

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

M.A. No.203 of 2016

1. Tapeswar Prasad, son of Doman Ram.
2. Salini Kumari, D/o Tapeswar Prasad.
3. Mukesh Kumar, son of Tapeswar Prasad.
4. Salu Kumari, D/o Tapeswar Prasad.

All dependents of late Uma Devi (deceased) and Residents of village Jabra, P.O. Korrah, P.S. Sadar, District Hazaribagh, Jharkhand.

..... ... Appellants

Versus

1. Akashyabat Ray, son of late Yadunandan Ray, at Jharkhand Nagar, Piska More, S. Nagar (Sukhdeo Nagar), PO & PS Ranchi, District Ranchi (Jharkhand). (Owner of Bus No. BR-14-P-2711).
2. M/s Oriental Insurance Co. Ltd., Vaid Narain Bhavan, Kachahari Road, Ranchi. (Bus No. BR-14-P-2711).
3. Anil Thakur, son of Sr. R.D. Thakur, resident of Madhyagram, PO Hatia, District Ranchi. (Driver of Bus No. BR-14-P-2711).
4. Sanjay Kumar, son of Bijay Bansi Prasad, resident of Mohallah Korrah, PO Korrah, PS Sadar, District Hazaribagh. (Owner of Jeep No. JH-2-E-3343).
5. Surendra Kumar, son of Ram Surender Kumar, New Colony, PO Korrah, PS Sadar Hazaribagh. (Driver of Jeep No. JH-2-E-3343).
6. United India Assurance Company Ltd., Prabhu Niwas Market G.G.S. Road, Hazaribagh (Insurer of Jeep No. JH-2-E-3343)

.... Respondents

PRESENT

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellants : Mr. T. S. Rezvi, Advocate
Mr. Saurav Anand, Advocate
For the Respondent : Mr. Tapeswar Nath Mishra, Advocate

J U D G M E N T

CAV On 21st October 2024

Pronounced on 14 November 2024

The instant miscellaneous appeal has been directed against the award dated 21.12.2015 passed in Claim Case No. 02/2008 by the Presiding Officer, Motor Vehicles Accident Claim Tribunal, Hazaribagh.

2. The brief facts leading to this Miscellaneous Appeal are that the claimants Tapeshwar Prasad and three others had filed a claim petition with these averments that on 25.06.2007 at 06:30 AM the wife of petitioner no.1 Tapeshwar Prasad alongwith other family members were going to Rajrappa by the Jeep No. JH-02-E-3343 and when they reached near Village Kaitha, 8 Km east of Police Station Ramgarh a bus no. BR-14-P-2711 (hereinafter referred to as the offending vehicle) hit the Jeep as a result of which the deceased died on the spot and FIR bearing no. 285/2007 under section 279/337/338/304A of the Indian Penal Code was registered at Ramgarh Police Station against the driver of the offending vehicle. The deceased was running a provision store and was earning Rs.10,000/- per month.

3. On behalf of op no.1 the owner of the bus no. BR-14-P-2711, no one appears despite service of notice hence the claim petition was proceeded against him *ex-parte*.

4. Respondent No.2 Insurance Company filed written statement and took several plea *inter-alia* that the claim petition was not maintainable. Respondent no. 1 the driver of the offending bus had issued

a cheque for a sum of Rs.16,981/- on 04.06.2007 but the same returned unpaid with the remark "No Fund" as such the insurance policy got automatically cancelled in view of the terms and condition of the said policy since the offending vehicle had no valid policy at the relevant date of accident as such the respondent no.2 insurance company was not liable to pay the compensation.

5. The Respondent no.4 and 5 the owner and driver of the Jeep respectively also filed the written statement alleging that the said accident took place on account of the negligence on the part of driver of the offending bus. Respondent no.5 was driving the Tata Specio Jeep bearing registration no. JH-02-E-3343 with a valid and effective driving license.

6. The respondent no.6 the insurance company of the Jeep also filed the written statement containing therein that the said accident was caused on account of the negligence of driver of the offending bus.

7. The learned Tribunal while disposing the claim petition framed following issues:

(I) Whether the claim case is maintainable in the eye of law?

(II) Whether the deceased Uma Devi was killed due to rash and negligent driving of bus bearing No. BR-14-P-2711?

(III) Whether the claimants are entitled for compensation arising out of this motor accident and if so to what extent and against whom of the O.P's?

8. On behalf of claimant examined altogether **five witnesses, CW1- Tapeswar Saw, CW2- Ashok Kumar, CW3- Sadan Kumar,**

CW4- Manohar Lal, CW5- Shambhu Prasad Mandal and in documentary evidence filed Exhibit-1 to Exhibit-9 i.e. Ext.-1 Certified copy of FIR No.285/2007, Ext.2 Certified copy of charge sheet, Mark-X Copy of postmortem report of deceased, Mark-X/1 copy of owner book of offending vehicle, Mark-X/2 Copy of driving license of OP No.3, Mark-X/3 Copy of Insurance Cover Note of offending vehicle, Mark-X/4 Copy of Tax Token of offending vehicle, Mark-X/5 Copy of Fitness certificate, Mark-X/6 Copy of DL of jeep Driver Sanjay Kumar, Mark-X/7 Copy of DL of driver Surender Kumar, Mark-X/8 Copy of Insurance Policy of Jeep and Mark-X/9 Copy of Death certificate of deceased.

