*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

&

***THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

+MOTOR ACCIDENT CIVIL MISCELLANEOUS

APPEAL NO:3420/2014

% 18.07.2024

Between:

T. Savithramma & 4 others **...APPELLANT(S)**

AND

K Venakteswarlu & 2 others **...RESPONDENT(S)**

!Counsel for the appellants : Sri K. Rathanga Pani Reddy

^Counsel for the respondent No.3 : Sri Ch. Narendra Babu

<Gist:

>Head Note:

? Cases referred:

[1] [2022] 18 S.C.R 238
[2] (2020) 4 Supreme Court Cases 228
[3] [2022] 18 S.C.R 238
[4] (2009) 6 SCC 121
[5] (2017) 16 SCC 680
[6] (2018) 18 SCC 130
[7] (2021) 11 SCC 780
[8] (2015) 1 SCC 539
[9] (2021) 6 SCC 188
[10] (2021) 2 SCC 166

HIGH COURT OF ANDHRA PRADESH

* * * *

MOTOR ACCIDENT CIVIL MISCELLANEOUS

APPEAL NO: 3420/2014

DATE OF JUDGMENT PRONOUNCED: 18.07.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

1. ***Whether Reporters of Local newspapers may be allowed to see the Judgments?*** ***Yes/No***

2. ***Whether the copies of judgment may be marked to Law Reporters/Journals*** ***Yes/No***

3. ***Whether Your Lordships wish to see the fair copy of the Judgment?*** ***Yes/No***

_____

RAVI NATH TILHARI, J

_____

NYAPATHY VIJAY,J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

MOTOR ACCIDENT CIVIL MISCELLANEOUS

APPEAL NO:3420/2014

JUDGMENT: *(per Ravi Nath Tilhari, J)*

Heard Sri K.Rathanga Pani Reddy, learned counsel appearing for the appellants and Ms.D.Anusha, learned counsel representing Sri Chilukuri Narendra Babu, learned counsel appearing for respondent No.3.

2. This appeal under Section 173 of Motor Vehicles Act, 1988 (for short 'the Act') has been filed challenging the Award of the Principal District Judge-cum-Chairman, Motor Accident Claims Tribunal, Kurnool (for short 'Tribunal') dated 21.04.2014 passed in M.V.O.P.No.706 of 2011.

3. The appellants are the claimants. Their grievance is that the compensation awarded is not a just compensation and is on the lower side.

4. The appellants filed Claim Petition M.V.O.P.No.706 of 2011 against the respondents under Section 166(1)(c) of the Act claiming compensation of Rs.1,20,00,000/- with subsequent interest and costs against the respondent Nos.1 to 3, the previous owner, subsequent owner and insurer respectively of the offending Bolero vehicle bearing registration No.AP04-S-1394, on account of death of Sri T.Venkata Narayana (for short 'the deceased') in the motor

vehicle accident that took place on 15.08.2011 at about 06.30 a.m. on NH-7 road, near Sompauram village bus stop, Dhone Mandal.

5. The case of the appellants was that the accident was caused by the rash and negligent driving of the driver of the Bolero vehicle which dashed against Mahendra Xylo vehicle bearing registration No.AP02AE-1166. The age of the deceased was 45 years on the date of accident. He was class-1 Contractor and agriculturist getting an income of more than Rs.15,00,000/- per annum, by all means.

6. Present respondent No.3/insurer filed counter denying the case of the appellants and *inter alia* submitting that the appellants be put to strict proof of their case; The compensation as claimed was said to be on higher side.

7. The Tribunal framed the following issues:-

> *"1. Whether the pleaded accident occurred, resulting in the death of the deceased, and if so, was it due to the fault of the driver of Bolero vehicle bearing registration No.AP04-S-1394 or the driver of Mahindra Xylo vehicle bearing registration No.AP02AL-1166?'*
>
> *2. Whether the Bolero vehicle bearing registration No.AP04-S-1394 is owned by the first respondent and transferred to the second respondent and stood insured with the third respondent by the date of accident, and if so, whether the policy covers the risk of the deceased?*

3. Whether the petitioners are legal heirs of the deceased and entitled to compensation and if so, what amount and against which of the respondents?

