

A LAXMIDHAR NAYAK AND ORS.

v.

JUGAL KISHORE BEHERA AND ORS.

(Civil Appeal No. 19856 of 2017)

B NOVEMBER 28, 2017

[**RANJAN GOGOI AND R. BANUMATHI, JJ.**]

C *Motor Vehicles Act, 1988 – Rash and negligent driving – Fatal accident – Head-on collision between bus and truck resulting in death of pedestrian – Victim-deceased aged 42 years was agricultural labourer – Tribunal determined monthly income of Rs.650 taking daily income as Rs.25 and after deducting Rs.250 towards her personal expenses awarded compensation of Rs.70600/-*
D *– High Court affirmed the award of compensation but reduced interest from 9% to 7% – Instant appeal is filed by sons and daughter of the deceased seeking enhancement of compensation – Held: The wages assessed by tribunal for the daily labourer at Rs.25/- per day and the monthly income at Rs.650/- is too low – The reasoning of the tribunal that a lady labourer may not get engagement daily is not acceptable – Deceased being a woman and mother of three*
E *children, would have also contributed her physical labour for maintenance of household and also taking care of her children – Taking income from the agricultural labour work at Rs.3,000/- p.m. and Rs.1,500/- p.m. for the household work, the monthly income of the deceased is fixed at Rs.4,500/- p.m. deducting 1/3rd for personal expenses, contribution of deceased towards the family is calculated*
F *at Rs.3,000/- p.m. and Rs.36,000/- p.a. – As per the second schedule to the Motor Vehicles Act, 1988, for the age groups 40-45 years multiplier is “15” – As per Sarla Verma decision for the age groups 41-45 years, multiplier to be adopted is “14” – Therefore, the multiplier of “12” adopted by the tribunal and the High Court is*
G *not correct – Adopting the multiplier of “14” loss of dependency is calculated at Rs.5,04,000/- – Also, compensation of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses is awarded – Thus total compensation awarded to the claimants is enhanced to Rs.5,34,000/- payable with interest at the rate of 7% p.a.*

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Partly allowing the appeal, the Court

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HELD: 1. PW-1 in his evidence stated that the victim-deceased was earning Rs.35/- per day as wages out of the labour work. It is quite improbable that a labourer would be available for such a small amount of Rs.25/- per day. The reasoning of the tribunal that a lady labourer may not get engagement daily is not acceptable. Even though works like cutting of paddy and other agricultural labour may not be available on all days throughout the year, in rural areas other kinds of work are available for a labourer. Deceased even though was said to be earning only Rs.35/- per day at that time, over the years, she would have earned more. The High Court as well as the tribunal did not keep in view the contribution of the deceased in the household work, being a labourer and also maintaining her husband, her daily income should be fixed at Rs.150/- per day and Rs.4,500/- per month. Deducting 1/3rd for personal expenses, contribution of deceased towards the family is calculated at Rs.3,000/- per month and Rs.36,000/- p.a. Deceased was aged 42 years. As per the second schedule to the Motor Vehicles Act, 1988, for the age groups 40-45 years multiplier is "15". As per Sarla Verma decision for the age groups 41-45 years multiplier to be adopted is "14". Hence, the multiplier of "12" adopted may not be correct. Adopting the multiplier of "14" loss of dependency is calculated at Rs. 5,04,000/- (3,000x12x14). Further, compensation of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses is awarded. Thus total compensation awarded to the claimants is enhanced to Rs.5,34,000/- payable with interest at the rate of 7% per annum. [Paras 6-9][245-D-H; 246-A-C]

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Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. (2009) 6 SCC 121 : [2009] 5 SCR 1098; *National Insurance Company Limited v. Pranay Sethi and Ors.* 2017 (13) SCALE 12 – relied on.

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Case Law Reference

[2009] 5 SCR 1098	relied on	Para 7
2017 (13) SCALE 12	relied on	Para 8

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- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 19856 -
of 2017.

From the Judgment and Order dated 27.01.2016 of the High Court of Orissa at Cuttack in MACA No. 802 of 2003.

- B Chattaranjan Misra, Bhanu Pratap Singh, D. P. Singh Yadav, Binay Kumar Das, Advs. for the Appellants.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

- C 2. Appellants who are the sons and daughter of the deceased Chanchali Nayak have filed this appeal seeking enhancement of compensation for the death of their mother in the road accident on 29.09.1991 as against compensation of Rs.70,600/- awarded by the tribunal and affirmed by the High Court of Orissa.

