

RESERVED

A.F.R.

Court No. - 33

Case :- FIRST APPEAL FROM ORDER No. - 2341 of 2006

Appellant :- Abdul Hameed Khan and others

Respondent :- Vijay Kumar Singh and others

Counsel for Appellant :- Ram Singh

Counsel for Respondent :- Nagendra Kumar Srivastava

Hon'ble J.J. Munir,J.

This is an appeal by the claimants of Motor Accident Claim Petition No. 219 of 2004, seeking enhancement of compensation awarded by the Tribunal.

2. On the 16th of January, 2004, Abdul Maroof, a youth of sixteen years, was proceeding on his motorcycle bearing Registration No. UP 32 AB 2993, at 06:45 a.m., to a certain Sigma Coaching. He had left home for the coaching centre. At about 7 O'Clock, as Maroof reached the Indian Press Crossroads, within the local limits of Police Station Colonelganj, District Allahabad (now Prayagraj), a truck bearing Registration No. UP 70 Y 9448, driven at a high speed and negligently by its driver, hit the motorcycle on the rear side. The truck caused the accident, moving to the wrong side of the road. The impact caused Maroof to sustain grievous injuries. The truck dragged the motorcycle and the victim across some distance, and turning left from the Indian Press Road Crossroads, made good its escape via the Balson Crossroads.

3. The victim was carried by his cousin, Parvez Ahmad, who witnessed the accident, to the Priti Hospital for medical aid. After administering some treatment, the victim was referred to the Beli Hospital. While on way to the Beli Hospital, the victim breathed his last on board ambulance.

4. A First Information Report¹ regarding the incident was lodged by Parvez Ahmed with the Police on 16.01.2004 at 08:30 a.m., giving rise to Crime No. 13 of 2004, under Sections 279, 337, 338, 427, 304A of the Indian Penal Code, 1860, Police Station Colonelganj, District Allahabad. The present claim petition was instituted by the deceased's father, Abdul Hamid Khan on his own behalf, and that on behalf of the deceased's mother, Smt. Kausari Begum, and his sister Kumari Fauzia Begum.

5. According to the claimant-appellant Abdul Hamid Khan, the deceased had passed his intermediate examination in the first division and was preparing to write his competitive examination for the purpose of seeking admission to his undergraduate engineering course. It was for the said purpose that he was going to the coaching institute, when the accident happened. The deceased would attend the Sigma Physics Centre in the morning hours, and, in the evening batch, at the Yes Academy, Tashkand Road, Civil Lines, Allahabad. The deceased's date of birth was 08.10.1987. The claimant has asserted that the deceased would earn an estimated sum of ₹15,000 per month.

6. Opposite party No. 1 to the claim petition and respondent No. 1 to this appeal, Vijay Kumar Singh, is the owner of the offending truck, a DCM make. He shall hereinafter be called 'the owner'. Opposite party No. 2 to the claim petition and respondent No. 2 to this appeal are the National Insurance Company Limited, Civil Lines, Prayagraj, who are the insurers of the offending vehicle. They shall hereinafter be referred to as 'the insurers'.

7. A written statement was filed on behalf of the owner. The ownership of the offending truck was acknowledged, but the accident was denied. It was further pleaded that on the date and time of the accident, the offending truck was insured with the insurers. In the additional pleas, the case taken is that the offending vehicle was being operated by its

1 'FIR' for short

driver carefully and slowly. The driver was one Ajay Kumar Pal son of R.N. Pal, who held a valid driving license bearing number A/347/2, valid from 18.01.2001 to 12.01.2005. The deceased was riding his motorcycle rashly and negligently at the time of the accident. The sole cause of the accident was the deceased's negligent driving. The deceased was a minor. He had no driving license, authorizing him ride a motorcycle. The insurers of the motorcycle were not impleaded, rendering the claim petition bad for non-joinder of necessary parties. The deceased had no income and that claimed for him in Column No. 6 was denied as incorrect.

8. A separate written statement was filed on behalf of the insurers. The allegations in the claim petition were generally denied. It was said that the claimant has not furnished the particulars of the policy and other required information in relation to it. In the absence of full particulars of the insurance policy, the insurers could not say much about their liability. In the additional pleas, it was asserted that the registration certificate, the driving license and the road permit of the offending vehicle were not filed by the claimant along with the petition. The accident did not take place in the manner alleged by the claimant. The claim was asserted by the insurers to be false and bogus, so much so, that according to them, the accident never took place. It was also averred that the claimant had not annexed documents or furnished requisite information in support of his claim, which disentitles him to relief. The compensation claimed was castigated as inflated and imaginary.