4. To what relief?"

8. On behalf of the claimants/appellants, P.Ws.1 to 3 were examined and Exs.A1 to A21 and Exs.X1 and X2 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B1-copy of the insurance policy was marked.

9. The Tribunal recorded findings that the accident was caused due to rash and negligent driving of the offending Bolero vehicle. The vehicle was insured with the third respondent. The risk was covered under the original of Ex.B1. The claimants were the legal heirs of the deceased, entitled to get compensation from the respondent Nos.1 to 3 jointly and severally.

10. On the point of quantum of compensation, the Tribunal considered the age of the deceased as 46 years. The income of the deceased as Rs.4,50,000/-, adding to it future prospects @ 30% and deducting Rs.55,000/- as Income Tax. It determined annual income as Rs.5,30,000/- After making deductions of ¼ for the personal and living expenses of the deceased and applying the multiplier of '13', as also awarding amount under different heads, the Tribunal partly allowed the petition for an amount of Rs.54,90,000/- with proportionate costs and simple interest @ 9% per annum from the date of the

petition till the date of realization. The Tribunal also made the apportionment of compensation amongst the claimants.

11. Learned counsel for the appellants submits that firstly the Tribunal has considered the age of the deceased as 46 years on the date of accident based on the Post Mortem report. He submits that as per Ex.A1-S.S. Certificate, the age of the deceased was 45 years on the date of accident. His date of birth recorded was 01.06.1966 and the date of accident was 15.08.2011. The date of death was 15.08.2011. On the date of the accident, the deceased was aged 45 years and two months. He submits that ignoring two months, the appellants proved that the age of the deceased was 45 years. The Tribunal erred in considering the age of the deceased as 46 years.

12. Learned counsel for the appellants further submits that so far as the income of the deceased is concerned, on behalf of the appellants, they filed income tax returns Exs.A6 to A9. The Tribunal did not place reliance on Exs.A8 and A9 on the ground that those were filed after the death of the deceased. He submits that there was a deduction of tax at source, which was made during the life time of the deceased. Those documents/Exs.A8 and A9 were accepted by the income tax department. It was so proved by the oral evidence of P.W.3-Income Tax Officer. The Tribunal is not justified and erred in ignoring Exs.A8 and A9 on the reasons assigned.

13. Learned counsel for the appellants rely on the Judgment of the Hon'ble Supreme Court in ***K.Ramya v. National Insurance Company Limited***[1]***.***

14. Learned counsel for respondent No.3 submits that the Tribunal has rightly considered the age of the deceased as 46 years which is based on the Post Mortem Report.

15. Learned counsel for respondent No.3 further submits that the Income Tax returns-Exs.A8 and A9 were filed after the death of the deceased and consequently, the Tribunal has rightly not taken into consideration these documents on the point of income. The Tribunal was justified to record finding based on documents Exs.A6 and A7 which were filed during the life time of the deceased. There is no illegality in the order of the Tribunal.

16. We have considered the above submissions advanced by the learned counsels for the parties and perused the material available on record.

17. The points for determination are as follows:

1. Whether the Tribunal has rightly considered the age of the deceased as 46 years on the date of the accident?

2. Whether the Tribunal is justified in not placing reliance on Exs.A8 and A9 on the ground as stated?

3. Whether the Tribunal has awarded just and fair compensation?

[1] [2022] 18 S.C.R 238

POINT NO.1:-

18. The Tribunal has determined the age of the deceased as 46 years as on the date of accident. In the S.S.C Certificate, the date of birth of the deceased was recorded as 01.06.1966. From that date, on the date of accident 15.08.2011, the age of the deceased was 45 years. There was no other document except the Post Mortem Report to disprove the case of the claimants that the age of the deceased was 45 years. The Post Mortem Report is not the proof of date of birth. That may be of some help to consider the age, approximately though not conclusively. In the presence of the S.S.C Certificate, recording the date of birth, the Tribunal has erred in placing reliance on the Post Mortem Report to determine the age of the deceased as 46 years. It should have determined the age based on date of birth in S.S.C. Certificate. It is in the absence of any other document of proof of date of birth, the Post Mortem Report could be relied upon to determine age, subject to other evidences on record.

