

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Miscellaneous Appellate Jurisdiction)

M.A. No. 27 of 2024

1. Shakuntala Devi, W/o Late Mantu Soren, aged about 38 years old.
2. Belani Kumari, D/o Late Mantu Soren, aged about 21 years old,
3. Asha Kumari, D/o Late Mantu Soren, aged about 20 years old,
4. Aman Soren, S/o Late Mantu Soren, aged about 17 years old,
5. Munibala Devi, W/o Hakim Manjhi, aged about 66 years old,
6. Hakim Manjhi, S/o Late Somay Manjhi, aged about 71 years old. Appellant No.4 is minor and represented through Appellant No.1.

All R/o Balidih Basti, P.O. & P.S.-Balidih, District-Bokaro
Permanent R/o Village Jaina Basti, P.O. & P.S.-Jaridih, District-Bokaro.

.... Appellants

Versus

- 1.M/S National Insurance Co. Ltd. Represented through Divisional Manager, Sheela Sadan, City Centre, Sector IV, P.S. Sector IV, P.O.-B.S. City, Distt-Bokaro, Vide Policy No. 180502311910004277 valid from 30.10.2019 to 29.10.2020
- 2.Rajesh Singh, S/o Tej Narayan Singh, R/o- L.H.More, Sonatand, P.O. & P.S.- Sector-12, District-Bokaro, 827012 (Owner of Truck No. JH09AE-6872) Respondents

P R E S E N T

HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellants : Mr. Nikhil Ranjan, Advocate
For the Respondents : Mr. Mukesh Kumar Dubey, Advocate

C.A.V. on 23.10.2024 : **Pronounced on 14.11.2024**

The instant Misc. Appeal has been directed on behalf of the claimants/appellants against the impugned Award dated 13.03.2023 passed by the learned District Judge-I-cum-P.O.M.A.C.T., Bokaro in Motor Accident Claim Case No. 53 of 2020.

2. The brief facts leading to this Misc. Appeal are that the claimants had filed the Claim Petition with these averments that

on 27.12.2019 deceased Mantu Soren had gone to market and when he reached near Jaina Chowk four lane Main Road P.S. Jaridih, the driver of Truck No. JH09AE-6872 came rashly and negligently and dashed the deceased by which the deceased got serious injuries and died on the spot. After his death, deceased left his wife, three children and mother and father. All were dependent on the income of deceased. After his death they had become hand to mouth. Deceased was 35 years old was a mason and was earning 15,000/- per month. As such the amount of Rs. 30,00,500/- was claimed as compensation in the Claim Petition under Section 166 of the M.V. Act. On the written information given by Raj Mohan Soren Jaridih P.S. Case No. 0178 of 2019 under Section 279/304-A of I.P.C. was registered against the driver of offending Truck JH09AE-6872 in which the I.O. after having completed the investigation, filed the charge-sheet against the driver of the offending vehicle, namely, Robin Chakra Mandal. The said Truck was also insured by National Insurance Company.

3. O.P.No.1 (Respondent No.2 herein) the owner of the Truck filed the written statement denying the averment of the Claim Petition stated that the said Truck was not driven rashly and negligently by its driver Robin Chakra Mandal. The offending vehicle was insured by O.P.No.2 (Respondent No.1 herein)- National Insurance Company and the insurance policy was valid from 30.10.2019 to 29.10.2020. The driver of the vehicle was also having a valid and effective driving licence on the very date of

accident. The offending vehicle was driven with all the valid documents. If any liability is found, the same can be fastened to Insurance Company.

4. On behalf of the O.P.No.2 (Respondent. No.1 herein) the Insurance Company filed the written statement in which the averments of the Claim Petition were denied and stated that it is the owner of the offending vehicle who has to prove that the offending Truck was driven with a valid and effective licence and with all the valid documents. There being the breach of the policy the Insurance Company is not liable to pay any amount of compensation.

5. The learned Tribunal on the basis of the pleadings of the parties framed the issues. On behalf of the claimants in documentary evidence filed Ext.1 to 2- certified copy of FIR and seizure list of Jaridih P.S. Case No. 178/2019, Ext.3-Certified copy of charge-sheet of Jaridih P.S. Case No. 178 of 2019, Marked X for identification-Photo copy of postmortem of deceased Mantu Soren, Marked X/1 to X/6 for identification-Photo copy of Aadhar Card of Shakuntala Devi, Belani Kumari, Asha Kumari, Aman Soren, Munibala Devi, Hakim Manjhi. Marked Y for identification-Photo copy of Registration of the offending vehicle. Marked Y/1 for identification-Photo copy of National permit of the offending vehicle, Marked Y/2 for identification-Photo copy of certificate of fitness, Marked Y/3 for identification-Photo copy of Goods permit of the offending vehicle, Marked Y/4 for identification-Photo copy

of Road Tax of the offending vehicle, Marked Y/5 for identification- Photo copy of Pollution certificate of the offending vehicle, Marked Y/6 for identification-Photo copy of driving licence of driver Robin Chakra Mandal and in Oral evidence examined C.W.1- Shankutala Devi, CW2-Ranjeet Manjhi and CW3-Santosh Kumar Mahato.

6. On behalf of Opposite Party neither oral nor documentary evidence was adduced.

7. The learned Tribunal after hearing the rival submission of parties passed the impugned Award directing to pay Rs. 14,81,200/- as compensation to the claimants.

