

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

M.A. No. 117 of 2015

1. Mangra Khariya @ Mangra Bilung, S/o Late Manai Khariya,
2. Somari Khadyain, W/o Mangra Khariya @ Mangra Bilung,
3. Sugiya Bilung (minor), D/o Mangra Khariya @ Mangra Bilung,
4. Bandhna Bilung (minor), S/o Mangra Khariya @ Mangra Bilung

Appellant Nos.3 & 4 are minors and are being represented through their father and natural guardian appellant no.1, who has no adverse interest them.

All R/o Village Kulabira, P.O. Patiya, P.S. Gumla, Distt. Gumla, at Present R/o Village Barwatoli, P.O., P.S. & Distt. Lohardaga Appellants

Versus

1. Santosh Kumar Gupta, S/o Late Ganesh Pasad Gupta, R/o Village Tapkara, P.O. Tapkara, P.S. Tapkara, Distt. Jashpur Nagar, Chattisgarh at present R/o near Lahkothi, Ratu Road, P.O. Hehal, P.S. Sukhdeonagar, Distt.- Ranchi
2. Branch Manager, National Insurance Co. Ltd, LDG Branch Office, at B.S. Malwas Building, 2nd Floor, Ratu Road, Ranchi, P.O. Hehal, P.S. Sukhdeonagar, Distt.- Ranchi Respondents

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CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

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For the Appellant(s) : Mr. Ashutosh Anand, Advocate.
For the Respondent No.1 : Mr. Rajiv Anand, Advocate
For the Respondent No.2 : Mr. Niraj Nayan Mishra, Advocate

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08/09.06.2020. Heard, learned counsel for the appellants and learned counsel for the respondents.

2. Claimants/appellants have preferred this appeal for enhancement of the award dated 29.11.2014 passed by learned Principal District Judge-cum-Presiding Officer, Motor Accident Claim Tribunal, Lohardaga, in Compensation Case No.25 of 2010 whereby the claimants have been awarded a sum of Rs.3,35,100/- under Section 166 of the MV Act (after deducting the amount of ad-interim compensation Rs.50,000/- under Section 140 of the MV Act) along with interest @ 6% per annum from the date of institution till its actual realization, within a period of two months, failing which the same shall be recovered in due process of law, which shall carry penal interest @ 10% per annum from the date of award till its actual realization.

3. Learned counsel for the appellants has assailed the impugned award on following grounds:-

(i) Learned Tribunal has wrongly considered the income of the deceased- Faguwa Bilung @ Fagua Bilung as Rs.150/- per day, whereas the income of the deceased, who was working as a mason was Rs.200/- per day though the mason usually work for 25-26 days but the learned Tribunal has wrongly considered the income of the deceased as Rs.150/- considering him a labour, relying upon the evidence

of P.W.1, who never said that the deceased was having income of Rs.150/- rather he says that daily-wage of a labourer is Rs.150/-. P.W.1 has never stated that deceased was a labourer rather consistent evidence and materials brought by the appellants/claimants is that the deceased was a mason.

4. Learned counsel for the appellants has further submitted that the deceased died at the age of 23 years, as such, in view of the judgment passed by the Apex court in the case of *Sarla Verma (Smt) & others vs. Delhi Transport Corporation & another*, reported in (2009) 6 SCC 121 the multiplier of 18 was applicable while learned Tribunal has used the multiplier of 14. The same view has been reiterated by the Apex Court in the recent judgment passed in the case of *National Insurance Company Ltd. vs. Pranay Sethi* reported in (2017) 16 SCC 680. Learned counsel for the appellants has thus submitted that the multiplier should be of 18.

5. Learned counsel for the appellants has further submitted that the deceased was a self-employed person, as such, considering his age, there shall be 40% of future prospect, which the learned Tribunal has not considered. Learned counsel for the appellants has further submitted, that the learned Tribunal has wrongly deducted the personal expenses of the deceased @ 50%, which ought to have been 1/4th in view of para 30 of the judgment passed in the case of *Sarla Verma (Supra)*. Learned counsel for the appellants has further submitted that under conventional head, the amount has been given by the learned Tribunal to the tune of Rs.2,500/- for loss of Estate and Rs.5000/- for funeral expenses contrary to the judgment passed by the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*, which ought to have been Rs. 70,000/- in view of paragraph 59.8 of the said judgment (i.e. loss of Estate Rs.15,000/-, loss of consortium as Rs.40,000/- and loss of funeral expenses as Rs.15,000/-).

6. Learned counsel for the appellants has further submitted that the interest has been given @ 6% from the date of filing of the application for two months, failing which, the same has been enhanced @ 10% per annum as penal interest from the date of award till its actual realization.