19. In the case of the **Divisional Manager,** ***the Oriental Insurance Company Limited v. K. Veeralakshmi and others*** which was decided on 29.11.2016 in C.M.A(MD) No.758 of 2014 and M.P.(M.D)No.1 of 2014, the Madras High Court held that the doctors prescribe the age in the post-mortem certificate based on the anatomical analysis and it will be certainly appropriate and can never be accurate. In the absence of any other document like Ration

card, Birth certificate, Passport, Aadhar card and Voter I.D., the age prescribed in the post-mortem certificate shall be considered. But when the self declared age is available in the above said Government I.Ds, the same is to be taken as conclusive and the age in the post-mortem certificate can never be construed as conclusive. In the said judgment, the Madras High Court relied on the previous Division Bench of the same High Court.

20. It is apt to refer paragraph 7 and 8 of the said judgment.

> *"7. The above judgment submitted by the learned counsel for the respondents needs not be relied upon, in view of the fact that the Hon'ble Division Bench of this Court in a judgment reported in 2005 (5) CTC 515 (The Managing Director, Tamil Nadu State Transport Corporation, Madurai v. Mary and others) stated as follows:*
>
> > *"9. As regards compensation, the appellant is aggrieved by the assessment of the age of the deceased at 41. The age of the deceased had been assumed to be 41 on the basis of the birth certificate/certificate issued by the Church at the time of anointing of the deceased on 25.7.1959. As against the said material, the appellant seeks to rely on the post mortem certificate fixing the age at 50. It is needless to mention that the age fixed under the post mortem certificate cannot be stated to be an accurate age and the same could be referred to only in the absence of any other material. When a contemporaneous birth certificate is issued under Ex.A-3 disclosing the age of the deceased as 41, there is no justification to reject the said certificate. On the basis of the said certificate, the multiplier of 15 has been properly adopted."*
>
> *8. It is always known that the Doctors prescribed the age in the post-mortem certificate based on the anatomical analysis and it will be certainly appropriate and can never be accurate. Therefore, in the absence of any other document like Ration card, Birth certificate, Passport, Aadhar card and Voter I.D., the age prescribed in the post-mortem certificate shall be considered. When the self declared age is available in the above said Government I.Ds, the same is to be taken as conclusive and the age in the post-mortem certificate can never be construed as conclusive. Therefore, this Court is not inclined to consider the arguments advanced by the learned counsel for the respondent and the findings of the Hon'ble Division Bench will prevail over and accordingly, this Court is of the unambiguous view that the age stated in the family ration card alone will prevail for the purpose of fixation of compensation by the Tribunal."*

21. In ***Manoj @ Monu @ Vishal Chaudhary v. State of Haryana & Another,*** in Criminal Appeal No.207 of 2022 (arising out of SLP (Criminal) No.8423 of 2019) though the said matter arose out of the Juvenile Justice (Care and Protection of Children)Rules, 2007, where the question was with respect to the determination of the age of the juvenile, referring to its previous judgment in '**Jyothi Prakash Rai v. State of Bihar'**, it was reiterated that the medical report determining the age of a person has never been considered by courts of law as also by the medical scientist to be conclusive in nature. Paragraph 18 of the said judgment is reproduced as under:

