

Court No. - 33**Reserved****A.F.R.****Case :- FIRST APPEAL FROM ORDER No. - 3455 of 2004****Appellant :- New India Assurance Co Ltd****Respondent :- Mohd. Iqbal And Others****Counsel for Appellant :- Amaresh Sinha****Counsel for Respondent :- Ram Ashish Pandey****Hon'ble J.J. Munir,J.**

1. This is an appeal by the Insurance Company, questioning the judgment and award of Mr. V.K. Tyagi, the Motor Accident Claims Tribunal/ the Special Judge (Essential Commodities Act), Etawah dated 17.08.2004, allowing MAC No.319 of 2002.

2. Heard Mr. Anubhav Sinha, Advocate holding brief of Mr. Amaresh Sinha, learned Counsel for the appellant/ Insurance Company and Mr. Ram Ashish Pandey, learned Counsel appearing on behalf of respondent Nos.1 to 5. No one appears on behalf of the owner-respondent No.6.

3. On the 14th of July, 2000 at about half past two in the night, Kamarul Nisha along with her husband, Mohd. Iqbal and children was travelling on board Jeep No. UP-75B-9599, a Mahindra Utility vehicle, from Kanpur to Etawah. The Jeep had on wheel Pramod Kumar. Pramod Kumar was driving the Jeep at a high speed and negligently. Near Village Mehtauli, the driver ran into a stationary truck, bearing Registration No. UP-65H-7459, parked on the left hand side of the road. Kamarul Nisha and another man Rajesh Kumar @ Pandit Ji died on the spot in consequence of the collision. Kamarul Nisha's husband Mohd. Iqbal, their children and others on board sustained injuries. The driver abandoned post and fled. The accident happened solely on account of the Jeep driver's negligence, the

truck being stationary and parked on the southern side of the road, that was a *kachcha* pavement. A first information about the accident was lodged with Police Station P.S. Amarahat, where it was registered as Case Crime No.27 of 2000, under Sections 279, 337, 304-A IPC on 14.07.2000 at 4:30 a.m. Blaming, as already said, the Jeep driver exclusively for the negligence, the claimant-respondents say that given the location of the stationary truck, there was no reason for the Jeep driver to have rammed into it. The road at the site of the accident was sufficiently wide and at the time when it happened, there was no other vehicular movement. Kamarul Nisha's body was conveyed to the Hallet Hospital, Kanpur, where autopsy was done.

4. At the time of her demise, Kamarul Nisha was aged about 35 years. She would undertake embroidery and knitting jobs at home, earning approximately Rs.5000/- per *mensem*. She would contribute to household work, besides raising and grooming the couple's children. The accident and Kamarul Nisha's untimely demise deprived the claimants of her financial contribution, besides depriving her husband of conjugal bliss. The minor claimants, the deceased's children have been deprived of the mother's affection. The claimants have sustained heavy financial loss and mental pain, which is difficult to compensate. The claimants had earlier petitioned the Tribunal at Kanpur Dehat *vide* MAC No.326 of 2000, but since the claimants have moved to Etawah, they found it difficult to pursue the litigation at Kanpur. Accordingly, the last mentioned claim petition was withdrawn on 24.04.2002 and the present claim petition instituted before the Tribunal at Etawah.

5. The claimants are five in number. As already said, Mohd. Iqbal is the deceased's husband, whereas Mohd. Zafar, Mohd. Akbar and Mohd. Imran are minor sons of the deceased. Km. Shannu is the deceased's minor daughter. The claim petition has been instituted by Mohd. Iqbal, described in the cause title as Mohd. Iqbal Mistri on his own behalf and as the next friend for claimant Nos.2, 3, 4 and 5, his minor children. The claimants, who are the respondents in this appeal, shall hereinafter be referred to as 'the claimants', unless the context requires a different or individual reference.

6. Raj Kumar son of Naresh Chand is the owner of Jeep No. UP-75B-9599. He was arrayed as opposite party No.1 to the claim petition. He is respondent No.6 to this appeal and shall hereinafter be referred to as 'the owner'. New India Assurance Company Limited, Branch Manager, Station Road, Etawah are the insurers of the offending Jeep. They are arrayed as opposite party No.2 to the claim petition and the appellant here, who shall hereinafter be referred to as 'the Insurers'.