8. The claimants have filed this Misc. Appeal aggrieved from the Award on quantum of the compensation on the ground that the learned Tribunal has held that from the evidence on record that the deceased was a mason but held that the mason was semi-skilled labour. As such the wages which were fixed by the learned Tribunal were of semi-skilled while the mason as per Govt. Notification comes in category of skilled labour. The wages should have been assessed of a skilled labour. Moreover, the parents of the deceased were not awarded the amount under the head of loss of consortium.

9. Per contra, learned Counsel for the Opposite Party vehemently opposed the contentions made by the learned Counsel for the appellant and contended that the quantum which was

assessed by the learned Tribunal bears no infirmity and needs no interference.

10. While disposing the issue No.4 & 7 in regard to quantum of the compensation, **the learned Tribunal has held that the deceased was a mason; but the income of the deceased was assessed as a semi-skilled worker in view of the Jharkhand Minimum Wage Notification with effect from 1st October, 2019 the Minimum Wages Act, 1948.** The Govt. of Jharkhand vide Notification No. 2/MW-2071/2010 L & T-1836 has released the minimum wages variable dearness allowance effective from 1st October, 2019 as accident had occurred on 27.12.2019. The total minimum wages of semi-skilled worker during the year 2019 was fixed by the Government of Jharkhand Rs. 7008.14/- per month and in round of figure the income was assessed 7,000/- per month.

11. **In the very Gazette Notification, the mason is shown under the category of skilled worker and the minimum wages of a skilled worker in this very Gazette Notification the monthly minimum wages are shown 9238/-. As such the income of deceased which was assessed 7,000/- by the learned Tribunal holding the mason as a semi-skilled is wrong and same requires modification because Mason is the skilled worker.**

11.1 The Hon'ble Apex Court also in the case of ***National Insurance Co. Ltd. vrs. Pranay Sethi***, the land mark Judgment

of Constitution Bench of Supreme Court (2017) 16 SCC 680.

Para 13 reads as under:

13. It is interesting to note here that while the reference was pending, the judgment in Santosh Devi v. National Insurance Co. Ltd. was delivered by a two-Judge Bench which commented on the principle stated in Sarla Verma. It said : (SCC pp. 428-29, paras 14-18)

“14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case⁴ that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc. the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed

wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.

11.2 Therefore, the income of the deceased is computed as under:

The monthly income of the deceased = Rs. 9238.00

Future prospect 40% of Rs. 9238.00= Rs.3695/-

Total monthly income (9238+3695)= Rs. 12,933/-

Deduction towards personal and living expenses in

view of **“Sarla Verma vs. DTC” (2009) 6 SCC 121**

is 1/4th if number of dependent family member are

4 to 6, therefore, total monthly income would be

amount of Rs. 12,933-3233 (12,933x1/4) = 9700/-

Total annual income would be 9700x12= 1,16,400/-

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. 1,16,400x16= Rs. 18,62,400/-

12. So far as the amount in conventional head is concerned, the same is not challenged by the appellant and the same will remain the same as awarded by the learned Tribunal. Only **this plea has been raised on behalf of the learned Counsel for the appellant that the parents of the deceased are also entitled to loss of consortium.**

12.1 **This Court is of considered view that claimant/Appellant No. 5 & 6 are entitled to parental as well filial consortium for death of their son.**

12.2 The Hon'ble Apex Court in the case of **Janabai WD/o Dinkar rao Ghorpade vrs. I.C.I.C.I. Lombard Insurance Company Ltd. 2022 LiveLaw (SC.) 666 held that:**

Compensation on account of spousal consortium for wife and for parental consortium for the children is permissible.

Para 13 reads as under:

13. The appellant has claimed compensation on account of love and affection as well on account of spousal consortium for wife and for the parental consortium for the children in the calculation given to this Court but in view of three Judge Bench judgment reported as United India Insurance Company Limited v. Satinder Kaur & Ors. 2, the compensation under the head on account of loss of love and affection is not permissible but compensation on account of spousal consortium for wife and for the parental consortium for children is admissible. This Court held as under:

"30. In Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

31. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

32. Modern jurisdictions world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under the

loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

*33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in **Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]** .*

*34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in **Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]** , has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In **Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153]** , this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.*

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.”

12.3 As such under the conventional head only modification which requires is that the parents of the deceased who are the claimant No.5 & 6 in the Claim Petition are also entitled to the amount of parental as well filial consortium of Rs.40,000/- and this same amount in view of the Judgment of **National Insurance Company Ltd. vrs. Pranay Sethi 2017(16) SCC 680** should be

enhanced @ 10% in every three years which becomes due in the year December, 2022. As such the amount of parental consortium Rs. 44,000/- would be added in the very amount of compensation.

13. Accordingly, this Misc. Appeal deserves to be allowed.

14. This Appeal is hereby partly allowed. The impugned Award is modified up-to the extent in computation of the compensation for annual loss of dependency in place of Rs.14,81,200/- the amount of Rs. 18,62,400/- would be payable and in conventional head the amount for compensation for the loss of parental consortium would be payable Rs.44000/- to claimant No. 5 & 6. The rest of the Award will remain same.

(Subhash Chand, J.)

P.K.S./A.F.R.