9. On behalf of respondent no.2 Insurance Company of the offending bus filed following documents: Exhibit-A Certified copy of letter issued by respondent no.2, Exhibit-B Certified copy of Insurance Policy of offending vehicle, Mark-Y Copy of Cheque dated 04.06.2007, Mark-Y/1 Copy of cheque returning memo dated 14.06.2007, Mark-Y/2 Copy of Cheque dishonour register.

10. The learned Tribunal after hearing the rival submission of the learned counsel of parties passed the impugned judgment of the award for the amount of Rs.6,09,000/- in favour of the claimant no.1 to 4 and against the respondent no.2. The respondent no.2 M/s Oriental Insurance Company Ltd. was directed to disburse the said amount in their favour in equal proportions from the date of settlement of issues i.e. 01.07.2013 @ 6% per annum within 30 days from the date of this award, failing which the award amount shall carry interest @ 9% per annum from the date of

award.

11. Aggrieved from the impugned award instant miscellaneous appeal has been directed on behalf of the claimants for enhancement of the compensation amount on the ground that the learned Tribunal has wrongly assessed the notional income of deceased as Rs.3,000/- per month while from the evidence on record the income from the grocery shop is proved to be Rs.10,000/- to Rs.11,000/- per month. Further it has been contended that no amount of compensation was given for the future prospect.

12. Per contra the learned counsel for the respondent no.2 Insurance Company vehemently opposed the contentions made by the learned counsel for the appellant and contended that the impugned award passed by the learned Tribunal bears no infirmity. From the evidence adduced on behalf of the claimant the income is not proved to be Rs.10,000/- to Rs.11,000/- and there being no positive evidence in regard to the income the learned Tribunal has rightly assessed the income notionally as Rs.3,000/- per month. Further the learned counsel for the insurance company also conceded that certainly nothing was paid for the future prospect by the learned Tribunal and same was also not wrong as the alleged occurrence had taken place on 25.06.2007 and there was no occasion to pay the compensation for future prospect as well.

13. I have heard the learned counsel of parties and perused the material on record. For the disposal of this miscellaneous appeal following point of determination is being framed:

Whether the claimants are entitled to the enhanced compensation?

14. On behalf of the appellants/claimants to prove the income of the deceased this plea has been raised that the deceased was running a grocery shop and was earning Rs.10,000/- to Rs.11,000/-. On this very issue on behalf of claimants, no documentary evidence has been adduced; only the oral evidence has been adduced. In oral evidence have been examined five witnesses:

14.1 **CW1- Tapeswar Sahu** has stated that his wife was educated lady and by running the provision store was earning Rs.10,000/- to Rs.11,000/- per month.

In cross-examination this witness has stated that he **had not obtained any license for the provision store from any local authority.**

14.2 **CW3- Sadan Kumar** has stated that deceased had taken two rooms on rent from him in which she was running provision store at Korrah Chowk. She was also assisted by 2-3 employees.

In cross-examination this witness has stated that he **has not adduced any documentary evidence in regard to giving on rent the two rooms to the deceased** and he is not aware that the deceased was also having any license to run the shop.

14.3 **CW4- Manohar Lal** has stated that he used to purchase the *ration* from deceased every month for Rs.4,000/- to Rs.5,000/-.

In cross-examination **no documentary proof for purchase of goods has been adduced by him.**

14.4 **CW5- Shambhu Prasad Mandal** has also deposed that he was employed with the deceased since 1999 and was getting monthly salary of Rs.3,500/- to Rs.5,000/- per month. Besides same two more persons were also employed in the very shop.

In cross-examination this witness has stated that Arvind and Kamal Prasad were also getting Rs.2,700/- and Rs.2,500/- per month respectively as salary. The per day sale was of Rs.6,000/- to Rs.7,000/-. He has also stated that **he is not aware whether the shop was registered under Shop And Establishment Act and no documentary evidence has been adduced in regard to being employed at the shop.**

15. **Admittedly no documentary evidence has been adduced on behalf of the claimants in regard to running the provision store by the deceased. No licence issued by any local authority has been produced. No invoice has been adduced on behalf of the claimants in regard to purchasing the goods from the wholesalers for the purpose of resale of them on retail price at the grocery shop. So far as employee the CW5- Shambhu Prasad Mandal and other two persons Kamal Prasad and Arvind are concerned, they have also not produced any documentary evidence being employed at the grocery shop. On behalf of the claimants also no register of the salary of the employees or any other documentary evidence has been adduced. Moreover, even no income tax registration, sale tax registration or registration of any local authority for the very provisional store has been adduced on behalf of the claimants. As such from the very oral evidence adduced on**

behalf of the claimants the evidence in regard to running shop and earning Rs.10,000/- to Rs.11,000/- per month by the deceased is not found proved.