7. A written statement was filed on behalf of the owner, where in the para-wise reply, there is a general denial to the allegations in the claim petition, except the fact that the owner acknowledges his proprietorship of Jeep No. UP-75B-9599. In the additional pleas, it is asserted that the claimants are not the deceased's legal representatives and not entitled to compensation. The claim has been presented on got up facts and founded on premises not countenanced by the law. The compensation claimed has been castigated as baseless, got up and imaginary. It is also pleaded that since the owner of the truck, its insurers and driver and the ill-fated Jeep's driver have not been made parties, the claim petition is bad for non-joinder

of necessary parties. The First Information Report carries a false and got up story in order to support the cause of action here. If the accident is proved, the owner asserts that his driver was operating the Jeep according to traffic rules with all necessary documents, enabling the Jeep to ply in a public place. The accident has happened, because of the negligence of the truck driver in applying sudden brakes contrary to Rules, which caused the accident. It is averred in the claim petition that the accident happened because of the truck driver parking his vehicle without lights and applying brakes without the necessary signal. To the driver of the ill-fated Jeep, no negligence can be attributed. The deceased did not do any work nor earned a sum of Rs.5000/- per month. Incorrect facts relating to her occupation and income have been alleged by the claimants. The claimants were not dependent upon her in any manner and are, therefore, not entitled to maintain the claim petition. A plea is also raised to the effect that the truck owner and its Insurers were impleaded as parties to the claim petition, but scored out of the array, which is illegal. It is emphasized that this is so because Column No.15 of the claim petition makes it essential to implead the owner and the insurers of the vehicles involved in the accident. On the date of the accident, the ill-fated Jeep was insured with the Insurers *vide* Cover Note No. 371663, valid from 24.01.2000 to 23.01.2001, covering the vehicle for an unlimited liability. The liability to make good the compensation, therefore, falls on the Insurers.

8. The Insurers have put in their own written statement dated 25.09.2002. They have generally denied the allegations in the claim petition. It is pleaded that the claimants were not dependent on the deceased and the relationship between the claimants and the deceased has also been denied. The income

of the deceased has been denied and it is pleaded that the assertion that she had an income of Rs.5000/- per month and did not pay income tax are contradictory. These lead to the inference that she did not have the pleaded income. About the accident, it is the Insurers' case that it never happened at the date, time and place alleged. In fact, no accident of the kind at all happened. The deceased did not sustain injuries, simple or grievous, in consequence of an accident, leading to her death. If any FIR in this connection has been lodged with the Police and a case registered, the entire criminal proceedings have been initiated with a view to secure monetary gain. About the insurance, it is pleaded that the particulars of the insurance policy given are illegible and incomplete. Therefore, in the circumstances, the fact that the Jeep was insured with the Insurers is denied. If in future the entire facts relating to the insurance policy are brought forth by the claimants, the Insurers reserve their right to file an additional written statement. In the additional pleas, it is said that the claimants have not annexed any papers relating to the accident, such as the FIR, the site plan, the postmortem report, the charge-sheet filed in Court and no facts relating to the criminal case have been disclosed. It is also pleaded that the claimants have not averred if a charge-sheet in the criminal case has been submitted, and if so, against which driver. The claimants have suppressed facts deliberately in the petition. Looking to the facts set forth in the claim petition, the accident happened on account of the truck driver's negligence. It is then pleaded that according to the terms of the insurance policy and Section 134 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988'), no information about the accident was given to the Insurers by the owner. It is also pleaded that no particulars of the insurance policy were

intimated to the Insurers or the driver's name and address or the particulars of his driving licence. These facts, according to the Insurers, show that the accident did not happen. It is pleaded further that the fact that the deceased and many others were travelling on board Jeep shows that it was being plied for hire at the time of the accident. The ill-fated vehicle was being used for ferrying passengers, a purpose for which it was never insured. Also, the ill-fated Jeep did not have a permit to carry passengers.

9. On the pleadings of parties, the Tribunal framed the following issues (translated into English from Hindi):

"1. Whether on 14.07.2000 at 2:40 of the Clock in the morning hours at the Auraiya-Kanpur Road, near Village Mehtauli within the local limits of P.S. Amarahat, District Kanpur Dehat, the driver of Jeep No. UP-75B-9599, driving it at a high speed and negligently, drove it into a stationary truck, causing the accident, that resulted in grievous injury to Kamarul Nisha, in consequence whereof, she died?

2. Whether at the time of the accident, Jeep No. UP-75B-9599 was insured with the opposite party, New India Assurance Company Limited?