Learned counsel for the appellants has further submitted that the learned Tribunal can only award a reasonable interest either 7.5% or prevalent bank rate interest in view of the judgment passed in in the case of *Dharmpal and Sons Vs. UP State Road Transport Corporation*, reported in 2008 (4) JCR 79 SC.

Learned counsel for the appellants has thus submitted that in view of the same there may be enhancement of the compensation which is not in consonance

with the law laid down by the Apex Court.

7. Learned counsel for the respondent-owner, Mr. Rajiv Anand has no objection and has fairly submitted that the vehicle was covered under the policy and has not violated any conditions as contemplated under Section 149(2) of the MV Act.

8. Learned counsel for the respondent- Insurance Company, Mr. Niraj Nayan Mishra has opposed the same and has relied upon the judgment of *Amrit Bhanu Shali & Ors. vs. National Insurance Company Ltd. & Ors.*, reported in (2012) 4 JCR 116 (SC), (2012) 11 SCC 738 passed by Hon'ble Apex Court, the learned Tribunal has rightly deducted personal expenses @ 50%. The said judgment at para 13 it has been held as under:

13. The question relating to deduction for "personal and living expenses" and selection of multiplier fell for consideration before this Court in Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002]. In the said case this Court taking into consideration the decisions in Kerala SRTC v. Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], U.P. SRTC v. Trilok Chandra [(1996) 4 SCC 362], New India Assurance Co. Ltd. v. Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] and Fakeerappa v. Karnataka Cement Pipe Factory [(2004) 2 SCC 473 : 2004 SCC (Cri) 577], held as follows: (Sarala Verma case [(2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], SCC pp. 134, 136 & 140, paras 30-32 & 42)

"Re: Question (ii)—Deduction for personal and living expenses

"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 [(1996) 4 SCC 362], 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 (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent 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.

Re: Question (iii)—Selection of multiplier

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), 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.”

14. Admittedly both the parents, 1st appellant Amrit Bhanu Shali (father) and 2nd appellant Smt Sarlaben (mother) have been held to be dependents of deceased Ritesh Bhanu Shali and, therefore, the Tribunal held that the 1st appellant and the 2nd appellant have the right to get the compensation. On the date of the accident the 3rd appellant Mamta was not married but by the time the case was heard by the Tribunal the 3rd appellant Mamta had already been married. In these circumstances, she is not found to be dependent upon the deceased. Thus, both the parents being dependents i.e. father and the mother, the Tribunal rightly restricted the “personal and living expenses” of the deceased to 50% and contribution to the family was required to be taken as 50% as per the decision of this Court in Sarla Verma [(2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002].”

Learned counsel for the respondent- Insurance Company has further submitted that income of the deceased has rightly been considered as Rs.150/- per day as he was working as a labourer. Learned counsel for the respondent- Insurance Company has thus submitted that no interference is required by this Court.

10. After hearing, learned counsel for the parties and on the basis of pleading, it appears that the consistent case of the claimants is that the deceased- Faguwa Bilung @ Fagua Bilung, son of the applicant no.1 died in a motor accident on 02.11.2009. The deceased was working as a skilled labourer i.e. mason earning Rs.6,000/- per month and as per the finding given by the learned Tribunal at para-16, the deceased was aged about 23 years. It appears that no contrary evidence has been brought on record by the Insurance Company establishing the case. Learned Tribunal has taken note of evidence of P.W.2- Sandeep Bilung, who used to work as labourer at Ranchi. In cross-examination this witness has stated that deceased was working as mason and had gone to Ranchi but since could not get any work while he was returning during said festival with him met with an accident. This fact has been disclosed to the surveyor of the Insurance Company. P.W.2 in his evidence has stated that applicants are the original resident of his Village whom he knows and used to work as mason in Ranchi and had seen the accident from his own eyes. He has further stated that on the alleged date of

accident, this witness Sandeep Bilung, Samir Bilung and Pawandeo Bilung were returning at the time of Bandai festival by the offending vehicle.

11. Under the aforesaid circumstances, since this evidence is of an eye witness and the person who worked with the deceased, this court is accepting the income of the deceased as Rs.200/- per day considering deceased was working as a mason. So far the age of the deceased is concerned, the same is admitted in para 16 of the impugned award as 23 years. In view of the judgment passed by the Apex Court in the case of *Sarla Verma (Supra)* the multiplier of 18 is applicable, but not 14. So far the future prospect is concerned in view of the judgment passed by Hon'ble Court in the case of *Pranay Sethi (supra)*, the same is 40% which has not been awarded by the learned Tribunal. So far conventional head is concerned, it is Rs.70,000/- as stated above in view of the para 59.8 of the judgment passed by this case of *Pranay Sethi (Supra)* which has only been granted to the tune of Rs.7,500/- and the same is hereby enhanced as Rs.70,000/-.

