

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 703 of 2017

.....

Manager Legal Claim, National Insurance Company Limited, office at Natraj Mansion, By-pass Road, Chas, P.O. and P.S. - Chas, District – Bokaro.

.... **Appellant**

Versus

1. Shanti Devi, wife of Late Mohan Nayak.
2. Sanjit Kumar, son of Late Mohan Nayak
3. Rajiv Kumar Nayak, son of Late Mohan Nayak
(1) to (3) residents of Bandhdih, P.O. + P.S. - Jaridih, District – Bokaro.
4. Deepak Kumar Hembrom, son of Maheshwar Manjhi, resident of Tand Balidih, P.S. - Balidih, District – Bokaro.
5. Tijan Singh, son of Late Bhadu Singh, resident of Bahadurpur, P.S. - Jaridih, District – Bokaro.

.... **Respondents**

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

.....

For the Appellant : Mr. Alok Lal, Advocate.

For the Respondent Nos. 1 to 3 : Mr. Satish Kumar, Advocate.

.....

06/08.07.2020.

The appeal has been preferred by National Insurance Company Limited against the Award dated 30.05.2016 passed by learned District Judge-III-cum-Presiding Officer, Motor Vehicle Accident Claim Tribunal, Bermo at Tenughat, Bokaro in Motor Accident Claim Case No. 90 of 2013.

Heard, learned counsel for the appellant, Mr. Alok Lal and learned counsel for the respondent nos. 1 to 3, Mr. Satish Kumar on I.A. No.9431 of 2017 at Flag- L filed under Section 5 of the Limitation Act for condonation of delay of 450 days in preferring the appeal.

Learned counsel for the appellant has submitted that claim application was initially filed at Bokaro, thereafter, it was subsequently transferred to Tenughat. The Insurance Company entrusted the case record to one Mr. Satyaprakash one of the panel counsel at Bokaro, to represent the Insurance Company at Tenughat where this claim application was transferred. Subsequently Mr. Satyaprakash because of his age and ill health could not appear before the claim Tribunal at Tenughat and on account of non-appearance, the appellant-Insurance Company was debarred from filing written statement on 27.05.2015.

The appellant-Insurance Company subsequently filed written statement on 22.07.2015 with an application under Section 170 of the Motor Vehicles Act and at that time owner had also not appeared.

The claim Tribunal preferred to dispose the claim application in absence of the Insurance Company and the owner and passed award on 30.05.2016. Since no panel counsel was empanelled at Tenughat and only on 01.06.2016, the empanelment was made after engaging Sri Hemant Kumar Guru, it was found that application has already been allowed directing the Insurance Company to indemnify Rs. 37,60,216/- with interest @ 8%.

That Insurance Company preferred an application under Order IX Rule, 13 CPC, which was registered as Revocation Case No.08 of 2016, but the same was also dismissed by the claim Tribunal on 30.06.2017, as such, after obtaining the certified copy of document and relevant papers, the matter was referred before the Office of the Insurance Company and as such, time was consumed in preferring the appeal, thus, delay may be condoned.

Learned counsel for the claimants / respondent nos. 1 to 3, Mr. Satish Kumar has objection for long delay, but no counter affidavit has been filed.

Considering the rival submissions of the parties, since sufficient reason has been shown by the appellant, the delay is hereby condoned.

I.A. No.9431 of 2017 is hereby allowed.

On the joint prayer of learned counsel for the parties, the appeal has been taken for final hearing along with I.A. No. 1203 of 2018 filed for adducing additional evidence by the appellant kept at Flag- A and I.A. No.2455 of 2020 filed by the claimants / respondent nos. 1 to 3 for release of the amount, as such, this appeal is being heard on merit.