3. Whether at the time of the accident, the Jeep driver held a valid and effective driving licence?

4. Whether the claimants are entitled to compensation? If so, how much and from which opposite parties?"

10. The claimants filed their documentary evidence through a list bearing Paper No. 17-Ga, four documents, to wit, a certified copy of the FIR, a certified copy of the charge-sheet, a photostat copy of the site plan and a photostat copy of the technical inspection report. Along with another list of papers, bearing Paper No. 15-Ga, a certified copy of the deceased's postmortem report was produced. Through still another list,

bearing Paper No.16-Ga, a photostat copy of the deceased's Saving Bank Account's passbook was filed. It must be recorded here that the present claim petition was tried along with MACP No. 70 of 2001, treating the aforesaid claim petition as the leading case. The testimony of parties was recorded in the leading case. Therefore, for the purpose of decision of this appeal, the records of MACP No.70 of 2001, also decided by the same Tribunal through a common judgment and award, have been perused by this Court.

11. Mohd. Iqbal was examined as PW-2 in support of the present claim petition. On behalf of the owner, the owner examined himself as a witness and in his documentary evidence, produced through list bearing Paper No.16-Ga, three documents, to wit, the registration certificate, the insurance cover note and the driving licence. The Insurers filed through list bearing Paper No.25-Ga two documents, that is to say, an attested copy of the insurance policy and a verification report of the driver's driving licence, besides a photostat copy of Form No.54. It is clarified that though in the list of papers filed by the Insurers (Paper No. 25-Ga), two documents have been listed, but in fact, three have been filed, the third being Form No.54, the accident information report.

12. Issue No.1 relating to both the cases before the Tribunal were decided together and in the present case, it was held that Kamarul Nisha died in the accident on account of the driver of the Jeep, Rajesh Kumar, driving it negligently. About Issue No.2, it was held that the Jeep was validly insured with the Insurers. The third Issue was also common to both cases that the Tribunal decided and it was answered in the manner that the Jeep driver held a valid driving licence on the date of the

accident. The only issue that is of consequence in this appeal is Issue No.4.

13. It was urged before the Tribunal that the ill-fated Jeep was a Mahindra Multi-Utility Jeep, that was registered as a goods carrier. The insurance policy had insured it as a private goods carrier. Therefore, the Jeep if used to carry goods or ferry passengers for hire or reward, would be a violation of the insurance policy's conditions.

14. It is submitted by the learned Counsel for the Insurers that this is not a case where the Insurance Company can be asked to pay and recover. The learned Counsel has placed reliance on the decision of the Supreme Court in **National Insurance Co. Ltd. v. Bommithi Subbhayamma and others, (2005) 12 SCC 243** as well as that in **National Insurance Co. Ltd. v. Prema Devi and others, (2008) 5 SCC 403**.

15. The learned Counsel for the claimants, on the other hand, has supported the impugned award and argued that the Insurers are liable because the Jeep after all is essentially a passenger vehicle.

16. We have considered the submissions advanced by learned Counsel appearing for the parties and perused the record.

17. The foremost question to be considered is as to what was the type of the ill-fated vehicle carrying the deceased. The most crucial document to judge the type of the vehicle is the insurance policy, a copy whereof is on record as Paper No. 25-Ga-2. It describes the vehicle as a 'Mahindra Utility' and the year of manufacture as the year '2000'. The type of the body is described as van. The goods vehicle weight is mentioned as 52

CC. In the column below, it is described as a 'Private Carrier (Own Goods)'. There is an additional premium indicated for person employed in connection with operation, maintenance and unloading of the vehicle. The premium paid on this account is Rs.90/-. This may account for the premium to cover the risk of the extra hand travelling on board the vehicle along with the driver. The policy makes it pellucid that the vehicle is essentially a goods vehicle and insured to be utilized as a private carrier of goods. It was not at all a passenger vehicle.