12. So far towards personal deduction is concerned the Hon'ble Apex Court in the case of *Amrit Bhanu Shali Vs. National Insurance Company Ltd.*, reported in *(2012) 11 SCC 738* has considered the same to be 50%. The Hon'ble Apex Court has held that normally in a case of bachelor 50% is deducted as personal and living expenses because it is assumed that a bachelor would spend more on himself. Even otherwise there is also the possibility of his getting marriage in a short time, in which event the contribution to the parents is likely to be cut drastically. Further subject to evidence to the contrary 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 absence of evidence to the contrary, brother and sister will not be considered as dependent because they will either be independent and earning or married or being dependent on the father but the fact of the present case is different. In the said judgment it has also been held that where the family of a bachelor is large and dependent upon the income of the deceased as in a case where he has widow mother and large number of living sister and brother his personal and living expenses may be restricted to 1/3rd and contribution to the family will be taken as 2/3rd. This fact has been examined by this Court. It appears that the deceased was elder in the family having minor brother and sister, who are dependent upon him and due to his sudden death they became helpless.

13. Under the aforesaid circumstances, this Court has considered the same and also considering the background of the family, the personal expenses of the deceased, whose family comprises of 4-6 members, ought to have been deducted

@ 1/4th but not @ 50%, as such, the personal deduction in this case is 1/4th.

14. So far the interest is concerned, this Court has seen several judgments passed by the learned Tribunal in the State of Jharkhand. No consistency has been adopted by the learned Tribunals. It appears that without assigning any reason the learned Tribunals are passing the award whimsically granting interest some time 2%, some time 3%, some time 6%, some time 10% and some time 12%. This Court fails to understand, the rational behind the same. In the case of ***Dharmpal and Sons (Supra)***, the Hon'ble Apex Court has held that interest ought to have been 7.5% from the date of institution till the date of actual realization or prevalent rate of interest of bank on the date of the award.

15. However, the Hon'ble Apex Court has also given liberty to the learned Tribunal to fix the rate of interest, considering the conduct of the claimants, in pursuing the matter. If claimants are deliberately delaying the matter, it should be given as per the finding recorded by the learned trial court either from the date of admission or from the date of framing of the issue or from the date of judgment otherwise normally it should be in view of Section 171 of the MV Act which says as follows:-

“171. Award of interest where any claim is allowed- Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

16. Under the aforesaid circumstances, the anomaly found in the impugned award i.e. 6% from the date of institution for two months, though statutory time for preferring an appeal is 90 days, a penal interest has been awarded @ 10%. In view of the judgment passed by the Hon'ble Apex Court as stated above it ought to have been 7.5% from the date of institution of the claim application till the actual date of payment.

17. Considering the same, the interest part is hereby set aside and it is awarded @ 7.5% from the date of institution till the actual date of payment.

A fresh chart of calculation of compensation is given hereunder :-

| | | |
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| 1. Income | = | Rs.5200/- per month (200x26 days) |
| 2. Future Prospect | = | (40%) Rs. 2,080/- |
| | Total = | Rs.7280/- |
| 3. Deduction Towards Personal expenses | = | Rs.7280 - 1820 (1/4 of Rs.7280/-) = Rs.5460/- per month |
| 4. Total Income | = | Rs.5460/- per month |
| 5. Multiplier | = | 18 |
| 6. Loss of Future Income | = | Rs.5460/- x 12 x 18 = Rs.11,79,360/- |
| 7. Total Income | = | Rs.11,79,360/- |
| 8. Total Compensation | = | Rs.11,79,360/- + 70,000 = Rs.12,49,360/- and interest @ 7.5 % per annum from the date |

of institution of claim case. Amount of Rs.50,000/- already paid as ad-interim compensation shall be deducted while indemnifying the award.

18. Accordingly, the instant appeal is allowed.

19. In the aforesaid observations, it is expected that the Insurance Company shall comply this order as expeditiously as possible as the occurrence is dated 02.11.2009 and by of now 10 years has elapsed.

20. Let a copy of this order be communicated through FAX to the Director, Judicial Academy, Ranchi, so that training/workshop be initiated for all the Claim Tribunals of the State of Jharkhand in awarding the interest by following the judgment passed by the Hon'ble Apex Court in this regard.

(Kailash Prasad Deo, J.)