

Court No. - 33**Reserved
A.F.R.****Case :- FIRST APPEAL FROM ORDER No. - 3597 of 2008****Appellant :- The New India Assurance Company Ltd.****Respondent :- Smt. Madhu Gupta and others****Counsel for Appellant :- Aarushi Khare****Counsel for Respondent :- Vidya Kant Shukla****Hon'ble J.J. Munir,J.**

1. This is an appeal by the Insurance Company assailing an award by the Motor Accident Claims Tribunal/ Additional District Judge, Court No.13, Kanpur Nagar passed in Claim Petition No.236 of 2004 dated 19.08.2008, granting the claim and awarding a sum of Rs.4,85,000/- to the claimants together with interest, payable by the Insurance Company.

2. Ramu Gupta was a *chaat* vendor. He would sell his wares on a mobile cart (*thela*). On the 10th of February, 2004, Ramu Gupta parked his cart in the night hours at the Bhadoria Crossing, situate in Nehru Nagar, Kanpur Nagar and was cycling his way back home. As he reached near the Kanha Shyam Hotel, located at the G.T. Road and was about the petrol pump there, Truck No. MP-09KA-4228, hit him from the rear with full impact. Ramu along with his bicycle was thrown to the ground and died on the spot. The truck was given a chase by Raj Kumar son of Dularey Ram Verma, who was riding his motorcycle. Another, Nand Kishore son of Lal Deewan, who was riding pillion with Raj Kumar, caught up with the offending truck near the Gurudev Talkies and noted down its registration number. But, the truck driver was successful in making a get away.

3. A First Information Report was lodged by one Deepak Kumar, an employee with the petrol pump against an unknown

driver. When the deceased's wife came to know of the particulars of the truck, she went to the police station and conveyed the number of the offending truck. The information regarding the number of the offending truck was also sent by registered post to the Senior S.P., Kanpur Nagar by the deceased's wife on 20.02.2004.

4. The deceased is said to have been a promising and hard working man, who was the only bread-winning member of the family. He was survived by his wife, a minor son and a dependent father. The family have no other source of income. Ramu, at the time of his demise was aged 30 years, and it is said, that he had a monthly income of Rs.5000/-. On the basis of the FIR, Crime No.13 of 2004, under Sections 379, 304-A and 427 IPC, Police Station Nazirabad, District Kanpur Nagar was registered. It is on the foot of these facts that the claim petition, giving rise to the present appeal, was instituted before the Tribunal on 17.03.2004.

5. The claim petition was instituted by Smt. Madhu Gupta, Ramu's widow, his minor son Karan, aged about 7 years through his next friend and mother, Madhu Gupta and Har Dutt, the deceased's father. The three claimants are claimant-respondent Nos.1, 2 and 3 to the appeal. They shall hereinafter be called 'the claimants'. The claim petition was instituted against Hemant Kumar, the owner of the offending truck, arrayed as opposite party No.1 and the New India Assurance Company Limited through the Regional Manager, Civil Lines, Kanpur Nagar, as opposite party No.2. Hemant Kumar is arrayed as defendant-respondent No.4 to this appeal. He shall hereinafter be called 'the owner'. Opposite party No.2 to the claim petition, the Insurance Company aforesaid, are the appellants here, who shall be called 'the insurers', hereinafter.

6. A written statement was put in on behalf of the insurers generally denying the claimants' case. It was pleaded by them that the owner of the offending truck never gave information of the accident to the insurers. It was their case that the offending truck was never involved in the accident. It is next pleaded that the accident happened on account of the deceased's negligence. The further plea raised is that the offending truck, on the date of the accident, was not insured with the insurers and the driver did not hold a valid and effective driving licence. The deceased's age, income and occupation are not established by any documentary evidence.

7. No written statement was filed on behalf of the owner. Accordingly, the claim petition proceeded against the owner *ex parte*.

8. On the pleadings of parties, the following issues were struck (translated into English from Hindi):

"(1) Whether on 10.02.2004 at 11.45 p.m. or thereabouts, near Kanha Shyam Hotel, G.T. Goad, in front of the petrol pump, falling in the local limits of Police Station Nazirabad, District Kanpur Nagar, the driver of Truck No. MP-09KA-4228, driving it at a high speed and negligently, hit the deceased Ramu's bicycle, leading to his death on the spot?

(2) Whether the accident in question happened on account of the cyclist's own negligence?

