HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No.3175/2017

United India Insurance Company Limited, 20, Mohan House, Transport Nagar, Jaipur Having Its T.P. Claims Office At T.P. Claims Hub, 93, Saphire Centre, Opp. ESI Hospital, Ajmer Road, Jaipur Through Its Constituted Attorney.
(Insurer Motor Cycle No.R.J. 14 WS 4986)

----Appellant

Versus

1. Sumitra Devi W/o Late Sh. Ratan Lal, House No. 14, Sabji Mandi Road, Ward No. 14, Phulera, Dist. Jaipur
2. Kumari Khushi D/o Late Sh. Ratan Lal, Minor Through Natural Guardian And Mother Smt. Sumitra Devi, House No. 14, Sabji Mandi Road, Ward No. 14, Phulera, Dist. Jaipur
3. Kumari Divya D/o Late Sh. Ratan Lal, Minor Through Natural Guardian And Mother Smt. Sumitra Devi, House No. 14, Sabji Mandi Road, Ward No. 14, Phulera, Dist. Jaipur
4. Manav S/o Late Sh. Ratan Lal, Minor Through Natural Guardian And Mother Smt. Sumitra Devi, House No. 14, Sabji Mandi Road, Ward No. 14, Phulera, Dist. Jaipur
5. Bablu Mehra S/o Late Sh. Bhawarlal Mehra, 334, Aamagarh, Vaidhpuri Parvat Colony, Ward No. 42, Transport Nagar, Jaipur (Driver Motorcycle No.R.J. 14 WS 4986)
6. Ramjilal Mourya S/o Late Sh. Moolchand Mourya, House Number 123, Ramnagar Colony, Balaji Mod, Goner Road, Jaipur
   (Register Owner Motorcycle Number R.J. 14 WS 4986)
7. Babulal S/o Late Sh. Moolchand Mourya, House Number 123, Ramnagar Colony, Balaji Mod, Goner Road, Jaipur
   (Power of Attorney holder Motorcycle Number R.J. 14 WS 4986)
8. Malchand Rajora S/o Late Sh. Gangaram, House Number 14, Sabji Mandi Road, Ward No. 14, Phulera, Dist. Jaipur

----Respondents

Connected With

S.B. Civil Miscellaneous Appeal No.4143/2017

1. Smt Sumitra Devi W/o Late Ratan Lal, R/o H.no. 14, Subzi Mandi Road, Ward No.14, Phulera, District Jaipur Raj.
2. Kumari Khushi D/o Late Ratan Lal, R/o H.no. 14, Subzi Mandi Road, Ward No.14, Phulera, District Jaipur Raj. Minor Through Their Natural Mothr Smt Sumitra Devi W/o Late Ratan Lal,
3. Kumari Divya D/o Late Ratan Lal, R/o H.no. 14, Subzi Mandi Road, Ward No.14, Phulera, District Jaipur Raj. Minor Through Their Natural Mothr Smt Sumitra Devi W/o Late Ratan Lal,
4. Manav S/o Late Ratan Lal, R/o H.no. 14, Subzi Mandi Road, Ward No.14, Phulera, District Jaipur Raj. Minor Through Their Natural Mothr Smt Sumitra Devi W/o Late Ratan Lal,

----Appellants

Versus

1. Bablu Mehra S/o Late Bhabwar Lal Mehra, R/o 334, Aamaa Garh, Vaidhpuri Parvat Colony, Ward Number 42, Transport Nagar, Jaipur.
   (Driver Motorcycle Number R.J. 14 WS 4986)
2. Ramji Lal Morya S/o Late Shri Moolchand Morya, R/o H.no. 123, Ramnagar Colony, Balaji Mod, Goner Road, Jaipur Rajasthan.
   (Registered Owner Motorcycle Number R.J. 14 WS 4986)
3. Babulal S/o Late Shri Moolchand, R/o H.no. 123, Ramnagr, Colony Balaji Mod, Goner Road, Jaipur Rajasthan. (Power of attorney holder for registered owner Motorcycle Number R.J. 14 WS 4986)
4. The United India Insurance Company Ltd. 20, Mohan House, Transport Nagar, Jaipur Rajasthan.
   (Insurer Motorcycle Number R.J. 14 WS 4986)
5. Maalchand Rajora S/o Late Gangaraam, R/o H.no. 14, Subzi Mandi Road, Ward No.14, Fulera, District Jaipur Raj.

----Respondents

For Appellant(s) : Mr. Lokesh Parihar

For Respondent(s) : Mr. Kaleem Ahmed Khan

JUSTICE ANOOP KUMAR DHAND

<u>Order</u>

<u>23/02/2026</u>

1. Since common questions of law and facts are involved in both these appeals and both of them are arising out of the same impugned judgment, hence, with the consent of counsel for the parties, they are heard and taken up together for final disposal and are being decided by this common order.