Learned counsel for the appellant, Mr. Alok Lal on I.A. No.1203 of 2018 filed for adducing additional evidence under Order XLI Rule 27 CPC. has submitted that though the appeal was initially preferred at Bokaro, which was handed over to the counsel, Mr. Satyaprakash, but subsequently the case was transferred to Tenughat and as such, the Insurance Company could not empanel any lawyer at Tenughat and no

information was given by Mr. Satyaprakash regarding transfer of the case, as such, no step was taken for filing written statement and the learned Tribunal at Tenughat debarred the appellant-Insurance Company from filing written statement on 27.05.2015, but subsequently the Insurance Company filed written statement on 22.07.2015 along with an application under Section 170 of the Motor Vehicles Act, but in the meantime, the case was fixed ex-parte against the Insurance Company and also against the owner and driver of the offending vehicle on 09.09.2015, because of their none appearance even after valid service of notice and ultimately the case was heard and decided by the learned Tribunal by awarding a compensation to the tune of Rs. 37,60,216/- along with interest @ 8% per annum from the date of filing of the application till the date of judgment and appellant is directed to indemnify the same within 30 days.

Learned counsel for the appellant has submitted that the interest was awarded on the higher side @ 8% instead of 7.5% or the prevalent rate of interest on the date of award of a nationalized Bank as held in the judgment passed by Hon'ble Apex Court in the case of *Dharampal and Sons Vs. U.P. State Road Transport Corporation* reported in *2008 (4) JCR 79 (SC)*, and also directed to pay the compensation amount within 30 days of the judgment, meaning thereby no opportunity of appeal has been given to the appellant-Insurance Company.

Learned counsel for the appellant has further submitted that driver of the vehicle has not appeared even after valid service of notice and the case was fixed ex-parte vide order dated 09.09.2015 passed by learned Tribunal.

Learned counsel for the appellant has further submitted that the written statement could not be filed because of unavoidable circumstances and the case was fixed ex-parte debarring the Insurance Company from filing written statement, as such, the application has been filed before this Court under Order XLI Rule 27 CPC for adducing the additional evidence with regard to driving licence of driver of the offending vehicle. Deepak Kumar Hembrom, son of Maheshwar Manjhi, resident of Tand Balidih, P.S.- Balidih, District- Bokaro, is the owner of the vehicle and Tijan Singh, son of Late Bhadu Singh, resident of of Bahadurpur, P.S.- Jaridih, District-

Bokaro, is the driver of the offending vehicle bearing Registration No. BR-20B-8625 (Truck).

Learned counsel for the appellant thus submitted that the opportunity may be given to the appellant to adduce the evidence.

Learned counsel for the respondents, Mr. Satish Kumar has opposed the prayer and has submitted that because of deliberate laches on the part of the Insurance Company and in absence of any positive evidence adduced by the Insurance Company, the claimants, who are widow and sons of the deceased, are suffering since 19.09.2013, as such, the additional evidence may not be allowed at this stage as because same may give right of recovery in favour of the Insurance Company against insured/owner of Offending Vehicle, but certainly no case against claimant.

Learned counsel for the respondents has further submitted that conduct of the Insurance Company in pursuing the matter also goes against it.

To buttress his argument learned counsel for the respondent nos. 1 to 3/claimants has submitted that as per the case of the Insurance Company, Mr. Satyaprakash was engaged to pursue the matter, who did not file written statement but it was upon the Insurance Company also to pursue the litigation. They have not taken any indulgence in pursuing the matter and ultimately the Insurance Company was debarred from filing the written statement and the case was fixed ex-parte for hearing. Further, it is apparent from the fact that the impugned award has been passed by the learned Tribunal on 30.05.2016. As per the averments made in limitation petition filed vide I.A. No.9431 of 2017, the Insurance Company empanelled the lawyer on 01.06.2016 soon after award on 30.05.2016 and thereafter, filed a Revocation Case No.08 of 2016 under Order-IX Rules-13 CPC, which was also dismissed by the learned Tribunal in terms of the order dated 30.06.2017, as such, if the Insurance Company is not taking any indulgence in pursuing the matter, claimants cannot be allowed to suffer on the pretext for filing additional evidence. Whatever the Insurance Company has to say, those can be agitated between the Insurance Company or the insured i.e. owner of the offending vehicle, for which poor claimants cannot be allowed to suffer, as such, this Court may dismiss the

Interlocutory Application filed for adducing additional evidence under Order-XLI Rule-27 CPC vide I.A. No. 1203/2018.