18. So far as the liability of the insurers for passengers travelling on board the ill-fated Jeep, which is apparently a goods vehicle, is concerned, the principle applicable is well established, and the fact, whether the deceased was travelling on board the said vehicle as a gratuitous or non-gratuitous passenger, is not of much relevance so long as there is no doubt that the vehicle was indeed a goods vehicle. The testimony of PW-2, the deceased's husband, Mohd. Iqbal mentions the fact that one of the occupants in the Jeep was a Conductor by the name "Pandit Ji", which would suggest that the Jeep was plying for hire and or reward, but later on in his testimony, PW-2 has said that he was a motor mechanic and a friend of the Jeep driver's. The driver was, therefore, carrying the witness, one of the claimants as well as the deceased and their children without charging them any fare. This is of little consequence so far as the liability of the Insurers is concerned. The law is by far well settled that in case of a goods vehicle, no one except the driver, a helper and if it is carrying a consignment of goods, the owner of the consignment or his agent, may legitimately travel on board such a vehicle. A goods vehicle can never be regarded as one where passengers may travel and have their risk covered by the Insurers. As already

noticed hereinabove, the terms of the insurance policy clearly indicate the vehicle to be a private carrier goods vehicle. It is not even a goods carrier, which can be hired by anyone to carry goods, let alone passengers. The terms of the policy and the type of the vehicle would clearly rule out the Insurers' liability for any injury sustained by passengers on board the ill-fated Jeep.

19. In *New India Assurance Co. Ltd. v. Asha Rani and others*, (2003) 2 SCC 223, it was held by a three Judge Bench of the Supreme Court:

"9. In *Satpal* case [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the

statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in *Satpal case* [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."

20. This view was followed in **Bommithi Subbhayamma** (*supra*).

21. In **National Insurance Co. Ltd. v. Baljit Kaur and others**, (2004) 2 SCC 1, it was held by the Supreme Court that the decision in **Asha Rani** (*supra*) would apply prospectively. Here, the Tribunal decided on 17.08.2004 and by that time, the decision in **Asha Rani** was already there overruling the earlier view in **New India Assurance Company v. Satpal Singh and others**, (2000) 1 SCC 237. Therefore, this is not a case where the law was uncertain when the Tribunal decided. It had already been settled by a three Judge Bench of their Lordships of the

Supreme Court in **Asha Rani** and followed in **Bommithi Subbhayamma**. In fact, the decision of the Supreme Court in **Baljit Kaur** (*supra*) making the law in **Asha Rani** prospective in its application would have been well-known by time the Tribunal decided. When the Tribunal rendered judgment, there was no basis, therefore, to direct the Insurers to pay the compensation adjudged, going by the principle in **Satpal Singh** (*supra*), that was already overruled by the three Judge Bench in **Asha Rani**. Since this decision was rendered not in the watershed between **Satpal Singh** and **Asha Rani**, but after **Asha Rani** had already held field, this is not a case where a direction to pay and recover may be issued.

22. I had occasion to consider this issue in **United India Insurance Co. v. Hari Shanker and another**, Neutral Citation No. - 2022:AHC-LKO:29858 and upon a survey of authority and principles laid down in various decisions, it has been opined that some directions given by their Lordships of the Supreme Court to pay and recover in case of gratuitous passengers travelling on a goods vehicle like the one in **Anu Bhanvara and others v. IFFCO Tokio General Insurance Co. Ltd., (2020) 20 SCC 632** are ones made in the exercise of their Lordships' power to do complete justice in the facts of a given case under Article 142 of the Constitution. Those powers are not available with other Courts.

23. In this view of the matter, it is held that the Insurers are not liable to make good the compensation awarded, which has to be recovered from the owner.

24. Though, this is an appeal by the insurers with no appeal for enhancement of compensation or cross-objection by the claimants, nevertheless this Court has not only the power, but

the duty and obligation under the Act of 1988 to make a just award. That this Court has such powers in the absence of cross-objections by the claimants has been held in **New India Assurance Co. Ltd. v. Smt. Lajjawati and others, 2022 (6) AWC 5291**. Accordingly, we are of opinion that compensation in this case ought to be revised, which we proceed to do hereinafter.

25. The learned Counsel for parties were heard on the issue of quantum.

26. Now, turning to the question of quantum of compensation to which the claimants are entitled, the first fact to be determined is the monthly income of the deceased. PW-2 in his testimony before the Tribunal has said:

"मेरी पत्नी की दुर्घटना के समय उम्र लग० 35 वर्ष थी। वह कढ़ाई व बुनाई से लगभग 5000/- (पांच हजार) रु० महीना कमा लेती थी। तथा इसके अलावा वह घर गृहस्थी तथा बच्चों की परवरिश करती थी। मैं अपनी पत्नी की दुर्घटना में आयी चोटों से मृत्यु के कारण उनकी आमदनी तथा दाम्पत्य जीवन से वंचित हो गया हूँ। कुल दावा मैंने 13,20,000/- (तेरह लाख बीस हजार) रुपये का किया है। दुर्घटना से सम्बन्धित सभी कागजात मैंने दाखिल कर दिये हैं।"