> "*18. Furthermore, this Court in a judgment reported as Jyoti Prakash Rai v. State of Bihar [(2008) 15 SCC 223] held that the medical report determining the age of a person has never been considered by courts of law as also by the medical scientist to be conclusive in nature. It was also found that though the Act is a beneficial legislation but principles of beneficial legislation are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. The Court held as under:*
>
> > *"12. The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on record by the parties. In the absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Evidence Act, the same must be determined keeping in view the factual matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.*
> >
> > *13. A medical report determining the age of a person has never been considered by the courts of law as also by the medical scientists to be conclusive in nature. After a certain age it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests. This Court in Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] opined : (SCC p. 290, para 20)*
> >
> > *"20. It is urged before us by Mr.Lalit that the determination of the age of the prosecutrix by conducting ossification test is*

> *scientifically proved and, therefore, the opinion of the doctor that the girl was of 18-19 years of age should be accepted. We are unable to accept this contention for the reasons that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact."*
>
> *In the aforementioned situation, this Court in a number of judgments has held that the age determined by the doctors should be given flexibility of two years on either side."*

22. We hold based on the S.S.C Certificate, which is not disputed that, the age of the deceased was 45 years on the date of the accident.

POINT NO.2:-

23. So far as the determination of annual income of the deceased is concerned, there was no contrary evidence to EXs.A8 and A9. The respondents did not file any documentary evidence, except Ex.B1-insurance policy. There was also no oral evidence contrary to the evidence of P.W.3 who proved Exs.A8 and A9-Income Tax returns to have been accepted by the Income Tax department.

24. The Tribunal has observed that from the evidence of P.W.3, it can be held that Exs.A6 and A7 were alone submitted by the deceased during his life time and that Exs.A8 and A9 were submitted by the legal heirs of the deceased after the death of the deceased. It further observed that there was no dispute that the deceased was a contractor. However, in its view, merely because income tax was deducted at source, during life time, at the time of making payment to the contractor, the actual net income of the deceased

could not be based on the income tax deducted at source. The Tribunal further observed that in EXs.A8 and A9, the net income tax of the deceased was shown as Rs.12,24,450/- and Rs.15,13,875/- respectively. In the view of the Tribunal the possibility of showing an exaggerated income of the deceased in Exs.A8 and A9, after the death of the deceased, for the purpose of getting huge compensation, cannot be ruled out. Consequently, the Tribunal was of the view that Exs.A8 and A9 could not be relied upon to determine the income.

25. The Tribunal further observed that from Ex.A6, the work in progress during the year 2008-09 was shown as Rs.44,500/- while in Ex.A7, the work in progress during the year 2009-10 was shown as Rs.65,000/- Ex.A8 shows that the work in progress was shown as Rs.7,15,000/- while Ex.A9 shows that the work in progress was shown as Rs.8,65,000/-. There was no other material to corroborate the work in progress in terms of money as mentioned in Exs.A8 and A9. There was vast difference regarding the work in progress in terms of money between Exs.A7 and A8 or A9. The Tribunal observed that though the net income mentioned in Exs.A6 and A7-income tax returns was the self-serving statement of the deceased, yet, it was inclined to place reliance upon those two documents to fix the income of the deceased, as the said income tax returns-Exs.A6 and A7 were submitted by the deceased prior to his death.

26. In ***Malarvizhi and others v. United India Insurance Company Limited and another*** [2] **,** the Hon'ble Apex Court reiterated that the determination must proceed on the basis of the income tax return, where

[2] (2020) 4 Supreme Court Cases 228

available. The income tax return is a statutory document on which reliance may be placed to determine the annual net income of the deceased. It is apt to refer paragraph 10 of the said judgment.