- D 3. Mother of appellants-Chanchali Nayak was working as an agricultural labourer. On the date of accident - 29.09.1991 at about 8.00 a.m., Chanchali Nayak was proceeding on the left side of the road alongwith some other labourers. At that time, due to head-on-collision between two vehicles-bus (bearing No.OSF 5157) and truck (bearing No.OAC 495), the bus swerved to the extreme left side of the road and ran over Chanchali Nayak and she succumbed to injuries. In the claim
E petition filed by the claimants, the tribunal held that the accident was due to rash and negligent driving of both the vehicles.

- F 4. So far as the compensation is concerned, the tribunal has taken the monthly income of the deceased at Rs.650/- per month and after deducting an amount of Rs.250/- towards her personal expenses, assessed the contribution to the family at Rs.400/- per month. Deceased was aged 42 years and the tribunal adopted multiplier of "12" and awarded compensation of Rs.57,600/- for the loss of dependency and adding conventional damages, tribunal has awarded total compensation of Rs.70,600/-. The respondents No.1 and 2 - owners of the bus and the
G truck were held liable to pay the compensation to the claimants at 50% each alongwith interest at the rate of 9% per annum. Pointing out that the claimants have not produced the insurance policies of the vehicles, the tribunal held that the insurance company is not liable to indemnify the compensation. However, it is seen from the judgment of the High
H Court that the insurance company has been satisfied with the award.

On appeal to the High Court by the claimants, the High Court affirmed the quantum of compensation of Rs.70,600/- awarded to the claimants but reduced the rate of interest from 9% to 7%. So far as the liability of the insurance company is concerned, the High Court held that the insurance company-respondent No.3 having paid the compensation to the claimants cannot avoid its liability to pay the compensation amount. Being dissatisfied with the quantum of compensation, the appellants have filed this appeal. A B

5. We have heard the learned counsel for the appellants. Respondent No.2 and insurance company-respondent No.3 have not entered their appearance. We have perused the impugned judgment and the materials placed on record. C

6. PW-1 in his evidence stated that Chanchali Nayak was earning Rs.35/- per day as wages out of the labour work. Deceased Chanchali Nayak was an agricultural labourer. The tribunal has taken her income at the rate of Rs.25/- per day and assessed the monthly income at Rs.650/- per month. It is quite improbable that a labourer would be available for such a small amount of Rs.25/- per day. The wages fixed by the tribunal for the daily labourer at Rs.25/- per day and the monthly income at Rs.650/- is too low. The reasoning of the tribunal that a lady labourer may not get engagement daily is not acceptable. Even though works like cutting of paddy and other agricultural labour may not be available on all days throughout the year, in rural areas other kinds of work are available for a labourer. Deceased Chanchali Nayak even though was said to be earning only Rs.35/- per day at that time, over the years, she would have earned more. In our view, deceased Chanchali Nayak, being a woman and mother of three children, would have also contributed her physical labour for maintenance of household and also taking care of her children. The High Court as well as the tribunal did not keep in view the contribution of the deceased in the household work, being a labourer and also maintaining her husband, her daily income should be fixed at Rs.150/- per day and Rs.4,500/- per month. D E F

7. Taking income from the agricultural labour work at Rs.3,000/- per month and Rs.1,500/- per month for the household work, the monthly income of the deceased is fixed at Rs.4,500/- per month deducting 1/3rd for personal expenses, contribution of deceased towards the family is calculated at Rs.3,000/- per month and Rs.36,000/- per annum. Deceased Chanchali Nayak was aged 42 years. As per the second schedule to the G H

- A Motor Vehicles Act, 1988, for the age groups 40-45 years multiplier is "15". As per *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* (2009) 6 SCC 121, for the age groups 41-45 years multiplier to be adopted is "14". Therefore, the multiplier of "12" adopted by the tribunal and the High Court may not be correct. Hence, the multiplier of "12" adopted may not be correct. Adopting the multiplier of "14" loss of dependency is calculated at Rs.5,04,000/- (3,000x12x14).
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8. As per the decision of the Constitution Bench in *National Insurance Company Limited v. Pranay Sethi and Others* 2017 (13) SCALE 12, compensation of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses is awarded. Thus total compensation awarded to the claimants is enhanced to Rs.5,34,000/- payable with interest at the rate of 7% per annum.
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9. The impugned judgment is modified and the compensation payable to the claimants is enhanced to Rs.5,34,000/-. The enhanced compensation is payable with interest at the rate of 7% per annum from 27.01.2016 (the date of judgment of the High Court) and this appeal is partly allowed. Respondents No.1 to 3 are jointly and severally liable to pay the enhanced compensation with interest.
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