(3) Whether at the time of the accident in question, Truck No. MP-09KA-4228 was insured with opposite party No.2, the New India Assurance Company Ltd?

(4) Whether at the time of the accident in question, the driver of Truck No. MP-09KA-4228 held a valid and effective driving licence?

(5) Whether the claimants are entitled to receive any compensation? If yes, how much and from which opposite party?"

9. The claimants examined in support of their case, PW-1 Madhu Gupta, PW-2 Nand Kishore and PW-3 Rajeev Yadav. The claimants produced in their documentary evidence, through a list, bearing Paper No.6-Ga, a copy of the FIR and a copy of the written information supported by affidavit, sent by registered post to the S.S.P. Through another list, bearing Paper No.35-Ga, two documents were produced from the Nagar Nigam, a copy of the postmortem report and the site-plan. *Vide* Paper No.41-Ga, a photostat copy of the registration certificate was filed.

10. The insurers produced in their documentary evidence, a copy of the final report and the report of their Investigator, Anil Kumar Pandey. *Vide* another list, bearing Paper No.48-Ga, the insurers produced a copy of the FIR and a certified copy of the letter written to the Station House Officer, P.S. Nazirabad, a copy of the receipt from the Trade Tax Department and a photostat copy of a receipt issued by the Calcutta-Indore Transport Carrier.

11. The Tribunal decided Issue No.3 in favour of the owner and the claimants and against the insurers., holding that the offending truck, on the date and time of the accident, was validly insured. Issue No.4 was also decided in favour of the owner and the claimants, holding that on the date and time of the accident, the driver of the offending truck held a valid and effective driving licence. Issues Nos.1 and 2 were decided together answering Issue No.1 in the manner that the accident was caused by the driver of the offending truck driving it at a high speed and negligently, resulting in Ramu's death on the spot. Issue No.2 was answered in favour of the claimants and against the insurer and the owner, holding that the accident did not happen on account of the deceased's negligence, in any

manner. In answering Issue No.5, the Tribunal proceeded to work out the dependency crediting the deceased with a monthly income of Rs.3500/-. A one-third was deducted towards the deceased's personal and living expenses and a multiplier of '17' was applied. Thus, the substantive dependency worked out was a sum of Rs.4,76,000/-. To this were added under the conventional head, Rs.2000/- towards cremation expenses, Rs.5000/- towards the loss of consortium and mental agony and Rs.2000/- towards the loss of estate, aggregating a sum of Rs.9000/-. In this manner, a total compensation of Rs.4,85,000/- was awarded together with 7% interest payable annually. The compensation was directed to be paid by the insurers. A direction for apportionment of the compensation was made in terms that the deceased's father was held entitled to a sum of Rs.50,000/-, whereas out of the remainder of the compensation, the widow and the minor child were each entitled to a half share. The compensation payable to the minor was directed to be invested in fixed deposit with a nationalized bank until time that he attained majority.

12. Disillusioned by the award, the insurers have appealed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act').

13. Heard Mr. Sarvesh Kumar Pandey holding brief of Ms. Aarushi Khare, learned Counsel for the insurers and Mr. Vidya Kant Shukla, learned Counsel appearing on behalf of the claimants.

14. It is argued by the learned Counsel for insurers that the deceased was travelling on a bicycle, when he was hit by an unknown vehicle, and died. According to him, it is a case of hit and run. On the fateful day, that is to say, 10.02.2004, the

offending truck was in Indore and the accident took place at Kanpur Nagar. According to the learned Counsel, the offending truck has been falsely shown involved in the accident by the claimants, acting in collusion with the owner. This is apparently so because it was not possible for the offending truck to cause an accident at Kanpur Nagar, when it was present on that day at Indore. It is the learned Counsel's submission that the Tribunal failed to consider documentary evidence, comprising Paper No.50-C/1, that is to say, the owner's application to the Police dated 25.09.2007, Paper Nos.51-C and 52-C/1, filed by the insurers, which show that the offending truck was in Indore on 10.02.2004, making its involvement in the accident at Kanpur an impossibility. The FIR was lodged against an unknown vehicle. It was subsequently and after lapse of a period of ten days that the claimants passed on information to the Police about the offending truck's registration number.

15. It is emphasized by the insurers that no charge-sheet was filed against the offending truck or its driver, though detailed investigation was undertaken by the Police. The Investigating Officer came to the conclusion that the insured vehicle's involvement in the accident was not proved by evidence. The eye-witness produced by the claimants before the Tribunal was not named in the final report submitted by the Police. It is contended that it can, therefore, be unmistakably concluded that the eye-witness produced was got up by the claimants. It is also emphasized that it is not the claimants' case that they filed a protest petition before the Magistrate, where the Police had put in their final report.