27. In his cross-examination by the owner regarding the deceased's income, PW-2 has stated:

"मेरी पत्नी मायके से सिलाई कढ़ाई सीख कर आयी थी। यह कहना गलत है कि मेरी पत्नी की कोई आमदनी न हो। यह कहना गलत है कि मैंने फर्जी प्रतिकर पाने के लिये आज अदालत में कोई गलत व्यानी की हो।"

28. PW-2 in his cross-examination by the Insurers on the point of the deceased's income has testified thus:

"दलेलनगर की आबादी 1200-1300 लोगो की है। मेरी बीबी जब जिंदा थी, तब मेरे परिवार का खर्चा 150-200/- रोज में चल जाता था। मैं जो कमाता था वह बीबी के हाथ पर रखता था। मेरी पत्नी मृत्यु से 13-14 वर्ष पहले से कढ़ाई बुनाई का काम कर रही थी। मेरी पत्नी का खाता बैंक का?, वह बैंक में खाते में 2000-2500/- रु० छोड़ गई और कुछ नहीं छोड़ गई थी। मेरी पत्नी ने मेहराज मास्टर भूरे मोहम्मद व वीरेन्द्र , भूरे उर्फ जमील सभी

निवासीगण दलेलनगर व मुरादगंज के हैं, के यहां कढ़ाई बुनाई का काम किया था ये लोग जीवित हैं। यह कहना गलत है कि मेरी पत्नी कढ़ाई बुनाई का काम नहीं करती थी।”

29. The Tribunal in assessing the deceased's income had held it to be a sum of Rs.2000/- per *ensem* and *a fortiori* Rs.24,000/- per *annum*. In our opinion, the Tribunal has underestimated the deceased's monthly income by reckoning her contribution in plain monetary terms alone. The wife's contribution to a family is multifaceted and cannot be judged by arithmetically determined fruits of labour. The homemaker contributes in ways more than one to the family and that is a legitimate method of judging her income and contribution towards her dependents. Reference in this connection may be made to the decision of the Supreme Court in **Arun Kumar Agrawal and another v. National Insurance Company Limited and others, (2010) 9 SCC 218**. In **Arun Kumar Agrawal (supra)**, it was observed by their Lordships of the Supreme Court:

“**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.

28. In *Lata Wadhwa v. State of Bihar* [(2001) 8 SCC 197] this Court considered the various issues raised in the writ petitions filed by the petitioners including the one relating to payment of compensation to the victims of the fire accident which occurred on 3-3-1989 resulting in the death of 60 persons and injuries to 113. By an interim order dated 15-12-1993, this Court requested the former Chief Justice of India, Shri Justice Y.V. Chandrachud to look into various issues including the amount of compensation payable to the victims. Although the petitioners filed objection to the report submitted by Shri Justice Y.V. Chandrachud, the Court overruled the same and accepted the report. On the issue of payment of compensation to the housewife, the Court observed: (SCC pp. 209-10, para 10)

"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 per annum 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 per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs. 36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000 instead of Rs. 25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs. 10,000 per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs. 20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs. 50,000 towards the conventional figure."

(emphasis supplied)

29. The judgment of *Lata Wadhwa case* [(2001) 8 SCC 197] was referred to with approval in *M.S. Grewal v. Deep Chand Sood* [(2001) 8 SCC 151 : 2001 SCC (Cri) 1426] for confirming the award of compensation of Rs. 5 lakhs in a case involving the death of school children by drowning due to negligence of teachers of the school. In *Municipal Corpn. of Greater Bombay v. Laxman Iyer* [(2003) 8 SCC 731 : 2004 SCC (Cri) 252] a two-Judge Bench while deciding the issue of award of compensation under Sections 110-A and 110-B of the Motor Vehicles Act, 1939, referred to the judgments in *Lata Wadhwa case* [(2001) 8 SCC 197] and *M.S. Grewal case* [(2001) 8 SCC 151 : 2001 SCC (Cri) 1426] .

30. In *A. Rajam v. M. Manikya Reddy* [1989 ACJ 542 (AP)] , M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word "services" in cases relating to award of compensation to the dependants of a deceased wife/mother. Some of the observations made in that judgment are extracted below:

"The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.