> *".....We are in the agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for Assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased."*

27. In ***K.Ramya v. National Insurance Company Limited*** [3], on the point of 'Reliability on income tax returns and audit reports to determine 'Loss of Income'" the Hon'ble Apex Court observed and held as under:

> "*13. The Deceased in the present case was a businessman and during the proceedings before the Tribunal, the Appellants produced the relevant income tax returns, audit reports and other relevant documents pertaining to the commercial ventures of the Deceased to prove the loss of income attributable on account of his sudden demise. The Tribunal relied on the same and computed the income by taking an average of the income recorded in three prior financial years (FY 2000-2001, FY 2001-2002 and FY 2002-2003) to determine the compensation under the head of 'loss of income'.*
>
> *14. In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in* ***Amrit Bhanu Shali v National Insurance Co. Ltd [(2012) 11 SCC 738 para 17] and Kalpanaraj v Tamil Nadu State Transport Corpn [(2015) 2 SCC 764 para 8],*** *wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor*

[3] [2022] 18 S.C.R 238

it is the stand taken by the Insurance Company that the said reports inflated the income.

15. At this stage, to facilitate our analysis, it would be pertinent to divide the income as mentioned in the audit reports into two parts – (a) Income from Business Ventures and other Investments and (b) Income from House Property and Agricultural Land. It should be emphasized that these audit reports only showcase amounts which specifically stem from the shares and interest held by the Deceased in the businesses and it is not a case wherein the entire turnover of businesses are depicted as Deceased's income. Moreover, it deserves to be clarified that the income under the abovementioned two parts have been computed at gross value as per the audit reports and includes the deductions such as interest paid on loans and expenses incurred by the deceased."

28. In ***K.Ramya*** supra on the point of 'Treatment of Income from House property and Agricultural land', the Hon'ble Apex Court observed and held as under:

"*19. As per the audit reports, the Deceased used to draw all his rental income from the share he held in a commercial building known as 'Lakshmi Complex' and the remaining income was from his agricultural lands, which have been bequeathed to his legal heirs on his death. The audit reports indicate the amounts under the 'Income from House Property and Agricultural Land' as per follows – (i) for FY 2000-2001 is Rs.6,90,396/- (ii) for FY 2001-2002 is Rs.6,47,127/- (iii) for FY 2002-2003 is Rs.6,14,329/- and (iv) for FY 2003-2004 is Rs.4,78,240/-. The average of these amounts comes up to Rs.6,07,523/-.*

20. At this juncture, we must note the decision in ***Shashikala v Gangalakshmamma****[(2015) 9 SCC 150)] whereby this court deducted the entire amount earned as income from house property while determining the compensation under the Act. The decision in* ***Shashikala*** *was a split decision because of disagreement between the bench on whether future prospects are to be considered for awarding compensation when the deceased is a self-employed person. Accordingly, the matter was tagged and heard along with* ***Pranay Sethi****, wherein this court had conclusively decided the abovementioned issue regarding future prospects. After that, the matter was remitted back to a three-judge bench for redetermination of compensation, wherein this court again deducted the entire amount earned as income from house property.*

21. Now, the sole issue which remains before this court is whether the entire amount under 'Income from House Property and Agricultural Land' should be deducted or not. In this respect, we are guided by the observations of this court in ***State of Haryana v Jasbir Kaur[(2003) 7 SCC 484],*** *wherein it was noted that –*

8. x-x-x-x

The land possessed by the deceased still remains with his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. <u>Attendant circumstances have to be considered</u>.

(Emphasis Applied)

In our opinion, the abovementioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations."

29. With respect to the treatment of net income from agricultural land it was observed that as a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 % of the total rental income, but the acceptable range can be increased in light of specific circumstances. The same principle was held to be applicable with respect to income from agricultural land.

30. We are of the view that the computation of the income of the deceased should be made based on Income Tax returns, in the present case also on Exs.A8 and A9, even if they were filed after the death of the deceased, as the deductions had already been made during his life time and as those returns

were accepted by the Income Tax Department as proved by P.W.3-Income Tax Officer.