9. About the offending vehicle, it was pleaded that it was being driven in violation of the terms and conditions of the insurance policy, when the accident happened. The driver of the offending truck had no valid and effective driving license to drive the particular kind of vehicle. The insurers, on the last plea, said that the Insurance Company are not liable to pay compensation, amongst others.

10. On the pleadings of parties, the following issues were framed :

(i) Whether on 16.01.2004, at about 7 O'Clock in the morning, near the Indian Press Crossroads, situate within the local limits of Police Station Colonelganj, Allahabad when Abdul Maroof was proceeding on his motorcycle bearing registration No. UP 32 AB/2993 from home to his coaching (institute) Truck No. UP 70 AY/9948, driven at a high speed and negligently by its driver, hit the motorcycle, resulting in Abdul Maroof's death?

(ii) Whether the accident happened solely on account of the deceased's riding at a high speed and negligently?

(iii) Whether the truck driver had a valid and effective driving license at the time of the accident?

(iv) Whether the truck, at the time of the accident, was insured with the Insurance Company in accordance with law?

(v) Whether the claimants are entitled to compensation? If yes, from whom?

11. The Tribunal answered Issue No. 3 in the affirmative, holding that the truck driver held a valid driving license on the date and time of the accident. Issue No. 4 was likewise answered in favour of the claimant and against the insurers. Issue Nos. 1 and 2 were decided together by the Tribunal, while writing the impugned judgment. Issue No. 1 was answered in favour of the claimant, holding that on the basis of the evidence on record, it is well established that the driver of the offending truck, driving it at a high speed and negligently, caused the accident, resulting in injuries to the victim that led to his death. However, while answering Issue No. 2, 25% negligence was apportioned to the deceased and 75% to the driver of the offending truck. The Tribunal, thus, entered a finding of contributory negligence.

12. So far as the assessment of compensation is concerned, it was answered by the Tribunal in its decision on Issue No. 5. It was held that the deceased had a monthly income of ₹3,000. Apportioning out 25% towards contributory negligence, the monthly income was held to be ₹2250. The multiplier of '16' was adopted and deduction made towards personal expenses was one-third of the deceased's income. Nothing was

awarded towards future prospects or loss of consortium. ₹2,000/- was awarded under the head of funeral expenses. A total compensation of ₹1,46,000 was granted by the Tribunal together with simple interest at the rate of 6% per *annum* from the date of institution of claim petition until realization. The insurers were directed to deposit the awarded compensation with the Tribunal within three months and apportionment made in the manner that all the three dependants were held entitled to an equal share.

13. Heard Ms. Deepali Srivastava Sinha, learned Counsel for the claimants and Mr. Nagendra Kumar Srivastava, learned Counsel appearing for the insurers. No one appears on behalf of the owners.

14. There are two points, broadly on which this appeal has been pressed on behalf of the claimants. These relate to the findings on the issues of contributory negligence and the quantum.

15. So far as contributory negligence is concerned, it is argued by learned Counsel for the claimants Ms. Deepali Srivastava Sinha that the Tribunal's finding, holding contributory negligence on the deceased's part to the extent of 25% on ground that he had no driving license to ride the motorcycle, is manifestly illegal. It is argued that the mere fact that the driver of a vehicle has operated it without a driving license may constitute an offence under the Motor Vehicles Act, 1988² but that *ipso facto* cannot give rise to an inference of negligence on his part. In support of her contention, learned Counsel for the claimants has placed reliance upon the decision of the Supreme Court in **Sudhir Kumar Rana v. Surinder Singh and others**³. It is next submitted that the respondents have failed to produce any evidence *aliunde* to substantiate the fact that the deceased, in any way, contributed to the accident. The truck hit the motorcycle from the rear side and the Tribunal has otherwise held that the accident was

2 'the Act of 1988' for short

3 AIR 2008 SC 2405

caused by the sole negligence of the driver of the offending truck. Nevertheless, the Tribunal, according to the learned Counsel, held in manifest error that the deceased was a contributor to the accident for the mere fact that he did not hold a valid license to drive a motor vehicle of the kind that he was riding, given his age, the cubic capacity of the vehicle's engine and the provisions of Section 4 of the Act of 1988.