Heard, learned counsel for the parties and also perused the materials brought on record. It appears that additional evidence cannot be allowed at this stage as the accident is of dated 20.07.2013. It was because of laches on the part of the Insurance Company in pursuing the matter, the order has been passed ex-parte. The insurance company cannot take benefit of being insurer of the vehicle by lingering a proceeding. The written statement must be filed in compliance of the order, failing which the Insurance Company is liable to face the consequences, but since the Insurance Company is only agitating against the owner of the offending vehicle / insured about violation of terms and conditions of the Insurance as contemplated under Section 149 (2) of the Motor Vehicles Act, this Court gives liberty to the Insurance Company to prefer such application before the Tribunal by impleading the owner and driver of the Vehicle to be party and if such petition is filed in accordance with law, the Tribunal shall adjudicate the same afresh so as to give right to recovery in favour of the Insurance Company.

Accordingly, I.A. No. 1203 of 2018 filed for additional evidence is hereby dismissed.

On the joint prayer of the parties, the matter is being heard on merits so far claimants are concerned.

Learned counsel for the appellant, Mr. Alok Lal has assailed the impugned order on the ground of quantum of compensation apart from the interest.

Learned counsel for the appellant has submitted that deceased Mohan Nayak was a permanent employee of Bokaro Steel Limited and died in a motor accident on 20.07.2013, leaving behind his wife Shanti Devi and two sons namely Sanjit Kumar and Rajiv Kumar Nayak, who were dependent upon the income of the deceased. The deceased had a monthly salary of Rs. 56,019/- per month and annual income of the deceased was Rs. 56019/- X 12 = RS. 6,72,228/-. The tax amount has not been deducted by the Tribunal in view of the judgment passed by the Apex Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi*

and Ors. reported in *(2017) 16 SCC 680 (para-59.4)*. The established income means “**the income minus tax component**” as such it was incumbent upon the Tribunal to deduct the tax component for the financial year 2013-14, which was as follows:-

Income Up to Rs. 2,00,000/-	-	NIL
Income from Rs. 2,00,001-5,00,000/-	-	10%
Income from Rs. 5,00,001-10,00,000/-	-	20%
Income above Rs. 10,00,000/-	-	30%

Learned counsel for the appellant, Mr. Alok Lal has submitted that the income of the deceased was Rs. 6,72,228/- per annum and the tax limit was 10% and 20%, as the amount falls in the slab of Rs. 2,00,000-5,00,000/- and Rs. 5,00,001-10,00,000/- respectively, As such, 10% of Rs. 2,00,0001-5,00,000/- and 20% of 5,00,0001-6,72,228/- shall be deducted as tax amount which comes to Rs. 64,446/- and the same shall be deducted from total income of Rs. 6,72,228/-, but the learned Tribunal has not deducted the same while computing the compensation, as such the said amount ought to have been deducted from the income. Accordingly, this Court feels the submission of learned counsel for the appellant to be very bonafide and consider the income (-) tax component i.e. Rs. 6,72,228/- (-) Rs. 64,446/- = Rs. 6,07,782/-.

Learned counsel for the appellant has fairly submitted that 1/3rd has been deducted from the income of the deceased towards personal and living expenses in view of judgment passed by the Apex Court in the case of *Sarla Verma (Smt.) & Ors Vs. Delhi Transport Corporation & Anr.* reported in *(2009) 6 SCC 121 (paragraph-30)*.

Learned counsel for the appellant has further submitted that excess amount has been granted under conventional head by the Tribunal contrary to the judgment passed by the Apex Court in the case of *Pranay Sethi (Supra)*. In the present case, the Tribunal has granted Rs. 75,000/- as love and affection, Rs. 25,000/- as funeral expenses, Rs. 50,000/- as loss of husband to the wife and Rs. 25,000/- as loss of father to both children, which can only be granted to the tune of Rs. 70,000/- i.e. Rs. 40,000/- for loss of consortium, Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of love and affection, as such, the said amount may be reduced.