16. **Therefore, the learned Tribunal had rightly chosen to assess the notional income of the deceased to be Rs.3,000/- per month and the same bears no infirmity.**

17. So far as the quantum of the compensation is concerned, while assessing the same on the basis of the annual income of the deceased being Rs.36,000/- per annum and 1/3rd of the income was being deducted for his personal expenses which the deceased might have incurred, therefore Rs.24,000/- annual income was assessed and the multiplier of the 16 was applied by the learned Tribunal and Rs.3,84,000/- was assessed as the amount of compensation. In addition to that a sum of Rs.1,00,000/- was awarded under the conventional head for loss of estate and Rs.1,00,000/- for love and affection and Rs.25,000/- awarded for funeral expenses, as such the total compensation was awarded Rs.6,09,000/-.

18. From the evidence on record, deceased was 33 years old lady and the learned Tribunal held that she was household lady as such notional income was assessed Rs.3,000/- per month. **From the impugned award it is evident that the learned Tribunal has awarded nothing for the future prospect of the deceased.**

19. The Constitutional Bench of Hon'ble Apex Court in ***“National Insurance Company Ltd. vs Pranay Sethi” (2017) 16 SCC***

680 held that in case where the deceased was self-employed or on the fixed salary an addition of 40% of the established income should be added where the deceased was below 40 years of the age. Para-59.4 reads as under:

“59.4. 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.”

19.1 The Hon'ble Apex Court in *“Rahul Sharma & Anr. vs. National Insurance Company Ltd. & Ors.” Livelaw 2021 SC 252* held that the self employed deceased aged below 40 years were entitled to 40% addition as a future prospect. Para-10 reads as under:

“This Court in a Five Judge Bench decision in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, clearly held that in case the deceased is selfemployed and below the age of 40, 40% addition would be made to their income as future prospects. In the present case, the deceased was selfemployed and was 37 years old, therefore, warranting the addition of 40% towards future prospects. Moreover, Pranay Sethi (supra), affirming the ratio in Sarla Verma (supra), held

that the deduction towards personal and living expenses for a person such as the deceased who was married with two dependents, to be onethird (1/3rd). Since the High Court in the impugned judgment deducted 50% the same merits interference by this Court.”

19.2 The Hon'ble Apex Court in “***Meena Pawaiya vs. Asraf Ali***” ***Livelaw 2021 SC 660*** held that the claimants were entitled to future prospect even the deceased was not earning.

19.3 The Full Bench of Hon'ble Apex Court in “***Rajesh vs. Rajbir Singh***” ***2013 (ACJ) 1403 (SC)*** held that the in case of self-employed or person with fix wages the deceased victim was below 40 years there must be addition of 50% to the actual income of the deceased while computing future prospects.

20. Therefore, **the deceased who was 33 years old on the date of accident was a household lady. Taking into consideration her services to be provided to the family members even if for the sake of argument, she was not earning it would be appropriate to add the 40% of income as future prospect while assessing the amount of compensation.**

21. As such the quantum of compensation requires modification and the modified quantum of income is assessed as hereunder:

Notional Income = 3000/- per month

Future prospect- 40% of Rs.3000/- = 1200/-

Total monthly Income = 4200/- per month

Deduction toward personal and living expenses in view

of "*Sarla Verma vs. DTC*" (2009) 6 SCC 121 is $\frac{1}{4}$ th if number of dependent family member are 4 to 6 therefore, total monthly income would be $4200 - (4200 \times \frac{1}{4}) = 3150/-$.

Total annual income = 3150 x 12 = 37800/-

Multiplier of M-16 would be applicable in view of "*Sarla Verma Case (supra)*".

Therefore, amount of compensation would come to the tune of **Rs.37,800 x 16 = 6,04,800/-**.

22. So far as the amount of under conventional head is concerned, same has not been challenged by the claimants therefore will remain the same.

23. It is made clear that on the enhanced amount which is being awarded for future prospect the claimants would be entitled to the interest from the date of settlement of issue on 01.07.2013 at the rate of 6% per annum upto the date of award and the said amount would carry 9% interest per annum from the date of award up to the date of actual payment.

24. Accordingly, this Miscellaneous Appeal deserved to be partly allowed.

25. This Miscellaneous Appeal is hereby partly allowed. The quantum of compensation is modified from Rs.3,84,000/- to Rs. 5,69,600/-. The amount of compensation awarded under conventional head will remain the same. On the enhanced amount for the future prospect, the 6% interest

would be payable from the date of the settlement of the issue 01.07.2013 up to the date of award and 9% from the date of award up to the date of actual payment.

26. Let the record of learned court below be sent back alongwith copy of the judgment.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
AFR
Dated: 14.11.2024
RKM