16. On the other hand, Mr. Nagendra Kumar Srivastava, learned Counsel for the insurers has submitted that the Tribunal's finding regarding the contributory negligence is absolutely flawless, because, it is logical to draw the inference of negligence in some measure on the driver's part, whom the law holds ineligible to possess a license, authorizing him to drive a vehicle of the kind that he was operating in a public place.

17. On the other issue, that is about the quantum of compensation awarded, learned Counsel for the claimants submits that the award has made a very conservative estimate of the deceased's monthly income, given his educational qualification and his potential in the near future. It is also argued that the multiplier adopted is far on the lower side, and nothing has been awarded towards future prospects. It is also urged that the Tribunal has failed to grant adequate compensation in that, that nothing has been awarded towards the loss of parental consortium to the deceased's parents, who are two of the three amongst the claimants. Also, nothing has been awarded towards loss of estate, and the funeral expenses ordered are grossly inadequate.

18. Mr. N.K. Srivastava, on the other hand, submits that given the time and the prevalent price index when the accident occurred, the Tribunal has awarded just compensation and the award does not call for interference on ground of inadequacy.

19. This Court has considered the submissions advanced on behalf of the parties by the learned Counsel and perused the record as also the judgment impugned.

20. So far as the issue of contributory negligence is concerned, looking to the site-plan and the testimony of the eye-witness P.W.2, it is evident that the offending truck had hit the motorcycle from the rear end. The motorcycle was moving on the left-hand side, according the rule of the road. The offending truck hit from the rear and dragged the motorcycle across a considerable distance, before escaping from the Balson Crossroads. Thus, the negligence of the truck is writ large.

21. P.W.2, who had seen the accident from a distance of about 10 yards, as he says in his cross-examination, has described it in the following words :

.....दुर्घटना सड़क पर बाएं तरफ कर्नलगंज साइड में हुई थी। अल्फ्रेड पार्क की तरफ दुर्घटना नहीं हुई थी। यह दुर्घटना बिलकुल चौराहे पर हुई थी। इंडियन प्रेस चौराहे पर हुई थी। दुर्घटना मेन रोड (अमर रोड) पर हुई थी। दुर्घटना के समय ट्रक मृतक के शरीर के ऊपर चढ़ गयी थी मोटरसाइकिल के पिछले हिस्से पर भी चढ़ गयी थी।.....

22. The Tribunal has returned a finding to the following effect regarding the truck driver's negligence :

.....इस प्रकार मौखिक साक्ष्य एवं अभिलेखीय साक्ष्य से याचिका के कथनों को पर्याप्त समर्थन मिलता है और यह भलीभांति प्रमाणित होता है की प्रश्नगत ट्रक के चालक द्वारा ट्रक को तेजी एवं लापरवाही से चलाने के कारण यह दुर्घटना हुई जिसके फलस्वरूप पहुंची चोटों के कारण मृतक की मृत्यु हुई।

23. But, given this evidence and the finding returned by the Tribunal, regarding the truck driver's exclusive negligence, he has apportioned 25% of the blame upon the deceased on the ground alone that he was riding a motorcycle of Pulsar make, much above 50 c.c., while his age was 16 years. He was held to be riding in a public place. The Tribunal has, therefore, inferred a contributory negligence of 25% on the deceased's part, solely for the reason that he was riding the motorcycle in a public

place, which, by the terms of his learner's license and given his age, he was not authorized to operate all by himself. The contributory negligence has, therefore, been constructed by the Tribunal on account of a violation of the provision of the Act of 1988 on the deceased's part in driving the motorcycle in a public place, which the law did not permit him to do. It is not the Tribunal's finding that for a fact, the deceased was, in any way, contributory to the accident or, in any manner, actually negligent.

24. There is high authority in favour of the view that a person driving a vehicle without a license is, by itself, no reason to infer negligence on that person's part. The principle came to be laid down by the Supreme Court in **Sudhir Kumar Rana** (*supra*). In that case, the injured claimant was a 17 and a half year old youth, who was riding a two-wheeler on the fateful day. He met with an accident with a mini truck, that was rashly and negligently driven. He sustained a number of injuries, on account of which, the claim was brought. The Tribunal and the High Court both thought that for the reason alone that the claimant did not possess a driving license, he must be held to have contributed to the accident. In **Sudhir Kumar Rana**, it was held by their Lordships of the Supreme Court:

^9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.

