
(2022) 08 PAT CK 0025

In the Patna High Court

Case No : Miscellaneous Appeal No. 63 Of 2015

Kaushalya Devi

APPELLANT

Vs

Dinesh Paswan

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Citation : (2022) 08 PAT CK 0025

Hon'ble Judges : Partha Sarthy, J

Bench : Single Bench

Advocate : Alok Kumar @ Alok Kr Shahi, Ashok Kumar

Final Decision : Allowed

Judgement

Heard learned counsel for the appellants and learned counsel for the respondent National Insurance Company Limited.

The instant appeal has been preferred against the judgment dated 10.4.2014 passed in Claim Case no. 67 of 2009 by the learned Adhoc Additional District Judge II – cum – Motor Vehicle Accident Claim Tribunal, Vaishali at Hajipur whereby the respondent Insurance Company was ordered to pay a sum of Rs. 2,43,680/- to the claimants within three months.

The facts in brief are that while the deceased Anirudh Sah was going to the garage of one Bharat Sharma, as a result of rash and negligent driving by the driver of an unnumbered Swaraj tractor, he met with an accident in which he received serious injuries. The driver of the tractor was caught by the local persons and the tractor was seized. A case being Hajipur Town P.S. Case no. 89 of 2006 was registered. The injured Anirudh Sah died in course of treatment. After completion of investigation, chargesheet was submitted.

A claim application was filed on behalf of the claimants (appellants herein) stating therein that the deceased was aged 46 years, was working as an employee in Urwashi Hotel, Hajipur and was earning Rs. 5,000/- per month. He

was the only earning member of the family on whom the whole family was dependent for their livelihood. The opposite party nos. 1 and 2 who were respondent nos. 1 and 2 herein did not appear before the learned Tribunal and the claim case proceeded ex parte as against them. The respondent no. 3 Insurance Company appeared and filed their written statement stating that the driver had no valid driving licence at the time of accident and the claimants had not filed their heirship certificate. However, they admitted that the tractor was insured for agricultural purpose but was being used for commercial purpose.

Having heard learned counsel for the parties and taking into consideration the materials on record, the learned Tribunal was pleased to partly allow the claim case directing the respondent Insurance Company to pay Rs. 2,43,680/- within a period of three months to the claimants.

At this stage it is stated by the learned counsel for the Insurance Company that the total amount has already been paid to the claimants in the year 2014 itself.

It is contended by learned counsel appearing for the appellants that the learned Tribunal committed an error in not accepting that the deceased was earning salary of Rs. 5,000/- per month. It is further submitted that the future prospects of 25% has also not been added in the computation and further the amounts paid under the head of general and non pecuniary damages ie other conventional head is also on the lower side. In spite of the categorical statement of the witnesses Meghnath Sah and Kaushalya Devi to the effect that the deceased was working as a Munshi in the Urwashi Hotel and was earning a sum of Rs. 5,000/- per month, it is submitted that the witnesses not having been cross examined on the specific point on behalf of the Insurance Company, the same has to be taken at its face value. Learned counsel in support of his contention further relies on the judgment of the Hon'ble Supreme Court in the case of Sri Ramachandrappa Vs The Manager, Royal Sundaram Alliance Insurance Company Limited [AIR 2011 SC 2951 and more particularly paragraph no. 14 thereof.

The application is opposed by learned counsel appearing for the Insurance Company who submits that there is no error in the order of the learned Tribunal in view of the fact that the accident had taken place in the year 2006 and the amount payable at the time of accident have already been paid to the claimants soon after the judgment of the Tribunal in the year 2014 itself. It is submitted that there is no merit in the appeal and the same be dismissed. It is lastly submitted that in case the contention of the respondent does not find favour with the Court, the liberty granted in paragraph no. 7 of the judgment impugned wherein the Insurance Company has been given right of recovery of the amount from the owner of the vehicle be given to the Insurance Company.

Heard learned counsel for the claimants-appellants and learned counsel for the National Insurance Company Limited (hereinafter referred to as the 'Insurance Company').

