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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01.08.2023

+ **MAC.APP. 246/2022 & CM 36428/2022**

ORIENTAL INSURANCE COMPANY LIMITED

..... Appellant
Through: Mr.Abhishek Gola &
Mr.Anshul Kumar, Advs.

versus

SANDEEP KUMAR & ORS.

..... Respondents
Through: Mr.V.P. Singh Bidhuri, Adv.
for R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The present appeal has been filed challenging the Award dated 04.06.2022 passed by the learned Motor Accidents Claims Tribunal, East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACP No. 80/2017 *inter alia* awarding Rs.17,92,224/- as compensation to the Claimant/husband of the deceased on the account of loss of dependency.

2. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding the compensation on the above head. He submits that the learned Tribunal erred in taking the notional income of the deceased, who was admittedly a

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MAC.APP. 246/2022



housewife/home-maker, at the minimum wages as notified by the State of Uttar Pradesh for the relevant period for a skilled worker, that is, Rs.8,890/- per month.

3. Placing reliance on the judgment of the Supreme Court in ***Rajendra Singh and Others v. National Insurance Company Limited and Others***, (2020) 7 SCC 256, he submits that the notional income of the deceased should have been taken at Rs.5,000/- per month at the time of her death.

4. He further submits that, in any case, as the educational qualification of the deceased was not proved on record and, admittedly, as she was only a homemaker, minimum wages as applicable to an unskilled category of worker should have been taken into account, that is, Rs.7,214/- per month.

5. On the other hand, the learned counsel for the respondent no.1, placing reliance on the judgment of this Court in ***National Insurance Co Ltd. v. Chitra & Ors.*** NC:2023:DHC:4838, submits that no error can be found in the Award passed by the learned Tribunal in having adopted the minimum wages for a skilled category of worker for determining the loss of dependency of the respondent no.1 on the deceased. He submits that taking into account the general expenses that are to be incurred by a household for the household work, in fact, the amount awarded is on the lesser side.

6. I have considered the submissions made by the learned counsels for the parties.



7. The contribution made by a homemaker and the services rendered by a woman in a household cannot be undermined or undervalued. She is the support system behind any household. Contribution of the homemaker was highlighted by the Supreme Court in ***Kirit & Anr. v. Oriental Insurance Company Ltd.***, (2021) 2 SCC 166, with Justice N.V. Ramana in his Supplementing opinion, observing and holding as under:-

“20. One category of non-earning victims that courts are often called upon to calculate the compensation for are homemakers. The granting of compensation for homemakers on a pecuniary basis, as in the present case, has been considered by this Court earlier on numerous occasions. A three-Judge Bench of this Court in Lata Wadhwa v. State of Bihar, while dealing with compensation for the victims of a fire during a function, granted compensation to housewives on the basis of the services rendered by them in the house, and their age. This Court, in that case, held as follows:

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs 12,000 p.a. in cases of some and Rs 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the



data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs 3000 per month and Rs 36,000 p.a.”

(emphasis supplied)

21. *In Arun Kumar Agrawal v. National Insurance Co. Ltd., this Court, while dealing with the grant of compensation for the death of a housewife due to a motor vehicle accident, held as follows:*

“26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc. but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the



husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term “services” is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”

(emphasis supplied)

The above pronouncement has been followed by this Court in its recent judgment in Rajendra Singh v. National Insurance Co. Ltd., wherein the notional income of a deceased housewife was calculated for the purposes of granting compensation in a motor accident case.

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25. The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much



more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle. However, despite all the above, the conception that housemakers do not “work” or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome.

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30. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals.

31. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.

32. One method of computing the notional income of a homemaker is by using the



formula provided in the Second Schedule to the Motor Vehicles Act, 1988, which has now been omitted by the Motor Vehicles (Amendment) Act, 2019. The Second Schedule provided that the income of a spouse could be calculated as one-third of the income of the earning surviving spouse. This was the method ultimately adopted by the Court in Arun Kumar Agrawal. However, rationale behind fixing the ratio as one-third is not very clear.

33. Apart from the above, scholarship around this issue could provide some guidance as to other methods to determine the notional income for a homemaker. Some of these methods were highlighted by a Division Bench of the Madras High Court in Deepika which held as follows:

“10. The Second Schedule to the Motor Vehicles Act gives a value to the compensation payable in respect of those who had no income prior to the accident and for a spouse, it says that one-third of the income of the earning surviving spouse should be the value. Exploration on the internet shows that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which evaluates her wages by assessing what she would have earned had she not remained at home viz. the opportunity lost. The second is, the partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker's salary is valued at half her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the replacement method.”

(emphasis supplied)

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MAC.APP. 246/2022



34. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

35. Whichever method a court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants

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41. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarised as follows:

41.1. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

41.2. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.



41.3 Various methods can be employed by the court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

41.4 The court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

41.5 The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

8. Therefore, grant of ‘just compensation’ on basis of notional income where the deceased is homemaker is no longer *res integra*. It is also settled principle of law that various methods can be employed by the Court to fix the notional income of a homemaker, depending upon the facts and circumstances of the case. Section 168 of the Motor Vehicles Act, 1988 provides for compensation which appears to be ‘just’ to be awarded by the Tribunal. In my opinion, one of the methods for determining compensation which is ‘just’ in case of a homemaker, can be the minimum wages notified by the State where the deceased was residing at the time of the accident.

9. In ***Rajendra Singh and Others*** (Supra), the accident had taken place on 25.12.2012. Whereas the accident in the present case has taken place on 23.01.2017. The Court in ***Rajendra Singh and Others*** (Supra), found that the notional income of the deceased could be held to be Rs.5,000/- per month at the time of the death. The same cannot be a fixed yardstick for all

times to come.



10. In my view, therefore, the adoption of the minimum wages for determining the notional income of the deceased, who was a homemaker, by the learned Tribunal cannot be faulted. At the same time, it is noted that the respondent no.1 had failed to prove on record the educational qualification of the deceased. The deceased was a resident of the village Kastla Kasmabad, Hapur, Ghaziabad, Uttar Pradesh. In my view, in facts of the present case, the minimum wages as applicable to an unskilled worker should have been more apt and reasonable for awarding compensation to the respondent no.1. I am informed that the Minimum Wages notified by the State of U.P. for an unskilled worker at the time of the accident was Rs. 7,214/- per month. The Impugned Award shall stand modified to that extent.

11. The compensation payable by the appellant to the respondent no.1 herein, on account of the loss of dependency, shall stand reduced as under:-

$$\begin{aligned} & \text{"7214x140/100x3/4x16x12} \\ & \text{=Rs. 14,54,342/-"} \end{aligned}$$

12. The learned counsel for the appellant submits that the entire amount awarded by the learned Tribunal was deposited with the Tribunal in terms of the order dated 23.08.2022 of this Court.

13. In view of the above, and as the compensation amount has been reduced by this order, therefore, the excess amount



deposited by the appellant shall be released by the learned Tribunal to the appellant, along with interest accrued thereon.

14. The statutory amount deposited by the appellant shall also be released to the appellant along with the interest accrued thereon, by the learned Registrar General of this Court.

15. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 1, 2023/rv/AS

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MAC.APP. 246/2022