^ [Ed.: Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./66/2008 dated 27-8-2008] .

25. The principle in **Sudhir Kumar Rana** governs the fate of the issue regarding contributory negligence arising in this case. The principle in **Sudhir Kumar Rana** blissfully was laid down in the background of facts that are strangely similar, including the finding on the point of negligence for a fact. Indeed, it is one thing to say that the deceased had, in riding a motorcycle that he was not authorized by his age and the kind of license held, committed an offence punishable by law, and, quite another to infer from the commission of that offence or contravention of the provisions of the Act of 1988, a contribution on his part to the negligence, leading to the accident. There is no principle that may give rise to an inference of something that is constructive negligence, merely because a vehicle is operated in a public place by an unlicensed person; or a person not authorized to drive the vehicle by the terms of the license that he holds. Negligence in an accident is essentially a tort and has to be proved for a fact by evidence *aliunde*. The law cannot construct the negligence, at least, in the driving of motor vehicle, without a valid license.

26. Mr. Nagendra Kumar Srivastava has attempted to persuade this Court to infer contributory negligence by the fact alone that the deceased was riding a motorcycle without a valid license, invoking something like the principle of *res ipsa loquitur*. There is no principle or authority to support the view that the driving of motor vehicle without a driving license is an inherently hazardous activity. The principle is rather to the contrary, as laid down by the Supreme Court in **Sudhir Kumar Rana**. It is held accordingly.

27. This takes the matter to the issue of adequacy of compensation awarded by the Tribunal. The income of the deceased has been held to be ₹3000 per month by the Tribunal, taking note of the fact that the deceased had applied for admission to an engineering college and would have gained admission to one college or the other. The degree that he would have earned would have led to a job in Government or semi-Government

sector, yielding him an income of ₹15,000-20,000 per month. There would be prospects of promotion and increase in income also. The Tribunal has found that the deceased's high school and intermediate certificates have been annexed, a perusal whereof shows that he has passed those examinations in the first division. The deceased was also a Bharat Scout and an Uttar Pradesh Scout. A certificate was produced, indicating that he was studying in a coaching institute in order to facilitate his selection in the admission test to the B.Tech. course.

28. The Tribunal, relying upon the decision of the Supreme Court in **Municipal Corporation of Greater Bombay v. Laxman Iyer and another**⁴ has held that an income of ₹3000 per month can be conveniently credited to the deceased. 25% was apportioned away on account of the contributory negligence and a multiplier of '16' was adopted. The Tribunal directed a deduction of one-third to be made towards personal and living expenses of the deceased. There is then a further deduction of one-third directed by the Tribunal on ground that the deceased would have spent that sum on his family, once he got married. Therefore, effectively, the Tribunal had directed a deduction of two-thirds to be made out of the dependency worked out.

29. In order to assess the deceased's income, it has to be borne in mind that this is not a case where there is either an assertion or evidence about the unfortunate youth being productive at the time of his demise. There is good authority, however, to infer a projected income for a youth, making a good a career for himself, about which there is evidence. I had occasion to consider this issue in **Arun Kumar Dwivedi and another v. Sri Bharat Bhushan Khanna and another**⁵. In **Arun Kumar Dwivedi (supra)** it was observed :

18. The principles regarding assessment of compensation in case of persons, who do not have an income in

4 (2003) 8 SCC 731

5 Neutral Citation No. - 2023:AHC:124064

presenti, but are students, was considered by the Supreme Court in **M.R. Krishna Murthi v. New India Assurance Company Limited and others**, (2020) 15 SCC 493, where it was held:

"24. From the conjoint reading of the aforesaid judgments, *inter alia*, the following principles can be culled out which would be relevant for deciding the instant appeal:

24.1. In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poser would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

24.2. There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career, etc. If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

24.3. There may be cases like *Deo Patodi [Oriental Insurance Co. Ltd. v. Deo Patodi]*, (2009) 13 SCC 123 : (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963] where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

24.4. After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in *N. Manjegowda case [N. Manjegowda v. United India Insurance Co. Ltd.]*, (2014) 3 SCC 584 : (2014) 2 SCC (Civ) 297 : (2014) 4 SCC (Cri) 634]."

