

Subhra Goswami Vs Sindu Sanwar

Court: Jharkhand High Court

Date of Decision: Feb. 13, 2025

Acts Referred: Indian Penal Code, 1860 " Section 279, 304A, 338

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Rajiv Kumar Karan, Bibhash Sinha

Final Decision: Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Rajiv Kumar Karan, learned counsel for the appellants and Mr. Bibhash Sinha, learned counsel for respondent no.2-ICICI Lombard

General Insurance Company Limited.

2. The present appeal has been preferred against the award dated 16. 09.2016 passed by the learned District Judge-IV cum M.A.C.T., at Dhanbad in

Title (M.V.) Suit No.153/2015.

3. Mr. Karan, learned counsel for the appellants submits that the appellants are claimants and the appeal has been filed for enhancement of the award,

He submits that meager amount of Rs.3,69,500/- with interest @ 9% per annum has been awarded in the case of death. He further submits that the

said compensation case was instituted on the ground that on 21. 12.2010 at about 11:30 a.m., the informant Manoj Kumar gave a fardbeyan before the

police that the deceased Prashant Kumar Goswami along with Birendra Kumar was travelling by Bajaj Motor Cycle bearing no. JH-01S-9006 and

when they reached near Sidraul More, P.S. Namkum, District- Ranchi, all of a sudden one Indica car bearing No. JH-05AC-0816 dashed the said

motorcycle as a result of which the deceased received grievous injury and died on the spot. He then submits that on the basis of bardbeyan of Manoj

Kumar of Namkum P.S., FIR was registered being Namkum P.S. Case No.184/2010 dated 21.12.2010 under Section 279, 338 and 304A of the Indian

Penal Code against the driver of the said Indica car. He submits that the investigation was conducted and the Investigation Officer found the case true

under Section 279, 338 and 304A of the Indian Penal Code against the driver of the said Indica car and charge-sheet was submitted.

4. Mr. Karan, learned counsel for the appellants further submits that the learned Tribunal has wrongly assessed the income of the deceased as

Rs.3,000/- per month only, whereas, his monthly income was Rs.15,000/- per month. He submits that Ext.-2 is the certificate issued by the employer,

which clearly suggests that the income of the deceased was Rs.15,000/- per month. He also submits that P.W.2-Nikhil Ritesh Sanga has also stated

that the employer of the deceased was Udogini, which is an NGO and appointment letter was given after completion of six months. He further

submits that the learned Tribunal only on the ground of non-producing of the salary slip, has assessed the income of deceased as Rs.3,000/- per month.

On these grounds, he submits that the income is required to be modified as per the minimum wages of skilled labour. He also submits that nothing has

been provided under the head of future prospect and in view of the judgments passed in the case of Sarla Verma and others v. Delhi Transport

Corporation and another, reported in (2009) 6 SCC 121 as well as in the case of National Insurance Company Limited v. Pranay Sethi and

others, reported in (2017) 16 SCC 680, that is required to be added in the award. On these grounds, he submits that the award may kindly be

modified.

5. Mr. Bibhash Sinha, learned counsel appearing for respondent no.2-Insurance Company opposed the prayer and submits that the learned Tribunal

has rightly assessed the salary of the deceased to the tune of Rs.3,000/- per month. He further submits that the bank statement produced before the

learned Tribunal, marked as Ext-X, is not related with any bank and it does not bear the name of the bank and signature of the concerned person. He

also submits that the appellants are also not entitled for future prospect. On these grounds, he submits that this appeal is fit to be dismissed.

6. The Court has looked into the trial court records. The appointment letter is on the record, wherein, it has been stated that the deceased was

appointed w.e.f. 01.10.2010 on the monthly gross salary of Rs.15,000/- and certificate to that effect has also been issued on 02.08.2016, however, the

bank statement of the deceased is disputed. In view of that, the Court finds that the as per the skilled labour under the minimum wages, the income is

required to be assessed and, as such, the salary of the deceased is assessed as Rs.9,500/- per month and in view of that, the calculation with regard to

income of the deceased is required to be made deducting what has already been paid.

7. The contention of the learned counsel for the appellants is not being accepted by this Court in light of the judgment passed by the Hon'ble

Supreme Court in the case of P.V. George and others v. State of Kerala and others, reported in (2007) 3 SCC 557. Paragraph 29 of the said

judgment reads as under:

“29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore,

could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a

retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in

that behalf.”

In view of the above decision, the judgment passed in the case of National Insurance Company Limited v. Pranay Sethi (supra) will also apply in

all the cases, which are not decided as yet.

8. So far as future prospect is concerned, the age of the deceased was said to be 40 years. Paragraph 59.4 of the judgment passed in the case of

National Insurance Company Limited v. Pranay Sethi (supra) reads as under:

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was

below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50

to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

In view of the above decision, 25% is required to be added as future prospect of the deceased and in view of that, the award is further modified to the

effect that 25% will be added under the head of future prospect.

9. Paragraph 59.8 of the judgment passed in the case of National Insurance Company Limited v. Pranay Sethi (supra) reads as under:

“59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000

respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

In view of the above decision, the appellants are entitled to the sum of Rs.70,000/- as conventional head.

10. In view of the above facts, the award dated 16.09.2016 passed by the learned District Judge-IV cum M.A.C.T., at Dhanbad in Title (M.V.) Suit

No.153/2015 is modified to the effect that salary will be re-calculated, future prospect will be further added and the amount of Rs.70,000/- further will

be added as conventional head.

11. In view of the above, the appellants are entitled for:

Monthly income- Rs.9,500/-

Annual income-Rs.9,500/- x 12 - Rs.1,14,000/-

(-) Less 1/3rd standard deduction

(-) Rs.38,000/-

= Rs.76,000/-

(+) 25% future prospect (+) Rs.19,000/-

= Rs. 95,000/-

Multiplier of 15 (Rs.95,000/- x 15) = Rs.14,25,000/-

(+) Conventional head (+) Rs.70,000/-

Total = Rs.14,95,000/-

In compliance of the award, the amount of Rs.4,07,945/- (Rs.50,000+ Rs.3,57,945) has already been paid to the appellants/claimants.

12. Accordingly, this appeal is allowed in above terms and disposed of.