Learned counsel for the appellant has further submitted that interest @ 8% is not tenable in view of the judgment passed by the Apex Court in the case of *Dharampal & Sons (Supra)* and accordingly, the same may be reduced to 7.5% simple interest from the date of filing of the claim application.

Learned counsel for the respondents / claimants, Mr. Satish Kumar, has submitted that though claimants have not filed any cross-appeal / cross-objection for enhancement of the compensation, though future prospect of the deceased has not been considered by the Tribunal, but in view of the judgment passed by the Apex Court in the case of *Ranjana Prakash & Others Vs. Divisional Manager & Another* reported in *2011 (14) SCC 639*, para-8 which reads as under :

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

The Court may examine the compensation, if there is chance of enhancement in an appeal preferred by the Insurance Company, the same may not be allowed, but if there is chance of enhancement in absence of any cross-appeal by the claimants, this Court may also not reduce the same, if satisfied by own calculation, considering it to be a just compensation. This Court may not interfere with the Award passed by the learned Tribunal in view of the judgment passed by the Apex Court in the case of *Ranjana Prakash (Supra)*.

After hearing learned counsel for the parties and on the basis of the materials brought on record, this Court is computing compensation afresh so as to arrive at a conclusion whether the amount has to be reduced or

said amount is to be considered as just and fair compensation granted by the Tribunal.

The new calculation for consideration is as follows:-

The deceased Mohan Nayak died at the age of 56 years. He was permanent employee of BSL having income is Rs. 56,019/- per month equals to Rs. 6,72,228/- per annum. The tax amount is Rs. 64,446/-, thus income comes to Rs. 6,07,782/- per annum. 1/3rd of the income is to be deducted towards personal and living expenses of the deceased as his family left with three persons, wife and two sons, then income comes to Rs. 4,05,188/-. Since the age of the deceased was 56 years, the multiplier shall be 9 in view of the judgment passed by the Apex Court passed in the case of *Sarla Verma (Supra) (Para-42)* i.e. Rs. 36,46,692/-. After adding future prospect @ 15% in view of judgment passed by Apex Court in the case of *Pranay Sethi (Supra) (Paragraph-59.3)*, the income shall be Rs. 41,93,696/-. Amount under conventional head shall be Rs. 70,000/-. Thus, entire compensation amount comes to the tune of Rs. 42,63,696/-.

Under the aforesaid circumstances, there is chances of enhancement of the compensation amount, but since the claimants have not preferred any cross appeal for enhancement of award or cross-objection in view of the judgment passed by the Apex Court in the case of *Ranjana Prakash (Supra)*, this Court refrain from enhancing the award and without interfering with the same, considering it to be just compensation, the instant appeal is disposed of with compensation to the tune of Rs. 37,60,216/.

So far interest is concerned, this Court has taken consistent view with regard to interest @ 7.5% per annum or the prevalent rate of interest of any nationalized bank on the date of award, in view of judgment passed by the Apex Court in the case of *Dharampal & Sons (Supra)* as such the interest is reduced from 8% to 7.5 % from the date of filing of the claim application till the date of actual payment.

The Insurance Company is directed to indemnify the amount of Rs. 37,60,216/- along with interest @ 7.5 % from the date of filing of the claim application till the date of actual payment.

I.A. No. 2455 of 2020 filed by the respondent nos. 1 to 3 / claimants for release of the amount is, accordingly, also disposed of.

The appeal is, accordingly, disposed of.

The statutory amount deposited before this Court by the Insurance Company at the time of filing of this appeal shall be remitted to the learned Tribunal within a period of four weeks from today by the Registrar General of this Court. Rest amount shall be paid by the Insurance Company with interest as stated above.

Lower Court Record be sent down forthwith.

However, it is made clear that liberty is given to the Insurance Company to agitate such issue before the Tribunal against the owner and driver of the vehicle.

(Kailash Prasad Deo, J.)