19. In **Gopalpuri Jai Prakash and others v. The Managing Director, APSRTC and others, MACMA. No. 694 of 2011,** decided on **08.09.2022**, the Telangana High Court considered the income of a student studying in the intermediate course for the purpose of award of compensation to his legal representatives. The student in that case had died in a motor accident on 21.10.2006. While considering the question of income of student in **Gupalpuri Jai Prakash** (*supra*), it was observed:

"9. The petitioners stated that by the date of the accident Prakash/deceased was aged 18 years and was brilliant student studying intermediate. Further by giving tuitions, he used to earn Rs. 6,000/- per month.

10. Out of the documents filed by the petitioners, the driving licence/Ex. A-5, S.S.C. certificate/Ex. A-7 and passport/Ex. A-10 are reflecting that the date of birth of Prakash/deceased is 09.10.1989. Thus, the age of Prakash/deceased by the date of the accident is 18 years. With regard to income though the petitioners placed the evidence of PW-2 to support the claim that the deceased was giving tuitions, the material particulars as to how many students and the fees per student were missing. However, having regard to the pleaded academic record in Ex. A-7, A-8 and A-9 a monthly income of Rs. 5,000/- can safely be taken on notional basis."

20. Though **Gupalpuri Jai Prakash** was a case where it was asserted that the deceased had an actual income earned out of providing private tuitions, but the Court assessed his income on a notional basis at a figure of Rs.5000/- considering his academic record. Here, the deceased was a student of Class XI. This Court finds on a perusal of his mark-sheets for the High School Examination, 2004 conducted by the Central Board of Secondary Education dated 28.05.2004 that the deceased had averaged between C and D Grade, also earning a B, but nevertheless was a student of a good school, affiliated to the Central Board of Secondary Education. He had interest in extracurricular activities and there are certificates on record of his participation in these activities.

21. PW-1, the deceased's father Arun Kumar Dwivedi has said in his examination-in-chief that his son was reading in Class-XI in the Woodbine Gardenia School, Kanpur and was taking a foundation course to upgrade his skills in writing his Engineering Entrance Examination. In his examination-in-chief, it is further said that his son had read from Nursery to Class X in the Sir Padampat Singhania Education Centre, Kanpur, U.P., affiliated to the CBSE. The witness has also stated that after passing his Engineering Examination, his son wanted to join the

NDA. Considering the totality of evidence, it must be remarked that the deceased was a student, reading in a good institution at the intermediate level. Going by the guidelines in Paragraph No.24.2 of the report in **M.R. Krishna Murthi** (*supra*), it must be remarked that the deceased had an inclination to seek admission to an Engineering Course and aspired to join the NDA. The fact that he had passed his High School from a good institution and was pursuing his studies to earn his Intermediate Examination Certificate also from a good institution, both affiliated to the Central Board of Secondary Education, besides the fact that his family were spending money, providing him auxiliary coaching to upgrade his skills for the purpose of writing his competitive examination for selection to the Engineering Course, all go to show that he had good prospects of being selected in an Engineering Course and securing a rewarding job for himself. The mere fact that the deceased's High School Certificate does not carry very high grades is not an index about his future performance. The schools where he was studying and the fact that his family were funding his education in a good school, are dependable factors to infer a good future for the deceased in terms of his productivity.

22. In the opinion of this Court, bearing in mind the guidance on high authority regarding assessment to be made about the income of students on a notional basis and the circumstances of the deceased, the time when the accident happened, that is to say, the year 2004, when an unskilled daily-wagers would be earning about Rs.3000/- per month, it would be fair to find for the deceased a notional income of Rs.5000/- per month.

30. In the present case, the deceased was aged 16 years and had already earned his intermediate examination certificate. A perusal of the high school certificate shows him to have passed that examination in the first division, earning a distinction in Mathematics, appearing as a regular student from the Government College, Allahabad in the year 2001. The intermediate examination certificate shows that the deceased passed that examination in the first division, earning a distinction in Chemistry and Hindi. There are documents on record to show that he was a member of the Bharat Scouts and Guides and also the Uttar Pradesh Bharat Scouts and Guides in his college. He had also earned a certificate in the year 2000 passing the *Bharat Sanskriti Gyan Pariksha* from the Antarashtriya