31. We find that the respondents 1 and 2 in the claim petition were set ex parte. No oral evidence was reported by the 3rd respondent-United Insurance Company. So, there was no evidence contrary to the evidence of P.W.3, who proved the documents that the income tax returns Exs.A.8 and A.9. In the absence of any contrary evidence as also in the presence of all these documentary evidence Exs.A.8 and A.9 duly proved by P.W.3 that they were accepted by the income tax department, in our view, there was no reason for the Tribunal to have not relied upon Exs.A.8 and A.9 to determine the income i.e., I.T.Rs. These documents Exs.A.8 and A.9 in our view are reliable evidence to determine the income of the deceased. The reason given by the Tribunal that there was no material placed by the petitioners to corroborate the work in progress in terms of money mentioned in Exs.A.8 and A.9 and consequently it was not placing reliance thereon is unsustainable. Once Exs.A.8 and A.9 were accepted by the income tax department and the TDS was deducted during the life time of the deceased, the approach of the Tribunal in rejecting Exs.A.8 and A.9 for determination of the income on the ground that they were filed after the death is legally unsustainable. So far as the view expressed by the Tribunal that in Exs.A.8 and A.9, the net income of the deceased was shown as Rs.12,24,450/- and Rs.15,13,875/- respectively and consequently there was possibility of showing an exaggerated income of the deceased in Exs.A.8 and A.9, after the death of the deceased for the

purpose of getting huge compensation is merely an apprehension, expressed by the Tribunal without any foundation and specifically when the TDS was deducted in the life time of the deceased. The Tribunal ought not to have drawn such inference.

POINT No.3:

32. The average net income, the Tribunal considered, as Rs.4,56,854/- which was rounded off to Rs.4,50,000/- per annum. It was so based on Exs.A6 and A7. The Tribunal, thus, fixed the net annual income of the deceased as Rs.4,50,000/- by the date of accident. The Tribunal on the said amount awarded 30% towards future prospects at the age of 46 years and after deducting the income tax as per the slab during the relevant period, it determined as Rs.5,30,000/- per annum.

33. We have perused Ex.A.6 income tax return for the assessment year 2009-2010. The total income of the deceased from his own business and also the other source is Rs.3,28,708/-. Ex.A.7 for the assessment year 2010-2011 shows the total income from own business and other source as Rs.5,85,259/-. Ex.A.8 for the assessment year 2011-2012 shows the total income as Rs. 1224450/- and Ex.A.9 for the assessment year 2012-2013 shows the total income as Rs. 1513875/-. The average of net annual income after deducting the tax payable comes to as Rs. 7,37,247/-.

34. With respect to the agricultural income in Exs.A.6 (2009-2010) it shows total income as Rs. 1,59,200/-. Ex.A.7 (2010-2011) shows total income as Rs. 3,95,100/-. .A.8 (2011-2012) shows total income as Rs. 3,22,500/-..A.9 (2012-2013) shows total income as Rs. 1,87,500/-. The average of the agricultural income comes to Rs. 2,66,075/-. Upon the said agricultural income granting supervisory charges at 15%, it comes to Rs. 39,911/- rounded off to Rs. 40,000/-.

35. At the age of 45 years, the appropriate multiplier as per the judgment in the case of **Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another**[4] is '14'.

36. Under the head of loss of estate, they would be entitled to Rs.18,000/- and for loss of consortium, there being five claimants and the Tribunal having held that they are all dependents and entitled for compensation in view of the **National Insurance Company Limited vs. Pranay Sethi**[5] **& Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others**[6]under the head of loss of consortium of the applicants were entitled to Rs.48,000/- each, and towards funeral expenses Rs. 18,000/- in view of a three-Judge Bench of the Hon'ble Apex Court in ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors,***[7] in which the Hon'ble

[4] (2009) 6 SCC 121
[5] (2017) 16 SCC 680
[6] (2018) 18 SCC 130
[7] (2021) 11 SCC 780

Apex court after considering Pranay Sethi (Supra), observed that the aforesaid conventional heads are to be revised every three years @ 10%. Accordingly, the three Conventional Heads have been increased by 20%.

