

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.788 of 2014

1. Gopal Yadav and Anr. W/o Khuru Yadav
2. Mina Devi W/o Gopal Yadav Both are resident of village- Barwadih, P.O. Bhulua, P.S. Barachatti, District- Gaya.

... .. Appellant/s

Versus

1. The National Insurance Company Ltd., Gaya and Anr.
2. Mr. Pankaj Kumar Singh S/o Shiv Kumar Singh resident of South of Gandhi Maidan , Matbar, District- Hazaribagh. Owner of Truck No. JH- 02E-2470.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailendra Kumar, Advocate
For the Respondent/s : Mr. Raj Kumar Singh Vikram, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 21-07-2025

Heard Mr. Shailendra Kumar learned counsel for the appellants as well as Mr. Raj Kumar Singh Vikram learned counsel for the respondents.

2. The present miscellaneous appeal has been file under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the ‘Act’) on behalf of the appellants for enhancing the compensation amount awarded to the appellants/claimants by learned Adhoc Additional District Judge-III-cum-Motor Accidents Claim Tribunal, Gaya (hereinafter referred to as the Learned Tribunal) in Motor Accident Claim Case No. 04 of 2014/226 of 2010 vide Judgment dated 28.07.2014 and Award dated 08.08.2014.



3. The learned Tribunal held that the appellants/claimants are entitled to receive Rs. 2,62,412/- as compensation from the insurer (OP No.1) with interest @ 8 % per annum from the date of admission of the application through account payee cheque in the joint account of both the claimants within two months from the date of award. The interim compensation of Rs. 50,000/- under Section 140 of the Act shall be adjusted in the actual total amount of compensation.

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

| SI. No. | Heads | Calculation | Compensation awarded |
|---------|--|------------------------------|-------------------------------------|
| 1. | Monthly income | Rs. 89/-*26 | Rs. 2,314/- |
| 2. | Annual income | Rs. 2,314/-*12 | Rs. 27,768/- |
| 3. | ½ deduction towards personal and living expenses | Rs. 27,768/2 | Rs. 13884/- |
| 4. | Multiplier | 18 | Rs. 2,49.912/- (Rs.13,884/- *18) |
| 5. | Funeral expenditure | | Rs. 2,500/- |
| 6. | Loss of Estate | | Rs. 10,000/- |
| 7. | Total | | Rs. 2,62,412/- |
| 8. | Ad-interim compensation | Rs. 50,000/- | |
| 9. | Total compensation awarded | Rs. 2,62,412 - Rs. 50,000 | Rs. 2,12,412/- |

5. The brief of this case are that Yogendra Yadav (deceased) was employed over a truck bearing Registration No.



JH02E2470 as cleaner/khalasi. The aforesaid truck was coming from Varanasi to Sasaram on dated 13.02.2009 being driven by the driver Birendra Singh. The vehicle in question along with the driver and khalasi was kidnapped by some unknown extremist on the very same day and the dead body of Yogendra Yadav was found for which police registered FIR bearing Daudnagar P.S. Case No.35 of 2009 under Sections 302 and 201 of Indian Penal Code, 1860. Moreover, the postmortem of the deceased was conducted by the doctor at Sadar Hospital, Aurangabad. Yogendra Yadav (deceased) died during the course of his employment.

6. Claimant No.1 and Claimant No.2, father and mother of the deceased, respectively filed case bearing Motor Accident Claim Case No. 04 of 2014 / 226 of 2010 before the learned Tribunal claiming that the deceased was hale and hearty earning a monthly salary of Rs. 4,000/- along with khuraki of Rs. 50/- per day, and they are entitled for a compensation not less than Rs. 9,00,000/- since the deceased died during the course of his employment. However, for the court fees, they had presented their claim only for the amount of Rs.4,00,000/-. OP No.1 is the National Insurance Co. Ltd. (hereinafter referred to as 'Insurance Company') and OP No.2 Mr. Pankaj Kumar Singh



is the owner of the aforesaid Truck.

7. Both the opposite parties appeared and filed their respective written statements. In the written statement filed on behalf of the respondent/OP No.1, the Insurance Company, it has been stated that it is not a case of accident and it is barred by non-joint of parties. It is stated that the deceased was minor aged around 13-14 years and he cannot be employed as a khalasi, therefore, any liability arising out of accident of such a minor boy is upon the owner of the vehicle. It is further stated that the claim of the claimants regarding the age, income and health condition of the deceased is not based on any genuine document and also the owner of the alleged vehicle failed to produced the road permit and fitness certificate of the offending vehicle, thus, the claim under Section 166 of the Act is not tenable and the same is fit to be dismissed.

8. Moreover, the owner of the vehicle (respondent/OP No.2) filed his written statement stating that the claim is not tenable and the claimants have no cause of action. It is stated that the offending vehicle was insured with the Insurance Company bearing Insurance Policy No. 171100/31/08/6300001186 which was valid from 18.12.2008 to 17.12.2009. It is further stated that the driver of the offending



vehicle was having valid driving license at the time of the accident and the offending vehicle was running on road with all valid documents. Furthermore, it has been stated that the deceased Yogendra Yadav was employed as a cleaner/khalasi on the aforesaid truck, earning a salary of Rs.4,000/-per month and Rs.50/- per day as khuraki. Therefore, the owner of the vehicle is entitled to be indemnified by the Insurance Company.

9. It appears from the Tribunal Record that the interim Award of Rs. 50,000/- under the head of “no fault liability” envisaged under Section 140 of the Act was allowed vide order dated 06.09.2012 which was paid to the claimants.

