

Basanti Devi and Anr Vs. Mahesh Ram and Ors

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Court : Jharkhand

Decided On : Mar-10-2016

Appellant : Basanti Devi and Anr

Respondent : Mahesh Ram and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Miscellaneous Appeal No. 55 of 2013 1. Basanti Devi wife of Andu Bhuiyan 2. Andu Bhuiyan @ Anduwa Bhuiyan, son of late Sanichar Bhuiyan Both are residents of Village Kumrang Kala, PO & PS Tandwa, District-Chatra Appellants -V e r s u s- 1. Mahesh Ram (owner), son of Late Kauri Ram, resident of village Binglat, PO & PS Tandwa, District-Chatra 2. Ganga Sao (driver) son of Hemraj Sao, resident of Village Keredari, PO & PS- Keredari, District- Hazaribagh 3. United India Insurance Company Ltd. Hazaribag, PO & PS- Hazaribag, District- Hazaribag ... Respondents CORAM: HONBLE MR. JUSTICE RAVI NATH VERMA For the Appellants : Mr. Vijay Kumar Sharma, Advocate For the respondent nos. 1 & 2:- Mr. Jai Prakash, Sr. Advocate, M/s. Yogesh Modi & Chaitali C.Sinha, Adv. For respondent no. 3 :- Mr. H.K.Singh, Advocate ----- C.A.V. ON2101.2016 PRONOUNCED ON-10/03/2016 The claimants/appellants have filed this appeal against the Judgment/Award dated 27th day of July, 2012 passed by Claim Tribunal at Chatra in Claim Case No. 04 of 2009 seeking increase in Compensation awarded by the Claim Tribunal.

2. The father and mother of Bijay Bhuiyan (the deceased) filed a claim for Rs.4,00,000/- before the Motor Accident Claim Tribunal, Chatra with pleading that

on 27.06.2008 when their son Bijay Bhuiyan (the deceased) aged about 20 years and other labourers were going to Tandwa after loading bricks on the trailer of the tractor, the driver of the tractor was driving the vehicle rashly and negligently resulting in the deceased fell down from the tractor and crushed under its wheels and died on the spot. The deceased was earning Rs.3,000/- per month. Whereafter, Tandwa P.S. Case no. 50 of 2008 was instituted under Sections 279 and 304(A) of the I.P.C. against the driver of the tractor. The Insurance Co. appeared and filed written statement denying the claim and a separate petition was also filed under Section 170 of the M.V. Act.

3. The court below after appreciating the pleadings and evidences on record by judgment impugned held that the Insurance Co. i.e. United India Insurance Company Ltd. is liable to pay the total compensation amount of Rs. 3,89,000/-. However, as the claimants have already received Rs. 50,000/- under the heading of no fault liability, the 2 Insurance Co. was directed to pay Rs.3,39,000/- to the claimants within one month from the date of the Award after deducting the amount already paid, failing which Insurance Co. will have to pay interest @ 7 % per annum from the date of Award till the date of realization.

4. Assailing the impugned judgment/Award as bad in law and against the settled principle, the learned counsel appearing for the appellants mainly confined his argument on the issue while calculating the just compensation, the court below failed to appreciate the entitlement of the future prospect of the deceased in view of the ratio decided by the Honble Supreme Court in several judgments.

5. Contrary to the above, learned counsel for the Insurance Co. seriously contended that the deceased was working as a labourer without provision of annual increment and so the court below has rightly considered the just compensation by calculating the annual income and deducting the personal and living expenses and no interference is required in the judgment impugned.

6. The moot question for consideration by this Court is whether the deceased was entitled to any incremental enhancement in compensation amount by way of future prospects? 7. The Honble Supreme Court in Santosh Devi Vs. National Insurance Company Limited and others; (2012) 6 SCC421 held in paragraph 14 and 17 as

follows:

14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in *Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*; (2009) 6 SCC121 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 nave 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.

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 season basis 3 8. The court below while calculating the just compensation has considered the income of the deceased as Rs.120/- per day, which was also the claim of the claimants, holding that casual labourer does not have work for each day of the month and calculated the monthly income on an average of 25 working days in a month and so the monthly income of the deceased has been calculated as Rs.3,000/-. Since the deceased died unmarried leaving behind his father and mother, the court below calculated the compensation considering the age group of the father that was 40 years and deducted half of the income towards personal expenditure on person of the deceased but calculating the amount considered the multiplier of 16.

9. Apparently, the court below while calculating the just compensation has not followed the correct multiplier as held in the case *Sarla Verma (Smt.) (supra)* for the claimants of age group of 40 years. The approved multiplier is 15. Besides that, the court below has also not considered the future prospects of the deceased in the light of the ratio decided in *Santosh Devi case (supra)*. The Honble Supreme

Court in another judgment *Rajesh and others Vs. Rajbir Singh and others*; (2013) 9 SCC54 while considering the future prospect has held in paragraph-8 as follows:-

8. Since, the Court in *Santosh Devi case* (supra) actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma case* (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30 % always; it will also have a reference to age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50 % to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30 % in case the deceased was in the age group of 40 to 50 years.

10. In *Reshma Kumari and others Vs. Madan Mohan and another*; (2013) 9 SCC65 while dealing with a similar situation where the deceased was a bachelor and claimants were parents, the Honble Supreme Court deducted 50 % towards his personal and living expenses assuming that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of getting married in a short time in which even the contribution to the parents and siblings is likely to cut drastically. 4 11. In the instant case, the deceased was in the age group of 20 years and the claimants, as calculated by court below, come within the age group of 40 years. Hence in the light of the ratio decided in the above case, the claimants-appellants are entitled to addition of 50 % increase to the actual income of the deceased while computing the future prospects. Applying the principles laid down by the Honble Supreme Court in the above cases, the compensation in the instant case has to be re-assessed as follows:-

Sl. No.	Heads	Calculation
(i)	Monthly income as calculated	Rs. 3000/- by the court below and claimed by the claimants
(ii)	30 % of monthly income to be added as future prospects	Rs. 3,000 + Rs. 900 = Rs. 3,900/- per month
(iii)	The income comes after deducting 1/3rd towards personal expenses of the deceased	(Rs. 3,900 - Rs. 1,300) = Rs. 2,600/- per month
(iv)	Compensation after multiplier	Rs. (2,600 x 12 x

15) = of 15 as applied in view of Rs.4,68,000/- Sarla Verma case (supra) 12. In the result, the appeal is allowed, the impugned judgment of the court below is, hereby, set aside and it is declared that the claimants-appellants shall be entitled to a compensation of Rs.4,68,000/- and also Rs.10,000/- as funeral expenses. Thus, the total compensation amount payable to claimants-appellants would be Rs.4,78,000/-. This total compensation amount after enhancement will carry interest @ 7 % per annum as awarded by the court below from the date of filing of the claim application till its realisation. The amount, which has already been paid to the claimants-appellants, shall be deducted from the total enhanced compensation amount. The Insurance Company is directed to pay the enhanced compensation amount within two months from today i.e. the date of judgment of this appeal. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 10th March, 2016 Ritesh/N.A.F.R.

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