2. These instant appeals have been preferred against the impugned judgment and award dated 23.03.2017 passed by the Motor Accident Claims Tribunal and Essential Commodities Act, Jaipur Metropolitan, Jaipur (for short “the Tribunal”) by which the claim petition submitted by the claimants has been partly allowed and the insurance company has been directed to pay a compensation of Rs.12,38,574/- to the claimants.

3. Feeling aggrieved and dissatisfied by the aforesaid award, both the Insurance Company as well as the claimants have approached this Court by way of filing two separate appeals. The claimants have approached this Court seeking enhancement of the amount of compensation, awarded by the Tribunal, whereas the Insurance Company has approached this Court for quashing of the aforesaid judgment and award.

4. Learned counsel appearing on behalf of the Insurance Company submits that the alleged incident occurred on

09.05.2013 and a *rojnamcha* report was registered with the concerned Police Station on the same day where the number of the offending vehicle was not mentioned. Learned counsel submits that subsequently the number of the offending vehicle was mentioned in the FIR in order to file the claim petition against the Insurance Company. Hence, under these circumstances, the impugned judgment is not sustainable in the eyes of law.

5. Learned counsel further submits that while assessing the income of the deceased, the Tribunal has treated him as a daily wager and accordingly, minimum wage of an unskilled labour was determined. However, while determining minimum wages, for the purpose of calculating loss of income, the monthly income of the deceased was determined as Rs.4980/-, but at the relevant time, the monthly wages of an unskilled labour was Rs.4316/-. Hence, under these circumstances, the quantum of loss of income has been determined on a higher side without any basis. He further submits that under the head of loss of consortium, an excess amount of Rs.1,75,000/- has been awarded to the claimants, while as per the judgment passed by the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 860**, each claimant is entitled to get a sum of Rs.40,000/- under the head of loss of consortium. Hence, the claimants, being four in number, are entitled to get a lumpsum amount of Rs.1,60,000/- under the head of loss of consortium. Lastly, he argued that even under the head of future prospects, the Tribunal has determined the same at an excess rate of 50% in favour of the claimants inasmuch as,

looking to the age of the deceased, i.e. 33 years, they are entitled to get an additional amount of compensation under the head of future prospects at a rate of 40%. Hence, under these circumstances, interference of this Court is warranted.

6. *Per contra*, learned counsel appearing on behalf of the claimants opposed the arguments raised by learned counsel for the Insurance Company and submitted that the deceased was performing the job of a Sales Representative at a clothing store and his monthly income was Rs.8,000/-. Learned counsel submits that no evidence, in rebuttal, of the same was produced by the Insurance Company in the evidence. Therefore, the Tribunal should have determined the monthly income of the deceased as Rs.8,000/- instead of Rs.4980/-. Hence, under these circumstances, the award passed by the Tribunal needs to be suitably enhanced, under the head of loss of income, by this Court.

7. Learned counsel submits that as far as the arguments raised by counsel for the Insurance Company with regard to excess amount of compensation under the head of loss of love & affection and future prospects are concerned, the same have no bearing as the judgment passed by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra) is not applicable in the facts and circumstances of the instant case since the accident occurred in the year 2013 and the judgment in the case of **Pranay Sethi** (supra) was passed by the Hon'ble Apex Court at a later stage. Hence, under these circumstances, interference of this Court is not warranted in the appeal submitted by the Insurance Company

and the same is liable to be rejected, however, the appeal submitted by the claimants is liable to be accepted and the amount of compensation is liable to be enhanced in favour of the claimants.

8. In the alternative, lastly he argued that in case the Tribunal had arrived at the conclusion that the deceased was a daily wager, then also under such circumstances, the minimum wages should have been determined for 30 days in a month, but the Tribunal has granted minimum wages for a period of 26 days in a month. In support of his contentions, he has placed reliance upon the judgment passed by this Court in the case of **Nandu Devi & Another Vs. Sohanlal and Others** while deciding **S.B. Civil Misc. Appeal No.769/2017** vide order dated 23.02.2022, wherein it has been held that while calculating the monthly income of the deceased, the same shall be determined for 30 days in a month instead of 26 days. He submits that, under these circumstances, the impugned award needs to be suitably enhanced.

9. Heard and considered the submissions made at the Bar and perused the material available on the record.

10. Perusal of the record indicates that the deceased met with an accident on 09.05.2013, wherein he sustained injuries and was taken to and admitted in the SMS Hospital, Jaipur and during the course of treatment, he passed away on 10.05.2013.

11. In the considered opinion of this Court, there was no reason or occasion available with the complainant to lodge the FIR immediately after the accident because it is not expected from any

family member of the deceased to lodge FIR at the first instance before taking the deceased to hospital for treatment in order to save his life.