Gayatri Pariwar, Shanti Kunj, Haridwar. The certificates relating to the deceased's activities as a scout and also as a member of the civil defence show that the deceased was a dynamic youth, with multi-faceted interests and a good academic record. There are then receipts, which indicate that he was reading to augment his scholastic abilities by coaching at the Sigma Physics Centre, Allahabad and the Yes Academy, Civil Lines, Allahabad, both of which he would attend in the morning and evening shifts, respectively. There is a certificate issued by the Sigma Physics Centre, saying that he was studying at the institute, preparing to write his engineering entrance test. The certificate is dated 25.01.2004. There is also on record an admit card for the All India Engineering/ Pharmacy/Architecture Entrance Examination, 2004 convened by the Central Board of Secondary Education on 20.05.2004, and another admit card issued by the Union Public Service Commission, New Delhi, showing the deceased to have sat the National Defence Academy and Naval Academy Examination, 2004 held on 04.04.2004. There is nothing about results of these competitive examinations, but nevertheless, these are positive pointers towards a promising career profile for the deceased. The evidence also shows that the deceased's family were supportive of his endeavours and he was undergoing intense scholastic training in the coaching institute to successfully attempt his B.Tech. Engineering entrance test.

31. In the opinion of this Court, given these circumstances and what I have held in **Arun Kumar Dwivedi** which incidentally was a case that arose out of an accident very contemporaneous to the present one in time, the deceased must be credited with an income of ₹5000/- per month. The annual income of the deceased has to be worked out accordingly.

32. The Tribunal has adopted a multiplier of '16' which does not conform to the principles laid down in **Sarla Verma (Smt.) and others vs.**

Delhi Transport Corporation and another⁶. Going by the age of the deceased and the principles laid down in **Sarla Verma** (*supra*) the applicable multiplier would be '18', the deceased being in the age bracket of 15-20 years. The finding of the Tribunal, therefore, requires to be modified on this score.

33. Again, the Tribunal has erred in deducting two-thirds towards personal and living expenses of the deceased by telescoping the deceased's personal expenses currently incurred, pegged at a one-third of his income, with an added one-third after his marriage. That does not appear to be the trite principle. In **Sarla Verma** it has been held :

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

34. Clearly, therefore, the deceased being a bachelor, a deduction of 50% towards his personal and living expenses is all that has to be made and no more.

35. So far as the future prospects are concerned, the Tribunal has not awarded anything. The deceased did not have an income *in presenti*. He was neither self-employed nor a person working on a fixed salary. His income has been determined by projecting a future for him on a notional basis. How future prospects in a case like this are to be determined, if at all, was considered by me in **Arun Kumar Dwivedi**. In **Arun Kumar Dwivedi**, I held :

⁶ (2009) 6 SCC 121

25. Nothing has been awarded by the Tribunal towards the future prospects of the deceased. In view of the decision of the Supreme Court in **National Insurance Company v. Pranay Sethi and others (2017) 16 SCC 680**, the benefit of future prospects have been extended to the self-employed and those working on a fixed salary, but here the deceased was neither self-employed nor a person working on a fixed salary. He was a young boy with a future to look to and, therefore, his income has been assessed notionally. The question is whether in the case of notional income, future prospects are to be granted as well. This question fell for consideration of the Supreme Court in **Meena Pawaia and others v. Ashraf Ali and Others, 2021 SCC OnLine SC 1083**. The question and the holding figure in Paragraph Nos.11 and 13 of the report of their Lordships' decision in **Meena Pawaia (supra)**, where it has been observed:

"11. The next question which is posed for the consideration before this court is whether anything further is required to be added towards the future rise in income? It is submitted that on behalf of the Union of India that as the deceased was not serving and earning at the time of accident/death nothing further is to be added towards the future prospect/future rise in income. The aforesaid cannot be accepted.

13. We see no reason why the aforesaid principle may not be applied, which apply to the salaried person and/or deceased self employed and/or a fixed salaried deceased, to the deceased who was not serving and/or was not having any income at the time of accident/death. In case of a deceased, who was not earning and/or not doing any job and/or self employed at the time of accident/death, as observed herein above his income is to be determined on the guesswork looking to the circumstances narrated hereinabove. Once such an amount is arrived at he shall be entitled to the addition over the future prospect/future rise in income. It cannot be disputed that the rise in cost of living would also affect such a person. As observed by this court in the case of *Pranay Sethi (Supra)*, the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Motor Vehicles Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment and/or in case of a deceased who was on a fixed salary and/or self employed would only get the benefit of future prospects and the legal representatives of the deceased who was not serving at the relevant time as he died at a young age and was studying, could not be entitled to the benefit of the future prospects for the purpose of computation of compensation would be inapposite. Because the price rise does affect them also and there is always an incessant effort to enhance one's income for sustenance. It is not

expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant. As observed in *Pranay Sethi* (Supra) to have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Therefore we are of the opinion that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this court in the case of *Pranay Sethi* (supra) i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years."