37. The total amount of compensation would come to as shown in the table below:-

<table>
<tr><th>Sl. No.</th><th>Head</th><th colspan="4">Calculated by the Hon'ble High Court</th></tr>
<tr><td rowspan="11">1.</td><td rowspan="11">Net Annual Income</td><td></td><td>Gross Total Income</td><td>Net Tax Payable</td><td>Actual Annual Income</td></tr>
<tr><td><u>A6</u> (2009-2010)</td><td>3,28,708/-</td><td>16,215/-</td><td>3,12,493/-</td></tr>
<tr><td><u>A7</u> (2010-2011)</td><td>5,85,259/-</td><td>1,00,505/-</td><td>4,84,754/-</td></tr>
<tr><td><u>A8</u> (2011-2012)</td><td>12,24,450/-</td><td>2,63,510/-</td><td>9,60,940/-</td></tr>
<tr><td><u>A9</u> (2012-2013)</td><td>15,13,875/-</td><td>3,23,074/-</td><td>11,90,801/-</td></tr>
<tr><td colspan="3">Average</td><td>7,37,247/-</td></tr>
<tr><td colspan="4">Agricultural Income</td></tr>
<tr><td><u>A6</u> (2009-2010)</td><td colspan="3">1,59,200/-</td></tr>
<tr><td><u>A7</u> (2010-2011)</td><td colspan="3">3,95,100/-</td></tr>
<tr><td><u>A8</u> (2011-2012)</td><td colspan="3">3,22,500/-</td></tr>
<tr><td><u>A9</u> (2012-2013)</td><td colspan="3">1,87,500/-</td></tr>
<tr><td>Average</td><td colspan="3">2,66,075/- (15% = 39,911)</td></tr>
<tr><td colspan="3">Total Average Income for 4 FY +</td><td>7,37,247/- +</td></tr>
<tr><td></td><td>Future prospects</td><td colspan="2">Supervisory charges for the Agricultural Lands (15%)</td><td>40,000/- = 7,77,247/-</td></tr>
<tr><td></td><td></td><td colspan="4"></td></tr>
</table>

3.	Total income (Net annually)	10,10,421/- (@7,77,247/- + 30%)
4.	Deduction towards personal expenditure (1/4th)	7,57,816/- (2,52,605/-)
5.	Multiplier of 14	**1,06,09,424/-** (@7,57,816/- x 14)
6.	**Conventional Heads: (With an increase of 20% in total)**	
	Loss of Consortium	Rs. 2,40,000/- (Rs. 48,000/- x 5)
	Loss of Estate	Rs. 18,000/-
	Funeral expenses	Rs. 18,000/-
7.	**Total compensation awarded**	**1,08,85,424/-**

38. The Tribunal has awarded 9% interest per annum. In ***Kumari Kiran vs. Sajjan Singh and others,***[8] the Hon'ble Apex Court set aside the judgment of the Tribunal therein awarding interest @ 6% as also the judgment of the High Court awarding interest @7.5% and awarded interest @ 9% p.a. from the date of the claim petition. In ***Rahul Sharma & Another vs. National Insurance Company Limited and Others,***[9] the Hon'ble Apex Court awarded @ 9% interest p.a. from the date of the claim petition. Also, in ***Kirthi and another vs. Oriental Insurance Company Limited,***[10] the Apex Court allowed interest @ 9% p.a. which is upheld.

[8] (2015) 1 SCC 539
[9] (2021) 6 SCC 188
[10] (2021) 2 SCC 166

39. The appellants would be entitled in total Rs.1,08,85,424/- towards compensation with interest thereon at 9% per annum from the date of filing of the claim petition till the date of realisation/deposit.

40. The respondents shall make the payment by depositing the amount in total as per this judgment before the Tribunal, after adjusting the amount if any already deposited/paid, within two months. The claimants shall be allowed to withdraw the compensation amount with interest in the proportion, in terms of the award of the Tribunal.

41. With the above directions and observations, the appeal is partly allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Dated:18.07.2024
Note:
L.R copy to be marked.
B/o.
MP

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

M.A.C.M.A.NO:3420 OF 2014

(per Hon'ble Sri Justice Ravi Nath Tilhari)

Dated: 18.07.2024
MP