12. Hence, under these circumstances, the delay caused in lodging the FIR and not mentioning the number of the offending vehicle in the *rojnamcha* report cannot be held to be fatal to the case of the claimants. Hence, under these circumstances, this Court finds no merit and substance in the aforesaid arguments raised by learned counsel for the Insurance Company and the same has been rejected.

13. Now this Court proceeds further to decide the issue as to whether the deceased was working in the capacity of a Sales Representative with the cloth store (Nihar Saree Center)?

In this regard, except the oral evidence, no documentary evidence has been produced, on record, to demonstrate that the deceased was working at Nihar Saree Center. Neither any appointment letter nor any serving certificate has been produced on the record of the Tribunal, hence, under these circumstances, no evidence was available with the Tribunal to believe and rely upon such contentions raised by the claimants before the Tribunal. The Tribunal has, thus, not committed any error in treating the deceased as a daily wager.

14. Now next question which remains for consideration of this Court is as to whether a daily wager, at the relevant time, when the accident took place, was entitled to get the amount of compensation, under the head of loss of income, as Rs.4980/- per month or not?

It is true that at the time of accident, the minimum wages of an unskilled daily wager were Rs.166/- per day and for 26 days, he is entitled to get a sum of Rs.4316/-, but while calculating the loss of income, the wages of the deceased have been considered for 26 days in a month instead of 30 days.

15. This Court in the case of **Nandu Devi** (supra) has categorically held that in such like matters, the income of deceased should be taken into account for 30 days in a month and not for 26 days, hence, under these circumstances, the monthly income of the deceased would be Rs.4980/-, which has already been granted by the Tribunal and therefore, the same does not require any interference by this Court.

16. So far as other arguments with regard to loss of consortium and future prospects are concerned, the Hon'ble Apex Court in the case of **Pranay Sethi** (supra) has held that each claimant is entitled to get a sum of Rs.40,000/- under the head of loss of consortium, hence, under these circumstances, they are entitled to get a total sum of Rs.1,60,000/- instead of Rs.1,75,000/- as awarded by the Tribunal. The Tribunal has awarded Rs.10,000/- to the father of the deceased. In the considered opinion of this Court, he is also entitled to get compensation for the loss of consortium, love and affection amounting to Rs.40,000/-.

17. Similarly, looking to the fact that the age of the deceased was below 40 years, i.e., 33 years, at the time of accident/death, the dependents of the deceased are entitled to get compensation under the head of future prospects at the rate of 40% instead of 50%, as awarded by the Tribunal. Furthermore, so far as the head

of loss of estate and funeral expenses is concerned, a lumpsum amount of Rs.25,000/- only has been awarded to the claimants by the Tribunal, this Court is of the considered opinion that the claimants are entitled to get a sum of Rs.30,000/- under this head, in accordance with the law laid down by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra).

18. It appears from the record that no amount has been awarded to the claimants towards the cost of litigation expenses; This Court after due diligence deems it just and proper to award an amount of Rs.55,000/- to the claimants as the cost of litigation expenses.

19. Therefore, the instant appeals submitted by the Insurance Company and the claimants stand disposed of by calculating the following amount of compensation in favour of the claimants:-

Monthly Income (along-with 40% future prospects)	166 x 30+166 x 30 x 40% 4980 + 1992 = Rs.6972/-
Annual Income	6972 x 12 = Rs.83,664/-
Multiplier to be applied	16 83,664 x 16 = Rs.13,38,624/-
Deduction towards personal and living expenses of the deceased (1/4th)	13,38,624 – 13,38,624 x ¼ = Rs.10,03,968/-
Funeral Expenses & Loss of estate	Rs.30,000/-
Loss of Consortium, love and affection	40,000 x 4 =Rs.1,60,000/-
Treatment Expenses	Rs.2894/-
Compensation awardable to proforma respondent-Malchand Rajora	Rs.40,000/-
Cost of litigation expenses	Rs.55,000/-

Total Compensation Awardable	Rs.12,91,862/-
Compensation awarded by the Tribunal	Rs. 12,88,574/-
Difference in compensation	Rs.3288/-

20. With the aforesaid observations and directions, the instant civil misc. appeals stand disposed of and the impugned award passed by the Tribunal stands modified to the extent that the claimants are entitled to get a sum of Rs.3288/- by way of enhanced compensation and the remaining terms and conditions of the impugned award shall remain intact.

21. It is further ordered that the enhanced compensation amount of Rs.3288/- be deposited in the Savings Bank Account of the claimant No.1. The insurance company is directed to deposit the enhanced amount within a period of four weeks from today with interest @6% per annum from the date of filing of the claim petition.

22. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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