16. On the other hand, learned Counsel for the claimants, Mr. Vidya Kant Shukla, has submitted that the accident happened when the deceased was returning home riding his bicycle. The

offending truck hit the deceased at about 11.45 p.m. in front of the petrol pump located on the G.T. Road. The FIR in the matter was lodged by Deepak Kumar, an employee with the petrol pump. The offending truck was given a chase by Raj Kumar son of Dularey Ram and Nand Kishore son of Lal Deewan. Nand Kishore appeared in the witness-box as PW-2 and proved the accident involving the offending truck. The registration number of the offending truck was provided by Nand Kishore to the deceased's widow, and, it was, thereupon conveyed to the Senior Superintendent of Police on 20.02.2004, by registered post. The Police, however, did not investigate the matter fairly and properly. They submitted a final report on the basis that the unknown truck driver was not traceable. It is emphasized that the owner of the offending truck never contested the claim, against whom the claim proceedings went *ex parte*.

17. The present appeal has been carried by the insurers alone on ground, *inter alia*, that the offending truck was not involved in the accident. The insurers have filed receipts from a petrol pump, where the offending truck was allegedly refuelled, but the same have not been proved by any witness. It is, particularly, emphasized that the eye-witness, PW-2 has not been cross-examined about the identification of the offending truck by the insurers. The owner of the offending truck addressed the Police and sent the driver's name as well as a photostat copy of his driving licence, registration certificate, the insurers' policy etc. on 07.09.2007. He never said that his vehicle was not involved in the accident. The owner again sent information on 25.09.2007 taking a stand that on the date of accident, the vehicle was away from the place of accident, but documents to prove the fact, were never proved by any witness. The fact that the vehicle was involved in the accident is

well established by the claimants' testimony, both oral and documentary.

18. It is next submitted on behalf of the claimants that the deceased was a *chaat* vendor and would earn Rs.250-300/- per day. In this regard, the testimony of PW-1 has been emphasized. The Tribunal has assessed his income at a figure of Rs.125/- per day i.e. Rs.3750/- per month, but calculated compensation on the basis of a monthly income of Rs.3500/-. It is next submitted that the deceased was 30 years old and according to the law laid down by the Supreme Court in **Sarla Verma (Smt) v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, a multiplier of '17' ought to have been adopted by the Tribunal, the deceased being in the age bracket of 26-30. The award of compensation under the conventional heads is urged to be inadequate, as also the non-grant of compensation towards future prospects. In substance, the claimants have come up with an oral cross-objection to the extent that they claim enhancement of compensation in order to make it a just award.

19. Upon hearing learned Counsel for the parties, this Court finds that the Tribunal has meticulously considered the testimony of PW-2 and believed it. PW-2 is an eye-witness. The truck number is said to have been given out by PW-1 to the Police after she was informed about it by Raj Kumar Soni and Nand Kishore Soni at her house, as she says in her testimony.

20. So far as PW-2 is concerned, this Court has looked into his testimony. In the examination-in-chief, he has testified:

"दिनांक 11.2.04 को मैं अपने रिस्तेदार श्री राजकुमार सोनी की मोटर साइकिल में पीछे बैठकर सब्जी मण्डी वादशाही नाका से लाजपत नगर अपने घर जा रहा था। जैसे ही हम लोग जीटी० रोड पर कान्या श्याम होटल के पास पेट्रोल टंकी के सामने रात्रि 11-45 बजे पहुंचे कि देखा कि हमारे सामने जा

रहे एक साइकिल चालक को ट्रक नम्बर MP09K.A.4228 के ड्राइवर ने बड़ी तेजी व लापरवाही से चलात हुआ साइकिल चालक को सड़क के किनारे 2 जा रहा था जोरदार टक्कर मार दिया साइकिल चालक गिर गया था ट्रक चालक ट्रक को लेकर कल्यानपुर की तरफ भाग रहा था गुरुदेव चौराहे तक हम दोनों ने पीछा किया लेकिन रोकने की कोसिस की लेकिन रुका नहीं उस रात हम लोग नम्बर नोट करके अपने 2 घर चले गये थे। घटना की सूचना तीसरे दिन अखवार के माध्यम से जानकारी हुई कि उक्त घायल व्यक्ति की मृत्यु हो गई। मैंने नजीराबाद थाने में नाम पता किया (मृतक का) इसके बाद मृतक के घर रावतपुर गांव गया। मृतक की पत्नी मधु गुप्ता को ट्रक का नम्बर लिखकर व अपना नाम पता लिखकर दे आये थे।"

