability.

24. Three Judge Bench of Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurance Ltd.** reported in **(2017) 14 SCC 663** held that Section 10 of the Act requires a driver to hold a license with respect to class of vehicles and not with respect to type of vehicle. In one class of vehicle, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicle. As L.M.V. license includes transport vehicle also, a holder of L.M.V. license can drive all the vehicles of the class including transport vehicle. Transport vehicle would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle. A transport vehicle and omnibus, the gross weight of either of which does not exceed 7,500Kg would be an L.M.V. and also motor car or tractor or a road-roller, 'unladen weight', of which does not exceed 7,500kg and a holder of a driving license to drive class of "Light Motor Vehicle" as provided in Section 10 (2) (d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight does not exceed 7,500Kg or a motor car or



tractor or road-roller, the unladen weight, of which does not exceed 7,500Kg. That is to say, no separate endorsement on license is required to drive a transport vehicle of L.M.V. as enumerated above.

25. In Mukund Dewangan (*supra*) the Hon'ble Supreme Court has held that a transport vehicle, whose gross weight does not exceed 7,500 Kg would be a L.M.V. and holder of the driving license to drive class of L.M.V. as provided under Section 10 (2) (d) is competent to drive as transport vehicle, the gross vehicle whose weight does not exceed 7,500 Kg. The word gross vehicle weight is defined in Section 2 (15) of the Act which means, in respect of any vehicle, the total weight of vehicle and load certified and registered by registering authority as permissible for that vehicle.

26. Since, it is not in dispute and which is also apparent from the record that the driver of the accidental vehicle was holding valid license to drive the accidental vehicle at the relevant time of occurrence. In view of principle of law as discussed above, with respect to 'Pay and Recover' the trial Court rightly not granted the liberty to the Insurance Company to recover the compensation amount to be paid by the Insurance Company to claimants from the owner of the accidental vehicle.



27. The question before this Court in this appeal is “*whether the learned Tribunal has awarded the just compensation to claimants?*” 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. However, the determination of compensation is not exact since perfect compensation is hardly possible. The element of fairness in amount of compensation so determined is the ultimate guiding factor. The Court or the Tribunal have to assess the damage objectively with reasonableness.

28. The amount of compensation should be determined having regard to the pecuniary loss caused to the dependents by reason of death of victim. In **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.** reported in (2009) 6 SCC 121, it was observed that where the annual income is in taxable range, the word “actual salary” should be



read as actual salary less tax. In **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.** reported in (2017) 16 SCC 680 also held that actual salary should be read as actual salary less tax.

29. Recently, the Hon'ble Supreme Court in the judgment in **Meenakshi Vs. The Oriental Insurance Co. Ltd.** reported in 2024 SCC OnLine SC 1872 held that components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in future prospects to determine the dependency factor. The Hon'ble Supreme Court also quoted the judgment dated 11.07.2024 in **National Insurance Company Limited Vs. Nalini & Ors.** Reported in 2024 SCC OnLine SC 2252 wherein, the Hon'ble Supreme Court held that allowances under the heads of transport allowance, house rent allowance, provident fund loan, Provident fund and special allowance ought to be added while considering the basic salary of victim/deceased to arrive at the dependency factor.

30. In the present case, the number of claimants is three who are dependent on deceased. Resultantly, in view of the judgment of Hon'ble Supreme Court in the case of **Sarla Verma (supra)**, and judgment of the Constitution Bench in the



case of **Pranay Sethi** (*supra*) that where the number of dependent family members is in between 2 and 3, the deduction towards personal and living expenses of deceased should be $1/3^{\text{rd}}$. The deduction of $1/3^{\text{rd}}$ from the income of deceased towards personal and living expenses by the learned Tribunal is appropriate and no fault can be found in this regard.

31. In the present case the claimants in order to prove the income of the deceased for the purpose of calculation of compensation award produced Last Pay Certificate (Ext.-3). It appears that monthly salary as per last pay certificate was Rs.39,173/-. His annual income would be Rs.4,70,000/-(round off) and as per the Income Tax rate for the relevant Assessment year 2013-14 the income tax payable would be Rs.27,000/-. Thus, net annual income of the deceased would amounts to Rs.4,43,000/- (Rs.4,70,000 – Rs.27,000).

32. There is no dispute that the age of the deceased was 43 years at the time of accident and accordingly, the multiplier to be used would be 14 (for the age group of 41 to 45 years) instead of 15 as per the judgment of Hon'ble Supreme Court in the case of **Sarla Verma** (*supra*) and **Pranay Sethi** (*supra*). Accordingly, the multiplier applied in the award requires to be modified form 15 to 14.



