

**Court No. - 19**

**Case :-** FIRST APPEAL FROM ORDER No. - 62 of 2016

**Appellant :-** Rajendra Prasad And Ors.

**Respondent :-** The New India Insurance Co. Ltd.Thru Its R.M.And Ors.

**Counsel for Appellant :-** Krishna Nand Shukla,Mukesh Singh

**Counsel for Respondent :-** Ram Baran Singh,H.C. Shukla,Ram Baran Singh,Zafar Aziz

**Hon'ble Jaspreet Singh,J.**

1. Heard Shri Faizal Hasimi, Advocate holding brief of Shri Mukesh Singh, learned counsel for the appellants and Shri Zafar Aziz, learned counsel for the insurance company.
2. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of the award dated 07.02.2015 passed by MACT/Special Judge (SC/ST), Faizabad in Claim Petition No.42 of 2014, whereby in the death case, a sum of Rs.35,28,760/- has been awarded in favour of the claimants-appellants along with 7% interest per annum.
3. The record indicates that the instant appeal was filed along with an application seeking condonation of delay. The application was allowed on 01.11.2021 by the co-ordinate Bench of this Court and now the appeal is ripe for hearing.
4. A short question is involved in the instant appeal and the contention of learned counsel for the appellant is primary two fold. It is submitted that the age of the deceased was 45 years. However, the Tribunal has applied a multiplier of 10 instead of 13. It is also stated that though the Tribunal noticed in the award that the appropriate multiplier would be 13, but it has adopted a vague reasoning to state that by applying a multiplier of 13, the amount of compensation will be quite high, therefore, it has adopted a multiplier of 10, which is per se bad. The other limb of the submission is that the Tribunal has merely awarded Rs.15,000/- towards conventional head, whereas in the light of decision of the Apex Court in the case of ***National Insurance Ltd. Vs. Pranay Sethi and others, reported in (2017) 16 SCC***, the claimants are entitled to conventional heads both for filial consortium as well as spouse and parental consortium. In the aforesaid backdrop, it is urged that the award dated 07.202.2015 deserves to be modified and the amount to be enhanced.

5. Shri Zafar Aziz, learned counsel for the respondent-insurance company has fairly submitted that the reasoning adopted by the Tribunal while reducing the multiplier from 13 to 10 is apparently not sustainable as it runs contrary to the settled principle, which has been noticed by the Apex Court in ***Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another reported in 2009 (6) SCC 121***, which has been approved by the Constitution Bench of the Apex Court in Pranay Sethi (supra). It is thus submitted that since issue of compensation is to be determined by the Tribunal and can also be taken note by this Court in appeal, hence, the Court may calculate the appropriate compensation. It is also pointed out that the amount which was granted by the Tribunal has already been paid to the appellants and as such appropriate order may be passed by this Court.

6. Having heard the learned counsel for the parties and also on perusal of the material on record, at the very outset, it may be noticed that the Claim Petition No.42 of 2014 was filed by the claimants-appellants stating therein that on 03.12.2013, Chandra Prakash, who was riding his scooty bearing No.UP-70BJ-5626 and while he had reached Phaphamau railway over-bridge at around 2:00 pm, a bus bearing No.UP70 CT- 7774, which was being driven rashly and negligently hit the scooty from the back. As a result thereof, the wife of deceased, namely, Smt. Greesa Tiwari appellant No.3 fell and the bus crushed the head of the Chandra Prakash, who died on the spot. An FIR was also lodged by the Company Commandant as Chandra Prakash was working with the CRPF and was drawing a salary of Rs.31,589/- per month. It is on the aforesaid fact that claim petition came to be filed, which was contested by the respondents.

7. Upon exchange of pleadings, the Tribunal framed five issues and after noticing the oral as well as the documentary evidence, it recorded a finding that the accident had occurred on account of rash and negligent driving by the bus driver bearing Bus No.UP70 CT-7774. The Tribunal also found that the bus was duly insured and its driver has a valid and subsisting driving license. However, while computing the compensation, the Tribunal awarded a total of sum Rs.37,28,760/- along with 7% interest per annum by means of the award dated 07.02.2015 and it is this award, which is under challenge in the instant appeal.

8. Having heard the parties and from the perusal of the material on record, this Court finds that an apparent reasoning given by the Tribunal in adopting lower multiplier cannot be sustained. Inasmuch as, the Tribunal states that though in the given factual background, since the age of the deceased was 47 years, the

appropriate multiplier of 13 should have been taken but by adopting such multiplier the amount of compensation was getting higher. Accordingly, the Tribunal reduced the multiplier from 13 to 10 without any reason. It is relevant to notice that the Tribunal while considering a claim has to work in the light of the settled principles and an appropriate compensation, which is just and fair, must be awarded to the claimants. It is not the duty or the consideration for the Tribunal as to whether in its opinion the amount being awarded to the claimants is higher, which otherwise in terms of the settled principle the claimants are legally entitled to.

9. It is in the aforesaid backdrop, this Court finds that admittedly the salary of the deceased was Rs.31,589/- and he was entitled to an enhancement for future prospect with the number of the dependents, 1/4 ought to be deducted for the personal expenses and thereafter applying the appropriate multiplier, the income was to be calculated. This Court further finds that the claimants are parents of the deceased, wife and two minor children. In this context, the parents are entitled for filial consortium, whereas the wife is entitled for spouse consortium while two minor children are also entitled for parental consortium. In this context, the Tribunal has merely awarded a sum of Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and Rs.5,000/- towards loss of consortium. However, this issue has been noticed and settled by the Apex Court in the case of Pranay Sethi (supra). It has also been elaborated in a later decision of the Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram reported in 2018 SCC Online SC 1546.***

10. Noticing the aforesaid, this Court is of the clear opinion that amount of compensation as granted by the Tribunal has been suppressed for unnecessarily on some strange reason, which is not sustainable. Accordingly, this Court re-assesses the compensation as under:-

Income =31,589/- per month

Future Prospect @ 25% = 7,897/-

Deduction towards personal expenses (1/4) = 39,486-9,871 = 29,615/-

Age =45

Multiplier =14

Thus, compensation payable =29,615 x 14 x 12 = 49,75,320/-

Filial consortium for appellant Nos.1 & 2 = 15,000/-

Spouse consortium for appellant No.3 = 30,000/-

Parental consortium for appellant Nos.4 & 5= 30,000/-

Loss of Estate = 10,000/-

Funeral expenses = 10,000/-

Total = Rs.50,70,320/-

11. This Court finds that the claimants-appellants are entitled to a total sum of Rs.50,70,320/-. Any amount already to the claimants paid shall be deducted from the total compensation as determined above and the remaining amount shall be paid by the Insurance Company to the appellants within 60 days from today along with interest @ 7% per annum from the date of the application till the date of payment.

12. Accordingly, the appeal is **partly allowed** and the award dated 07.02.215 passed in Claim Petition No.42 of 2014 shall stand modified to the above extent. In the facts and circumstances of the case, there shall be no order as to costs.

13. Record of the Tribunal shall be returned forthwith.

**Order Date :- 11.10.2023**

Ashutosh Pandey