21. In the cross-examination of the witness, that was deferred on 02.10.2006 to 28.11.2006, PW-2 has stated:

"और 10.2.04 को भी मैं बादशाही नाका पर सब्जी के कारोबार में व्यस्त था। तथा 11.2.04 को भी मैं बादशाही नाका में ही था। राजकुमार सोनी मेरे रिश्तेदार है। तथा उनका मकान नं० मुझे नहीं मालूम। राजकुमार सोनी ही मोटर साइकिल चला रहे थे। मोटर साइकिल का नम्बर मुझे नहीं मालूम। उनकी मोटर साइकिल काले रंग की हीरो होन्डा था। घटना स्थल पर तुरन्त ही मैं पहुंच गया था। भागते हुए ट्रक को मैं पकड़ नहीं पाया वह निकल गया। नम्बर नोट कर लिया था। ट्रक लोडेड था। और मैंने उसका नम्बर देख भी लिया था उसके आगे गुरुदेव टाकिज तक पीछा किया और वहाँ पर पहुंच पुलिस वालो को मैंने बताया। उन्होंने मुझसे कहा कि तू भी मरना चाहता है क्या, तू अपने घर जा। और पुलिस वालो ने मुझे भाग दिया। इसके बाद मैं अपने घर आ गया।"

22. So far as this witness is concerned, his testimony is consistent and natural. The fact that he gave information to the deceased's wife some three days after the occurrence, is also logical, because the two are not acquaintances. In a road accident, the likelihood of an eye-witness, being a stranger to the victim and his family, enhances his credit rather than render his testimony doubtful. In the logical sequence of things, if the witness, who has given the offending truck a chase and noted its number, would miss the identity of the deceased, who in the meantime would have been removed from site. The FIR in this case was lodged by the petrol pump attendant, Deepak Kumar. After the chase was over and the offending truck's number noted by PW-2, there was no way the witness would have

known the deceased's whereabouts, except the way he has himself spoken of in his examination-in-chief. He read about the name of the deceased in the newspaper and went to the police station concerned. It was there that he came to know of his address, went over and conveyed the number of the offending truck to his wife. In the nature of things, the testimony of PW-2 is natural and his presence not doubtful. In his cross-examination, the witness has said that he chased the vehicle upto a certain Gurudev Talkies, where he found some policemen on duty, whom he informed about the offending truck, that was still in the vicinity. He has stated in his cross-examination that the policemen told him if he too wants to die and that he should go home. This attribution to the policemen is also something, which is not unbelievable. This kind of apathy is often seen amongst the lower ranks of the police, if something like an accident is brought to their notice by a common man of no special status. There is no reason to discard the eye-witness account of Nand Kishore, PW-2, which the Tribunal has wholesomely believed. We are in agreement with the Tribunal on this point.

23. The learned Counsel for the insurers has criticized the findings of the Tribunal about the eye-witness on ground that in the final report submitted by the Police, this witness is not mentioned. As already noticed, the learned Counsel for the insurers has dubbed this witness a planted one. There is a scathing criticism of his testimony in the minutest detail by the learned Counsel for the insurers. We cannot agree with the approach that the learned Counsel for the insurers wants us to adopt in evaluating the testimony of PW-2.

24. In a motor accident, the standard by which the case has to be established is not one beyond reasonable doubt or the

criminal standard. It may even be lesser than the strict civil standard of probability. The reason is that what the Tribunal does is not precisely hold trial of an action. It has to hold an inquiry into the accident, where its role is primarily inquisitorial. The Act is a social welfare legislation and the Tribunal in keeping with its purpose, has to ensure that an aggrieved, if there be evidence, should not be denied recompense by adopting a hyper-technical approach to the evidence that is forthcoming. A dependable eye-witness account before the Tribunal by a solitary eye-witness, who has identified the vehicle, is good enough to fix liability.