While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

33. In *Chandra Singh v. Gurmeet Singh* [(2003) 7 AD 222 (Del)] , *Krishna Gupta v. Madan Lal* [(2002) 96 DLT 829] , *Captan Singh v. Oriental Insurance Co. Ltd.* [(2004) 112 DLT 417] and *Amar Singh Thukral v. Sandeep Chhatwal* [(2004) 112 DLT 478] , the Single and Division Benches of the Delhi High Court declined to apply the judgment of this Court in *Lata Wadhwa* case [(2001) 8 SCC 197] for the purpose of award of compensation under the Act. In *Krishna Gupta v. Madan Lal* [(2002) 96 DLT 829] the Division Bench of the High Court observed as under: (DLT p. 834, para 24)

"24. ... The decision of the Apex Court in *Lata Wadhwa* [(2001) 8 SCC 197] in our considered opinion, cannot be said to have any application in the instant case. The Motor Vehicles Act, 1939 was the complete code by itself. It not only provides for the right of a victim and/or his legal heirs to obtain compensation in case of bodily injury or death arising out of use of motor vehicle, but the Forum therefor has been provided, as also the mode and manner in which the compensation to be awarded therefor. In such a situation, it would be inappropriate to rely upon a decision of the Apex Court, which had been rendered in an absolutely different fact situation and in relation whereto there

did not exist any statutory compensation. *Lata Wadhwa* [(2001) 8 SCC 197] was decided in a matter where a fire occurred during a celebration. The liability of Tata Iron & Steel Co. Ltd. was not disputed. Compensation was awarded having regard to the peculiar feature obtaining in that case which has got nothing to do with the statutory compensation payable under the provisions of the Motor Vehicles Act."

34. In *Amar Singh Thukral v. Sandeep Chhatwal* [(2004) 112 DLT 478] , the learned Single Judge of the Delhi High Court adopted the yardstick of minimum rates of wages for the purpose of award of compensation in the case of death of a housewife and then proceeded to observe: (DLT p. 487, para 35)

"35. ... Since there is no scientific method of assessing the contribution of a housewife to her household, in cases such as the present, resort should be had to the wages of a skilled worker as per the minimum rates of wages in Delhi. Although, this may sound uncharitable, if not demeaning to a housewife, there is hardly any other option available in the absence of any statutory guidelines."

35. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000 per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation.

36. Though Section 163-A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependants of a non-earning housewife/mother, it

would be reasonable to rely upon the criteria specified in Clause 6 of the Second Schedule and then apply an appropriate multiplier keeping in view the judgments of this Court in *Kerala SRTC v. Susamma Thomas* [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , *U.P. SRTC v. Trilok Chandra* [(1996) 4 SCC 362] , *Sarla Verma v. DTC* [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002] and also take guidance from the judgment in *Lata Wadhwa case* [(2001) 8 SCC 197] . The approach adopted by different Benches of the Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with the work of a skilled worker."

30. A similar question arose before the Supreme Court in the context of assessing the income of a non-working housewife, who died in a motor accident at the age of 22 years. The family claimed that she would earn Rs.900/- per month by doing embroidery and knitting work. On these facts, the Supreme Court in **Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others, (2015) 4 SCC 237** held:

"7. Admittedly, the claimants adduced only oral testimony of the witnesses to substantiate their claim that the deceased was self-employed and was earning Rs 900 per month. Smt Godavariben Khimshankar Trivedi, mother-in-law and Shri Khimshankar Raguram Trivedi, father-in-law have deposed to the effect that the deceased at the time of accident was doing tailoring, embroidery and knitting and was earning Rs 900 per month. They further deposed that their daughters were also doing the same work as the deceased Jayvantiben Jitendra Trivedi was then doing and that their daughters were earning Rs 3000 per month and had the deceased been alive, she would have also earned Rs 3000 per month.

8. The Tribunal observed that in the district of Kachchh embroidery work, stitching work and local traditional embroidery work is doing well and had the deceased been alive she would have earned Rs 1500 per month. Deducting 1/3rd for personal expenses and adopting multiplier of 18, the Tribunal has calculated the loss of dependency at Rs 2,16,000 (Rs 1000 × 12 × 18). Though in their cross-examination, Smt Godavariben Khimshankar Trivedi and Khimshankar Raguram Trivedi deposed

that they did not keep voucher and account books, reasoning of the Tribunal that the embroidery and tailoring work is doing well in the district of Kachchh and that the deceased would have earned not less than Rs 1500 per month is well merited. It is to be pointed out that the respondents have not adduced any evidence to prove that the deceased was not doing any embroidery or tailoring work or the like. While so, in the light of the factual findings recorded by the Tribunal, the High Court was not justified in reducing the income of the deceased to Rs 1350 per month from Rs 1500.

10. Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a homemaker. It is hard to monetise the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the homemaker, it is reasonable to fix her income at Rs 3000 per month.

11. Recognising the services of the homemaker and that domestic services have to be recognised in terms of money, in *Arun Kumar Agrawal v. National Insurance Co. Ltd.* [(2010) 9 SCC 218 : (2010) 3 SCC (Civ) 664 : (2010) 3 SCC (Cri) 1313], this Court has held as under : (SCC p. 246, paras 62-63)

“62. The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

63. Household work performed by women throughout India is more than US \$612.8 billion per year (*Evangelical Social Action Forum and Health Bridge*, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and the Tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing 'just compensation'."

13. In order to award just and reasonable compensation income of the deceased is taken as Rs 3000 per month. Deducting 1/3rd for personal expenses contribution of the deceased to the family is calculated at Rs 2000 per month. At the time of her death deceased Jayvantiben was aged about 22 years, proper multiplier to be adopted is 18. Adopting multiplier of 18, total loss of dependency is calculated at Rs 4,32,000 (Rs 2000 × 12 × 18). With respect to the award of compensation under conventional heads, the Tribunal has awarded Rs 5000 towards loss of estate and Rs 3000 towards funeral expenses totalling Rs 8000. The High Court has awarded conventional damages of Rs 15,000 i.e. Rs 10,000 towards loss of estate and Rs 5000 towards funeral expenses. The courts below have not awarded any compensation towards loss of consortium and towards love and affection. In *Rajesh v. Rajbir Singh* [(2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] and *Jiju Kuruvila v. Kunjujamma Mohan* [(2013) 9 SCC 166 : (2013) 3 SCC (Cri) 849], this Court has awarded substantial amount of Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of love and affection. Following the same, in the case in hand, Rs 1,00,000 is awarded towards loss of consortium and Rs 1,00,000 towards loss of love and affection to the minor children. Towards loss of estate and funeral expenses, award of compensation of Rs 15,000 awarded by the High Court is maintained. Thus, the claimants are entitled to a total compensation of Rs 6,47,000."

31. Here, the deceased was still a young women. She was aged 35 years. There is testimony of her husband that she was

engaged in the productive work of doing stitching and embroidery. Going by the deceased's age, she would have perfected her skills and supported her husband to contribute to the family's livelihood. There is nothing elicited during cross-examination that may show the assertion about the deceased's gainful employment at home to be fanciful. It goes without saying that domestic exertions to earn for supplementing the family's income by women do not come with formally documented evidence like books of account or income tax returns. These are contributions made to the family by the unorganized sector, the existence of which cannot be discounted. Apart from it, the deceased was making her own contributions to the family by other means, such as bringing up the dependent children and carrying on household work, which cannot be ignored as non-productive. On an overall estimate of the matter and given the time when the deceased passed away, it would be a just and fair estimation to find for her a monthly income of Rs.3000/-. The Tribunal has assessed it to be Rs.2000/- per month, but for all the reasons hereinabove mentioned, we think that the assessment is on the lower side.

32. Given the age of the deceased and the principles settled in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, the multiplier of '16' has to be adopted. The Tribunal too has applied the same multiplier and we agree with the Tribunal on this score.

33. The deceased's family comprised her husband and four minor children. Assigning each minor half a unit, the dependents have to be regarded as '3'. This, according to the principle in **Sarla Verma (supra)**, would place the dependent family members in the bracket of 2 – 3. Accordingly, a deduction

of one-third from the deceased's income has to be made. The Tribunal has opined likewise, which we affirm.

34. The Tribunal, however, has not awarded anything towards future prospects. By now, it is well settled that the self-employed and those working on a fixed salary are also entitled to add to their income on account of future prospects. This is the clear holding of the Supreme Court in **National Insurance Company v. Pranay Sethi and others, (2017) 16 SCC 680**.