The facts not in dispute are that as a result of the rash and negligence driving by

the driver of an unnumbered Swaraj tractor, one Anirudh Sah met with an accident in which he received serious injuries. He was taken to the Sadar Hospital, Hajipur for treatment where he gave his statement which lead to registration of the FIR being Hajipur Town P.S. Case no. 89 of 2006. During course of treatment the injured died and after investigation chargesheet was submitted.

In the Claim case no. 67 of 2009 filed by the claimants who happen to be the wife and children of the deceased Anirudh Sah, by judgment dated 10.4.2014 the Insurance Company was ordered to pay Rs. 2,43,680/- to the claimants.

It is against the judgment dated 10.4.2014 passed by the learned Tribunal that the claimants have preferred the instant appeal. No appeal has been preferred by the Insurance Company.

Learned counsel for the claimants-appellants has challenged the judgment of the learned Tribunal mainly on three grounds ie that the learned Tribunal committed an error in not accepting the income of the deceased as Rs. 5,000/- per month, future prospects of 25% was not added in computation of the total amount of compensation and lastly that a sum of Rs. 70,000/- should have been paid under 'other conventional head'.

So far as the income of the deceased is concerned, it may be stated here that in the claim case filed by the claimants, their specific case was that at the time of his death the 46 years old deceased was employed in Urwashi Hotel at Hajipur and was receiving a monthly income of Rs. 5,000/-. Further the witness Meghnath Sah who was examined as AW1 on behalf of the applicant stated that the deceased was working as a Munshi in the Urwashi Hotel. The witness AW3 Kaushalya Devi who also happens to be the wife of the deceased in her examination categorically stated that her deceased husband was working in Urwashi Hotel and was earning Rs. 5,000/- from which he was looking after the members of his family.

It may be stated here that neither of the two witnesses AW 1 Meghnath Sah nor AW3 Kaushalya Devi were cross examined on behalf of the Insurance Company on the point of the deceased working in Urwashi Hotel in Hajipur as a Munshi nor on his income being Rs. 5,000/- per month. Thus, the learned court below committed an error in not accepting the income of the deceased at the time of his death as Rs. 5,000/-per month.

So far as future prospect is concerned, this Court in the case of National Insurance Company Limited vs. Pranay Shethi [(2017) 16 SCC 680], in paragraph no. 59.4 thereof has held that in case the deceased was on a fixed salary and aged between 40 – 50 years, an addition of 25% should be made for calculating the future prospect. The Court holds the claimants-appellants to be entitled for the same.

The Court further finds that under the other conventional heads a sum only of

Rs. 2,500/- for funeral expense and Rs. 2,500 for loss of estate has been given as against a total sum of Rs. 70,000/- which should have been paid.

Thus in view of the facts and circumstances as discussed hereinabove, the calculation of compensation in the instant case would come as follows:-

Income (Rs. 5,000 x 12 months)

= Rs. 60,000/-

Future prospect @ 25% of 60,000

= Rs. 15,000/-

Total income (60,000+15,000)

= Rs. 75,000/-

Total annual income

= Rs. 75,000

deduction (1/4)

(-)Rs. 18,750/-

Net amount (75,000-18,750)

= Rs. 56,250

Multiplier applied = 13

Loss of dependency (56,250x13)

= Rs. 7,31,250/-

Other conventional heads

(i) Loss of consortium- Rs. 40,000

(ii) Loss of Estate- Rs. 15,000

(iii)Funeral expense Rs. 15,000

Rs. 70,000/-

Rs. 70,000/-

Total compensation

Rs. 8,01,250/-

In view of the above, it is directed that the National Insurance Company Limited (respondent no. 3) shall pay to the claimants-appellants a total sum of Rs. 8,01,250/- after deducting the amount already paid, within a period of three months from today along with simple interest @ 8% per annum on the total amount of compensation from the date of filing of the claim petition till the date

of actual payment. In the facts of the case as held by the learned Tribunal in the order impugned, the Insurance Company is given the right of recovery of the amount from the owner of the vehicle, if it so chooses.

The appeal stands allowed with the above modifications and directions.