25. The remarks of the Supreme Court in **Sunita and others v. Rajasthan State Road Transport Corporation and others, (2020) 13 SCC 486** are illuminating. It is observed in **Sunita (supra)**:

"30. Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross-examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (AD 2) evidence from the viewpoint of him not being named in the list of eyewitnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation (as set out in *Parmeshwari* [*Parmeshwari v. Amir Chand*, (2011) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] and reiterated in *Mangla Ram* [*Mangla Ram v. Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819]) that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been

named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross-examine the witness concerned. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross-examination, for which opportunity was granted to the respondents by the Tribunal."

26. In this case also, the insurers got ample opportunity to cross-examine PW-2, but there is nothing in his cross-examination that may shake his veracity or make his presence doubtful on the scene of accident. About the approach of the Tribunal to be more inquisitorial in a motor accident claim than adversarial, reference may be made to the decision of this Court in **Km. Jyoti Tripathi and others v. Devendra Singh Yadav and others, 2023:AHC:208490**. This Court, therefore, is in wholehearted agreement with the Tribunal about the conclusions that it has reached based on the testimony of PW-2.

27. There is much contention on behalf of the learned Counsel for the insurers that the documentary evidence shows that the offending truck was at a far away place on the date of occurrence, which makes it impossible to be involved in the accident. To this end, reliance has been placed on the fact that the truck was booked with a consignment from Calcutta (now Kolkata) to Indore on 05.02.2004. This is attempted to be proved by Paper No.51-Ga, which is a sales tax receipt. The margin of this receipt bears the signature of the driver, Rajvansh. It also bears the receipt of the Trade Tax Department. The receipt has been relied on to show that the offending truck left Calcutta for destination Indore on 05.02.2004, carrying its consignment. The Tribunal has remarked that there is no testimony to show that after

07.02.2004, what were the whereabouts of the offending truck. The Tribunal has observed that the accident happened on 10.02.2004 at 11.45 in the night hours. In the absence of testimony to indicate the whereabouts of the offending truck between 07.02.2004 and 10.02.2004, a period of three days and three nights is enough, as the Tribunal says, for a fast moving vehicle like a truck to conveniently traverse the distance and arrive at Kanpur on the date and time of the accident. This finding by the Tribunal cannot be flawed.

28. Moreover, the receipt Paper No.51-Ga is a photostat copy of the document and no explanation has been given why the original has not been or could not be produced. It is difficult to place reliance on secondary evidence in this fashion.

29. There are then documents about refueling of the vehicle, Paper No.52-Ga from B.P. Malva, Fatehpur (U.P.) dated 08.02.2008. This records the number of the truck and the quantity of the diesel oil purchased and its price. This too is a photocopy of the receipt. There is a computerized receipt and a hand written receipt. Both the receipts are photocopies. The receipts, as already said, have been issued by petrol pump in District Fatehpur, Uttar Pradesh. The receipt is dated 08.02.2004. It is not known what route the truck was taking at the time when it refueled at Fatehpur and if it was still *en route* to Indore. If it was not proceeding to Indore, Fatehpur is located hardly 70 kilometers away from Kanpur and the offending truck could have very well been at Kanpur on 10.02.2004, when the accident happened. The Tribunal has remarked that it is urged that the consignment loaded at Calcutta was delivered to the consignee Anil Enterprises at Indore on 11.02.2004 by the offending truck, but this fact has not been proved by examining the proprietor or the manager of Anil Enterprises. The approach

of the Tribunal in drawing its inference about the whereabouts of the vehicle at the time of the accident is flawless, which we uphold.

30. The police investigation has been much harped upon by the learned Counsel for the insurers. The Tribunal, for detailed reasons assigned, has not accepted the conclusions of the Police. This Court is not inclined to extend much credit to the police investigation in the present case, contrary to a dependable eye-witness account.

31. For all that we have said about the remarks of the Tribunal regarding the involvement of the offending truck in the accident, this Court holds in agreement with the Tribunal that the accident was caused by the offending truck. The deceased was riding a bicycle and was hit by the truck on the rear side. The Tribunal has found that the deceased was not at all negligent and for the reasons that the Tribunal has given and otherwise too, we believe the testimony of PW-2 on this score and hold that the accident was caused solely on account of the offending truck's driver's negligence.

32. This takes this Court to the other question, if the compensation awarded by the Tribunal should be enhanced. There is certainly an oral cross-objection, though no formal cross-objection or cross-appeal has been filed. The claimants have asked for just compensation to be awarded.