33. Under the conventional or traditional head namely, loss of estate, loss of consortium and funeral expenses has been quantified with fixed reasonable sums in **Pranay Sethi** (*supra*) as Rs.15,000/-; Rs.40,000/-; and Rs.15,000/- respectively to bring consistency in these heads which should be enhanced @ 10% in span of three years. The Hon'ble Supreme Court in **New India Assurance Company Ltd. v. Somwati and Ors.** reported in (2020) 9 SCC 644 referred various Judgments including the Judgment of Constitution Bench of Hon'ble Supreme Court in **Pranay Sethi** (*supra*), wherein in *para 52*, it has been opined that 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. In *para 59.8*, the Hon'ble Supreme Court further held that the amount of conventional head should be enhanced @10% every three years. The Hon'ble Court further referred a two-judge bench Judgment in **Magma General Insurance Co. Ltd. v. Nanu Ram** reported in (2018) 18 SCC 130 , wherein the amount of Rs.40,000/- each was awarded to father and sister of the deceased for loss of filial consortium considering the principles laid down in **Pranay Sethi** (*supra*). Then, Judgement of a three-judge bench in **United India Insurance Company**



Limited v. Satinder Kaur @ Satwinder Kaur & Ors. reported in (2021) 11 SCC 780 has been referred wherein the view of **Magma General Insurance Co. Ltd.** (*supra*) was reaffirmed and approved the comprehensive interpretation given to the expression “consortium” to include spousal consortium, parental consortium as well as filial consortium and in *para 87* there in “consortium” to all the three claimants was thus, awarded. The Hon’ble Court in **Somwati Case** (*supra*) observed that the Judgment of **Pranay Sethi** (*supra*) cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife. The Hon’ble Court further observed in **Satinder Kaur** (*supra*) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable and the Judgment of three-judge bench is binding.

34. In so far as conventional or traditional head are concerned, in view of the well settled principles of law as discussed above, the learned Tribunal has not awarded just compensation and required to be modified. The deceased Vijay Kumar Jaiswal left behind his wife and two minor children 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:

S.No.	Heads	Calculation	Compensation Amounts
1.	Loss of Estate	Rs.15,000/- enhance 10% twice	Rs.18,150/-
2.	Loss of Consortium	Rs.40,000/- + Enhance 10% twice each	Rs.1,45,200/- (Rs.48,400 x 3)
3.	Funeral Expenses	Rs.15,000/- Enhance 10% twice	Rs.18,150/-

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

S. No.	Heads	Compensation Awarded
1.	Monthly salary	Rs.39,173/-
2.	Annual Income	Rs.4,70,000/- (rounded off)
3.	Less: Income Tax	Rs.27,000/-
4.	Annual Gross-income	Rs.4,43,000/- (Rs.4,70,000-Rs.27,000)
5.	Less: 1/3 rd deduction towards personal and living expenses	Rs.1,47,667/- (1/3 rd of Rs.4,43,000/-)
6.	Total Annual Income after deduction	Rs.2,95,333/- (Rs.4,43,000- Rs.1,47,667/-)
7.	Future Prospects	Rs.88,600/- (30% of Rs.2,95,333/-)
8.	Multiplier	14
9.	Loss of dependency	Rs.53,75,062/- (Rs.3,83,933/- x 14)
10.	Funeral expenses	Rs.18,150/-



8.	Loss of Estate	Rs.18,150/-
9.	Loss of consortium	Rs.1,45,200/- (Rs.48,400 x 3)
10.	Total Compensation	Rs.55,56,562/- (Rs.53,75,062/- + Rs.1,81,500/-)
11.	Less: <i>ad-interim</i> compensation paid u/s 140 of the Act	Rs.50,000/-
12.	Total compensation payable	Rs.55,06,562 (Rs.55,56,562-Rs.50,000)

The appellants/claimants stand entitled for a total compensation to the tune of Rs.55,06,562/- with simple interest at the rate of 6% *per annum* from the date of filing of the claim case till its realization to be paid by the Insurance Company. The amount already paid by the Insurance Company shall be adjusted.

36. The Judgment dated 23.01.2018 and Award dated 31.01.2018 passed by the learned Tribunal stands modified to the aforesaid extent only. Accordingly, this appeal is **disposed of** with the aforesaid modification in the impugned Judgment and award.

37. There shall be no order as to costs.

38. The stay of the proceedings of Execution Case No.53 of 2018 *vide* order dated 29.08.2024 passed by this Court is vacated. Pending applications, if any, shall stand disposed of.

39. The Insurance Company is directed to make the payment of dues amount in terms of the aforesaid order within two months from today.



40. Let the Trial Court Records be returned to the Court concerned.

41. The statutory amount deposited by appellant/Insurance Company at the time of preferring the appeal shall be remitted to the learned Tribunal within a period of six weeks from today for adjustment of award to be indemnified by the Insurance Company to the claimants.

(Sunil Dutta Mishra, J)

Ashishkr/-

AFR/NAFR	AFR
CAV DATE	08.10.2024
Uploading Date	25.10.2024
Transmission Date	NA

