



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2024
(Arising out of SLP(C) No.27565/2023)

ROJALINI NAYAK & ORS. ... APPELLANT(S)

Versus

AJIT SAHOO & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave Granted.

2. This appeal questions the correctness of the final judgment and order dated 24th April, 2023, passed in MACA No.1168 of 2016 by the High Court of Orissa at Cuttack. The impugned judgment was in turn rendered in an appeal arising out of judgment dated 22nd August, 2016, passed by the Third Motor Accident Claims Tribunal, Jagatsinghpur in MAC No.301/2010.

3. The background facts leading to the present appeal are : –

3.1 The claimant-appellant is the wife of the deceased, namely, Bichitra Nayak @ Bagula. The other claimant-appellants are the mother and two

sons of the deceased. The deceased was employed as a '*Khalasi*' in an ambulance bearing registration No.OR-04-J-5604. On 4th June, 2010, while the ambulance was on its way from Chandikhol to Paradeep, it collided with the back of a truck bearing registration No.OR-13-4727. The driver of the vehicle, namely, Prakash Palei sustained grievous injuries and the husband of the claimant-appellant, died on the spot.

3.2 At the time of death, the deceased an employee of ESSAR Steel Orissa Limited, aged 44 years, was earning Rs.5,000/- per month. The Tribunal noted that after the accident, the owner of the ambulance, paid a sum of Rs.6,25,000/- towards compensation to the bereaved family.

3.3 The sum and substance of the issue before the Tribunal was, (a) maintainability of the action initiated for award of monetary compensation; (b) rash and negligent conduct of the truck driver; (c) whether the cause of death of the deceased was an accident; (d) compensation payable, if any, to what extent, and by whom.

3.4 The Tribunal concluded that no rash and negligent act could be attributed to the driver of the truck which resulted in the death of the claimant-appellant's husband. Consequent to the above, it was held that no liability could be fastened on either the owner or the insurer of the truck to compensate the claimant-appellants.

3.5 Thus, the Tribunal held the claim petition not to be maintainable.

4. On appeal, the High Court observed :

“10....The deceased was aged about 36 years as on 01.01.2002 as per his Voter I-Card produced by Mr. Satapathy, learned counsel for respondent No.4 in course of hearing. This is not disputed by the claimants. As such, his age on the date of accident is taken between 44 to 45 years, coming within the slab of 41-45 years. So the applicable multiplier is ‘14’. Adding future prospects to the extent of 25% and deducting 1/3rd towards personal expenses, the loss of dependency comes to Rs.7,00,000/-. Adding Rs.1,00,000/- towards loss of consortium for the widow and two children and Rs.30,000/- towards loss of estate and funeral expenses, the total compensation is determined at Rs.8,30,000/-.

11. As stated earlier, since receipt of compensation of Rs.6,25,000/- from the owner of the Ambulance has been established on record and accepted at the Bar, the same is adjusted from total compensation amount payable. It is also established that the same has been paid immediately after the accident and before filing of the claim application. Therefore, the balance amount of Rs.2,05,000/- is liable to be paid by both the insurers along with interest @ 6% per annum.”

5. Undisputably, only the claimant-appellants have preferred the instant appeal with the owner and insurer of the offending vehicle having accepted the findings of fact. As can be seen from the extracted portion, the High Court deducted 1/3rd towards personal expenses. However, a perusal of the affidavit filed by the wife of the deceased (claimant-appellant No.1) before the High Court shows four dependents on the deceased hence the deduction has to be by 1/4th and not 1/3rd as directed by the High Court.

6. In regard to future prospects, the High Court has taken 25% in addition to the actual salary. It is submitted that 30% addition is to be applied. In this regard we may notice para 59.3 of the Constitution Bench decision in *National Insurance Co. Ltd. v. Pranay Sethi*¹, which holds that if the deceased is holding

¹ (2017) 16 SCC 680

a permanent job, 30% addition to the actual salary is to be made when the age of the deceased is between 40 to 50 years. The submission of the learned counsel for the claimant-appellants is to be accepted.

7. In respect of loss of consortium towards four persons, the High Court has awarded Rs.1,00,000/-. We find this computation not to be in consonance with *Pranay Sethi* (supra). Para 52 of the said judgment reads as under :

“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to *Santosh Devi* [*Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

8. Under the heads of loss of estate, loss of consortium and funeral expenses, this Court awarded Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. It was further directed that the amount so quantified should be enhanced by 10% every three years. By that metric, with the amount standing at Rs.40,000/- in the year 2017, today it would be Rs.48,400/- (The amount having been enhanced by 10% twice). Hence, $48,400 \times 4 = \text{Rs.}1,93,600/-$.

9. In conclusion, the enhanced amount of compensation, as modified as a result of the above discussion is encapsulated in a tabular format hereinbelow :-

Heads	Tribunal	High Court	Final amount payable
Income	-	Rs.5,000/- p.m. Rs.60,000/- p.a.	Rs.5,000/- p.m. Rs.60,000/- p.a.
Future prospects	-	25% i.e. Rs.15,000/-	30% i.e. Rs.18,000/-
Personal expenses	-	1/3 rd of Rs.75,000/- = Rs.25,000/- (Rs.50,000 left)	1/4 th of Rs.78,000 = Rs.19,500/- (Rs.55,500/- left)
Multiplier	-	14	14
Loss of consortium to P1-P4	-	Rs.1,00,000/-	Rs.48,400 x 4 = Rs.1,93,600/-
Loss of Dependency	-	Rs.7,00,000/-	No change
Funeral expenses + Loss of Estates	-	Rs.30,000/-	Rs.18,150 + Rs,18,150 = Rs.36,300/-
Total compensation	Nil as Rs.6,25,000/- already paid by the Employer of the deceased	Rs.8,30,000/- [-] Rs.6,25,000/- (as already paid) = Rs.2,05,000/- (remaining)	Rs.10,06,900/- [-] (Rs.6,25,000/- (already paid) = Rs.3,81,900/- (remaining)
Rate of Interest	-	6%	7.5%

10. The appeal is allowed in the aforesaid terms. The impugned judgment dated 24th April, 2023 of the High Court of Orissa at Cuttack in MACA No.1168/2016 titled as *Rojalini Nayak & Ors. v. Ajit Sahoo & Ors.* is modified to the extent indicated in the chart. The amount so directed shall accrue from the date of filing of claim petition.

Pending applications, if any, are also disposed of.

.....**J.**
(C.T. RAVIKUMAR)

.....**J.**
(SANJAY KAROL)

Dated : August 07, 2024;
Place : New Delhi.