33. It is the duty of this Court under the Act to make a just award. That this Court has the power, in the absence of cross-objections by the claimant, to pass a just award, has been held in **New India Assurance Co. Ltd. v. Smt. Lajjawati and others, 2022 (6) AWC 5291**. Accordingly, this Court holds that

compensation in this case ought to be revised. This Court proceeds to do so.

34. The Tribunal after considering the deceased's avocation, who was a *chaat* vendor and the testimony about the affairs of his business has estimated his income at a sum of Rs.125/- per day as against Rs.250/- to Rs.300/- claimed for him. The accident happened in the year 2004. It is difficult to precisely assess the income of a vendor of foodstuffs, like *chaat*, but given the circumstances that the deceased was occupied in his avocation until the late evening hours, in a city like Kanpur, about the year 2004, one can reasonably infer for the deceased a daily income of Rs.150/-. This would lead to a monthly income of Rs.4500/-. The annual income would, therefore, be Rs.54,000/-.

35. The deceased had a family of three, besides himself, that is to say, his wife, a minor child and aged father, who are his dependents. Considering the child to be half a unit, the deceased would be placed in the bracket of 2-3 as laid down in Paragraph No.32 of the report in **Sarla Verma** (*supra*). For the said bracket, deduction towards personal and living expenses would be one-third. The finding of the Tribunal on this score is, therefore, flawless and affirmed.

36. The Tribunal has adopted a multiplier of '17', which also accords with what is laid down in Paragraph No.42 of the report in **Sarla Verma**. The adopted multiplier also does not require interference.

37. What the Tribunal, however, has not awarded is compensation payable on account of future prospects. After the decision in **National Insurance Company v. Pranay Sethi and others (2017) 16 SCC 680**, it is well settled that future

prospects are payable even to those, who are self-employed or work on fixed wages. The percentage of addition towards future prospects in the State of U.P. is governed by Rule 220-A(3) of the U.P. Motor Vehicles Rules, 1998 (for short, 'the Rules of 1998') as held in **New India Assurance Co. Ltd v. Urmila Shukla and others, 2021 SCC OnLine SC 822.**

38. The fact that this accident took place much before the introduction of Rule 220-A to the Rules of 1998, would not make the Rules inapplicable, as held in **Sushil Kumar and others v. M/s. Sampark Lojastic Private Limited and others, 2017 (35) LCD 1311.**

39. Under Rule 220-A(3) of the Rules of 1998, the deceased being aged less than 40 years, 50% would have to be added to her income on account of future prospects.

40. So far as conventional heads go, the law in this regard is again laid down by **Pranay Sethi (supra)**, where it is 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)

41. So far as the loss of consortium is concerned, the principles are elaborately laid down by the Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130**, where it has been observed:

"**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)

42. In view of the aforesaid legal position, the just compensation to which the claimants are entitled, requires to be revised in the following manner:

(i)	Monthly Income (of the deceased)	=	4500
(ii)	Annual Income (of the deceased) = 4500x12	=	54000
(iii)	Annual Income+Future Prospects (annual income x 50%) = 54000+27000	=	81000
(iv)	Annual Dependency = Annual Income – one-third deduction towards personal expenses of the deceased = 81000-27000	=	54000
(v)	Total Dependency = Annual Dependency x Applied Multiplier = 54000 x 17	=	918000
(vi)	Claimant’s entitlement towards conventional heads = Loss of Estate + Funeral Expenses + dependents’		

$$\text{Consortium} = 15000 + 15000 + 40000 \times 3 = 150000$$

$$\begin{array}{l} \text{The total compensation would} \\ \text{therefore, work out to a figure of} \\ \text{Rs.918000+ Rs.150000} \end{array} = 1068000$$

43. In the result, the appeal filed by the insurers **fails**. However, considering the oral cross-objections by the claimants seeking enhancement, the award passed by the Tribunal is modified and enhanced to a sum of Rs.10,68,000/-. The said sum of money will carry interest @ 7% per *annum* from the date of institution of the claim petition, until realization. Any sum of money, already deposited, pursuant to the impugned award passed by the Tribunal, or any interim orders of this Court, shall be adjusted. The directions of the Tribunal regarding apportionment of compensation between the heirs of the deceased shall remain intact with the modification that nothing shall now be held in fixed deposit for the then minor claimant, the deceased's son. The entire compensation shall be remitted in account to the deceased's son as well.

44. This appeal is **disposed of** in terms of the aforesaid orders.

45. There shall be no order as to costs.

Order Date :- 30.11.2023

Anoop

(J.J. Munir, J.)