(emphasis supplied)

36. Now, it is well settled, in view of the decision of the Supreme Court in **New India Assurance Co. Ltd v. Urmila Shukla and others**⁷ that future prospects in the State of U.P. have to be calculated in accordance with the Rules of 1998 and not in accordance with the principles in **National Insurance Company v. Pranay Sethi and others**⁸. Therefore, the future prospects in this case, where the income has been notionally assessed for a non-earning deceased, have to be determined in accordance with Rule 220-A of the Rules of 1998. Rule 220-A, that was inserted in the Rules of 1998 with effect from 26.09.2011 by the Eleventh Amendment, was held to apply retrospectively to an accident that took place before the amendment, by a Division Bench of this Court in **Sushil Kumar and others v. M/s. Sampark Lojastic Private Limited and others**⁹. Therefore, there can be little cavil that Rule 220-A would apply to this accident as well, which happened before the Eleventh Amendment, inserting the rule.

37. The deceased in this case was aged 16 years, that is to say, much less than 40 years. The future prospects, which the claimants are, therefore, entitled to add to the deceased's notional income, going by Rule 220-A(3) of the Rules of 1998, would be 50%.

7 2021 SCC OnLine SC 822

8 (2017) 16 SCC 680

9 2017 (35) LCD 1311

38. The next issue that arises for consideration is the entitlement of the claimants to claim compensation under the head of notional benefits. This question was, again, pronounced upon in **Pranay Sethi** (*supra*) where it has been 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 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."

(emphasis by Court)

39. The issue of award of compensation for the loss of consortium fell for consideration of the Supreme Court in **Magma General Insurance**

Company Ltd. v. Nanu Ram alias Chuhru Ram and others¹⁰ where it was 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. In view of the law laid down in **Magma General Insurance Company Ltd.** (*supra*) it is to be observed that though the unmarried sister of the deceased has been regarded as a legal representative entitled to compensation for the loss of dependency, there is no principle by which she may be entitled to award of compensation for the loss of consortium. That would be the entitlement of the parents here; none else.

¹⁰ (2018) 18 SCC 130

41. So far as the award of interest is concerned, Rule 220-A(6) of the Rules of 1998 provides :

(6) The rate of interest shall be 7% pendente lite and future till the actual payment.

Thus, the interest payable would have to be determined in accordance with the said rules.

42. In view of what this Court has found, the compensation payable to the claimants in appeal deserves to be revised and determined in the following manner :

<u>S. No.</u>	<u>Particulars</u>		<u>Amount</u> (in ₹)
(i)	Monthly Income (of the deceased)	=	5000/-
(ii)	Monthly Income + Future Prospects (Monthly Income x 50%) = 5000+2500	=	7500/-
(iii)	Annual Income (of the deceased) = 7500x12	=	90,000/-
(iv)	Annual Dependency = Annual Income - 50% deduction towards personal expenses of the deceased = 90000 - 45000	=	45,000/-
(v)	Total Dependency = Annual Dependency x Applied Multiplier = 45000 x 18	=	8,10,000/-
(vi)	Claimants' entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents' Consortium =15000+15000+40000x2	=	1,10,000/-
	TOTAL COMPENSATION (₹8,10,000 + 1,10,000)	=	9,20,000/-

Total Compensation = ₹9,20,000

(Rupees Nine Lacs Twenty Thousand Only)

43. In the result, this appeal stands **allowed in part**. The impugned award passed by the Tribunal is **modified** and the compensation awarded is **enhanced** to ₹9,20,000. The aforesaid sum of money shall carry simple interest at the rate of 7% per *annum* from the date of institution of the claim petition, until realization. Any sum of money already deposited with the Tribunal by the insurers, pursuant to the impugned award or the interim orders passed by this Court, shall be adjusted. The other directions of the Tribunal in the award shall remain intact.

44. Costs easy.

Order Date :- October 19, 2023

I. Batabyal

(J.J. Munir, J.)