35. The percentage addition towards future prospects in the State of Uttar Pradesh is governed by Rule 220-A of the U.P. Motor Vehicles Rules, 1998 (for short, 'the Rules of 1998') and not the principles in **Pranay Sethi (supra)** as held by the Supreme Court in **New India Assurance Co. Ltd v. Urmila Shukla and others, 2021 SCC OnLine SC 822**.

36. It is also settled by now that Rule 220-A(3) which was inserted to the Rules of 1998 by means of Notification No. 777/XXX-4-2011-4(3)-2010 dated September 26, 2011 *vide* The Uttar Pradesh Motor Vehicles (Eleventh Amendment) Rules, 2011 has retrospective application. The amended Rules apply to accidents that happened before it. This is the principle that was laid down by a Division Bench of this Court in **Sushil Kumar and others v. M/s. Sampark Lojastic Private Limited and others, 2017 (35) LCD 1311**. The accident here happened in the year 2000, but given the fact that Rule 220-A(3) has been held to have retrospective operation, the addition of future prospects would be governed by the said Rules, nevertheless.

37. Assuming that the deceased had a monthly income of Rs.3000/-, the claimants are entitled to add 50% towards future prospects, she being below 40 years.

38. The next issue to be considered is what entitlement do the claimants have towards conventional heads. This question was extensively dealt with by the Supreme Court in **Pranay Sethi**, where it was held:

“48. This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule to the Act. The said Schedule has been found to be defective as stated by the Court in *Trilok Chandra* [*UP SRTC v. Trilok Chandra*, (1996) 4 SCC 362] . Recently, in *Puttamma v. K.L. Narayana Reddy* [*Puttamma v.K.L. Narayana Reddy*, (2013) 15 SCC 45 : (2014) 4 SCC (Civ) 384 : (2014) 3 SCC (Cri) 574] it has been reiterated by stating : (SCC p. 80, para 54)

“54. ... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.”

49. As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also provides for general damages in case of death. It is as follows:

“3. General damages (in case of death):

The following general damages shall be payable in addition to compensation outlined above:

(i)	Funeral expenses	Rs 2000
(ii)	Loss of consortium, if beneficiary is the spouse	Rs 5000
(iii)	Loss of estate	Rs 2500
(iv)	Medical expenses – actual expenses incurred before death supported by bills/vouchers but not exceeding	Rs 15,000”

50. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in *Trilok Chandra* [*UP SRTC v.Trilok Chandra*, (1996) 4 SCC 362] and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs 1,00,000 was granted towards

consortium 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] . The justification for grant of consortium, as we find from *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] , is founded on the observation as we have reproduced hereinbefore.

51. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

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 seems 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."

(emphasis by Court)

39. Going by the principles in Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130, amongst the claimants, the husband is entitled to compensation on account of loss of spousal consortium whereas the four children are entitled to compensation on account of loss of parental consortium. In **Magma General Insurance Company Ltd. (supra)**, it has been held:

"21. A Constitution Bench of this Court in *Pranay Sethi*[*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse : [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary(5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

(emphasis by Court)

40. The claimants are also entitled to the sum determined in **Pranay Sethi** towards loss of estate and funeral expenses.

41. The view of the above discussions, the award is revised in the following manner:

(i) Monthly Income (of the deceased)	=	3000
(ii) Monthly Income+Future Prospects (monthly income x 50%) = 3000+1500	=	4500
(iii) Annual Income (of the deceased) = 4500x12	=	54000
(iv) Annual Dependency = Annual Income – one-third deduction towards personal expenses of the deceased = 54000-18000	=	36000
(v) Total Dependency = Annual Dependency x Applied Multiplier = 36000x16	=	576000
(vi) Claimant's entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium =15000+15000+40000x5	=	230000
The total compensation would therefore, work out to a figure of Rs. 5,76,000+2,30,000	=	8,06,000

42. So far as the entitlement of the claimants to interest is concerned, it is governed by Rule 220-A (6), which stipulates simple interest @ 7% per *annum*.

43. In the result, this appeal is **allowed** in part and the impugned award is modified in the terms that the compensation payable to the claimants shall be payable by the owner and not the Insurers. It is further ordered that the compensation awarded by the Tribunal shall stand enhanced to Rs.8,06,000/-, which shall carry simple interest @ 7% per *annum* from the date of institution of the claim petition until realization. The compensation shall be payable equally to all the claimants.

44. In the circumstances of the case, there shall be no order as to costs.

Order Date :- 02.11.2023

Anoop

(J.J. Munir, J.)