

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 158 of 2018

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Md. Yusuf & Anr. **Appellants**
Versus
Sonali Udaypuri & Others **Respondents**

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

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For the Appellants : Mr. Prashant Kumar Rahul, Advocate.
For the Respondent Nos.1&2 : Mr. Anil Kumar, Advocate.
For the Respondent No.3 : Mr. Manish Kumar, Advocate.

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06/05.04.2021.

Heard, learned counsel for the appellants, Mr. Prashant Kumar Rahul, learned counsel for the respondent no.2, Mr. Anil Kumar and learned counsel for the respondent no.3, Mr. Manish Kumar.

Learned counsel for the appellants has submitted, that there is delay of 380 days in preferring the appeal for enhancement and for condonation of the delay, I.A. No.6207/2018 has been preferred.

Learned counsel for the appellants has submitted that the claimants namely, Md. Yusuf and Naimun Khatun have preferred the instant appeal for enhancement of the award dated 21.11.2016 passed by learned District Judge 1st -cum- Motor Vehicle Accident Claims Tribunal, Latehar, in M.V. Claim Case No.01/2015, whereby claimants have been awarded compensation to the tune of Rs. 2,48,000/- to be paid within 45 days, failing which the Insurance Company shall be liable to pay interest @ 9% per annum from the date of order of judgment /award.

Learned counsel for the appellants has submitted, that deceased, Wajid Ansari was student in the Institute of Medical Technology, and died at the age of 22 years, while he was travelling on motorcycle alongwith one Md. Imran Ansari, which was dashed by TATA 407 bearing registration No. JH-01K-8158, near Komo forest due to which Wajid Ansari lost his life and Md. Imran Ansari sustained grievous injuries. Deceased was bachelor and he was degree holder of bachelor of Commerce and Pathology.

Learned counsel for the appellants has submitted that learned Tribunal has not considered the multiplier in correct perspective considering the age of the deceased rather learned Tribunal has considered

the age of father of the deceased, for computation of compensation contrary to the judgment passed by the Apex Court in the case of *Sarla Verma (Smt.) & Others Vrs. Delhi Transport Corporation & Another* reported in (2009) 6 SCC 121 (para-42).

Learned counsel for the appellants has submitted that instead of multiplier of 18, the learned Tribunal has considered multiplier of 11.

Learned counsel for the appellants has further submitted that under the conventional head, the amount of Rs.50,000/- has been paid contrary to 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-59.8), whereby it ought to have been 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 estate.

Learned counsel for the appellants has further submitted that future prospect of the deceased has not been considered, though the deceased was unemployed at the time of his death, but in view of the judgment passed by the Apex Court in the case of *Kirti & Anr. etc. Vs. Oriental Insurance Company Ltd.* decided the issue in Civil Appeal Nos.19-20 of 2021 on 05.01.2021 and the ratio laid down by the Apex Court in the case of *Pranay Sethi and Ors. (Supra) (para-59.4)*, the claimants are entitled for future prospect @ 40%.

Learned counsel for the appellants has further submitted, that interest has not been granted from the date of filing of the claim application in view of Section 171 of the Motor Vehicles Act nor any specific reason has been assigned for not granting interest rather the interest has been granted @ 9% per annum, if the awarded amount is not indemnified by the Insurance Company within a period of 45 days, as such, the interest ought to have been granted from the date of filing of the claim application.

Learned counsel for the respondent nos. 1 & 2, Mr. Anil Kumar has submitted, that the vehicle was duly insured before Oriental Insurance Company Limited valid for the period from 30.07.2014 to 29.07.2015 and there is no violation of terms and condition of the policy, as such, the

awarded amount has rightly been fastened upon the Oriental Insurance Company Limited.

Learned counsel for the respondent no.3, Mr. Manish Kumar has submitted, that so far interest is concerned, it has been awarded @ 9% per annum, if the awarded amount is not indemnified within 45 days, however, this Court has taken note of the judgment passed by the Apex Court in the case of *Dharampal and Sons Vs. U.P. State Road Transport Corporation* reported in *2008 (4) JCR 79 (SC)*, a consistent view of 7.5% simple interest from the date of filing of the claim application.

Learned counsel for the respondent no.3, Mr. Manish Kumar has further submitted that interest shall not be applicable for the period when there is delay on the part of the claimants, as notice has been issued to the Insurance Company on 20.09.2019, as such, if delay is condoned the interest may not be granted for that period.

After hearing learned counsel for the parties, looking into the fact and circumstances of the case and considering the delay, since it is a benevolent legislation, the appeal has been preferred for enhancement of the award accordingly, the delay is condoned, but the claimants shall not be entitled for any interest during the intermediary period that is after the 90 days of the award till 20.09.2019, on the date when the notice has been issued to the Insurance Company.

Accordingly, delay is condoned, I.A. No.6207/2018 is disposed of.

It appears that there is no dispute with regard to the consideration of notional income of the deceased. Learned Tribunal has considered the income of the deceased to be Rs.3,000/- per month as deceased was admittedly an unemployed person, having bachelor degree in commerce and Pathology. There is also no dispute with regard to deduction of 50% towards personal and individual expenses of the deceased.

So far consideration of future prospect of the deceased, the learned Tribunal has not calculated the same to the tune of 40% in view of the judgment passed by the Apex Court in the case of *Kirti & Anr. etc.(Supra)* and *Pranay Sethi (Supra) (Para-95.4)*. The learned Tribunal has also considered the multiplier on the basis of age slab of the claimants, which ought to have been age slab of the deceased, who lost his life at the age of

22 years, as such, in view of judgment passed by the Apex Court in the case of **Sarla Verma (Supra) para-42**, multiplier of 18 is applicable.

Further, under the conventional head, the learned Tribunal has only awarded Rs.50,000/- i.e. Rs.40,000/- as consortium and Rs.10,000/- as funeral expenses contrary to the judgment passed by the Apex Court in the case of **Pranay Sethi (Supra)**, as such, the same is granted as 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 estate.

Accordingly, this Court is computing the compensation afresh:-

Income	Rs. 3,000/- per month
Annual Income	Rs. 3,000/- x 12 = Rs. 36,000/-
40% future prospect Pranay Sethi (Supra) para-59.4	Rs. 36,000/- + Rs. 14,400/- = Rs. 50,400/-
1/2 deduction towards personal and living expenses (Sarla Verma Supra) para-30	Rs. 50,400/- x 1/2 = Rs. 25,200/-
Total Income	Rs. 50,400- Rs. 25,200/- = Rs. 25,200/-
Multiplier of 18 (as the deceased was in the age group of 21-25 years) Sarla Verma (Supra)	Rs. 25,200/- x 18 = Rs.4,53,600/-
Conventional Head Pranay Sethi (Supra) para-59.8	Rs. 70,000/-
Total Compensation Amount	Rs. 4,53,600/- + Rs. 70,000/- = Rs. 5,23,600/-

The entire calculated amount shall be paid along with interest @ 7.5% per annum from the date of filing of the claim application till the 90 days of the award i.e. up to 22.02.2017 and thereafter from 20.09.2019 till the date of indemnifying the award. The interest of intermediary period shall not be granted as there is delay of 380 days, which has been condoned vide I.A. No.6207/2018 on such conditions.

Accordingly, the instant miscellaneous appeal is hereby allowed.

Since the occurrence is of date 30.09.2014, it is expected that Insurance Company shall indemnify the award within a reasonable period.

(Kailash Prasad Deo, J.)

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