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

- (i). Is the claim case as framed maintainable?*
- (ii). Whether the deceased was minor and aged about 14 years on the date of accident?*
- (iii). Whether the OP-No. 2 has violated the condition of insurance by giving employment to a minor boy aged about 14 years?*
- (iv). Whether the deceased Yogendra Prasad Yadav died within use of motor vehicle during course of employment on 13.02.2009?*
- (v). Whether the death of deceased*



Yogendra Yadav comes under the purview of accident for the claim of compensation under Motor Vehicle Act?

(vi). Whether the deceased was getting Rs.4000/- per month salary with Rs.50/- per day as Khuraki Bhatta?

(vii). To what extent the applicants are entitled to get compensation amount and from whom?

11. In support of the Claim Petition, Claimants have examined four witnesses. In consonance therewith, the claimants have exhibited seven documentary evidences, i.e., original school leaving certificate of the deceased (Ext.-1), original horoscope of the deceased (Ext.-2), CC of the FIR bearing Daudnagar P.S. Case No.35 of 2009 (Ext.-3), CC of final report of Daudnagar P.S. Case No.35 of 2009 (Ext.-4), photocopy of postmortem report of the deceased Yogendra Yadav (Ext.5), photocopy of the Insurance Policy of the truck bearing Registration No. JH-02F-2470 (Ext.-6) and photocopy of the owner book of the truck bearing Registration No. JH-02F-2470 (Ext.-7).

12. No oral or documentary evidence have been adduced on behalf of both the respondents/opposite parties in rebuttal of the claim.

13. After hearing the parties and on perusal of the materials on record, the learned Tribunal held that the death



of the deceased was caused during the cause of employment on the offending vehicle and awarded the aforesaid amount of Rs.2,62,412/- along with interest @ of 8% per annum from the date of admission of the application to be paid by the Insurance Company (respondent/OP No.1).

14. The appellants being not satisfied and aggrieved by the awarded amount of compensation vide the impugned Judgment and Award, filed the present appeal for enhancement of the compensation amount by setting aside the Judgment and Award dated 28.07.2014 and 08.08.2014, respectively.

15. Learned counsel for the appellant submitted that the impugned judgment/award is bad in the eyes of law, bad in the facts and circumstances of the case and against the law settled by the Hon'ble court. He further submitted that Learned tribunal has not given the benefit of future prospect as the age of deceased is 19 years so 40% future prospect should be given as per Hon'ble Apex court decision given in ***Pranay Sethi Case(2017) 16 SCC 680.***

16. Learned counsel on behalf of respondent submitted that the compensation amount awarded by Learned Tribunal have already been in compliance with settled law. He



further submitted that the deceased was minor aged about 13 years old as per postmortem report. at the time of accident and he was not fit for any employment in any sector. He also submitted that the deceased was not Khalasi at the time of accident. He further submitted that any documents filed by the Claimants/Appellant have not been adduced in evidence and also not supported by any oral evidence so, the instant appeal is fit to be dismissed with cost.

17. Having heard learned counsel for the parties and perused the records. 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?

18. 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.

19. The learned tribunal held that the age of deceased was 19 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 (15 to 20) of deceased would be 18. With respect to future prospect, 40% of monthly income of deceased was added in his income and deduction of 1/2 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.

20. In so far as conventional damage of claimants are concerned, the learned Tribunal has awarded loss of estate Rs.10,000/-, funeral expenses Rs.2,500/- and loss of consortium has not been given, which is not a just compensation and required to be enhanced. The deceased left behind his mother 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.96,800/- (Rs.48,400/- X 2) |
| 3. | Funeral Expenses | Rs. 15,000/- + Enhance 10% twice | Rs. 18,150/- |

21. In the present case the employer of deceased has not been examined with respect to the employment and monthly income of the deceased, the monthly income of the deceased which has been claimed to be Rs. 4,000/- per month and khuraki of Rs. 50/- are not proved. It is well settled law that if income of the deceased is not established, then taking into consideration the notional income of Rs.3,000/- per month in view of the law laid down by the Apex Court in the case of *Laxmi Devi & Ors. v. Md. Tabbar and Anr.* reported in *2008 0 ACJ 1488*. So, in accordance with the aforesaid law monthly



income of the deceased be taken as Rs. 3,000 per month/- where the income of the deceased is not proven by any documentary evidence. As the deceased was of 19 years old and it was not established that he was a permanent employee, hence, the future prospects to the tune of 40% must be paid as in accordance with para 59.4 of *Pranay Sethi (supra)*.

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

| Sr. no. | Head | Compensation Awarded |
|---------|--|--|
| 1. | Annual Income | Rs.36,000/- (Rs.3,000 X 12) |
| 2. | Addition of 40% towards future prospects | Rs.50,400/- (Rs.14,400 + Rs.36,000) |
| 3. | 1/3 th deduction towards personal and living expenses | Rs.16,800/- |
| 4. | Annual income after deduction towards personal and living expenses | Rs.33,600/- (Rs.50,400 - Rs.16,800) |
| 5. | Multiplier | 18. |
| 6. | Loss of Dependency | Rs.6,04,800/- (Rs.33,600 X 18) |
| 7. | Loss of Estate | Rs.18,150/- |
| 8. | Loss of Consortium | Rs.96,800/- |
| 9. | Funeral Expenses | Rs.18,150/- |
| 10. | Total Compensation | Rs.7,37,900/- |



23. The Judgment and Award dated 25.07.2014 and 08.08.2014 respectively. passed by the learned Tribunal stands modified to the aforesaid extent with 6% interest only on income within three months from the date of the order of the learned tribunal. The amount which is already paid by the respondent no.1 to the appellants be adjusted in the actual total compensation awarded. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned Judgment and award. All compensation amount shall be payable be electronic mode.

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

25. 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)

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| AFR/NAFR | NAFR |
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