

Reserved
Neutral Citation No. - 2024:AHC-LKO:71995
AFR

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 333 of 2023

Appellant :- The New India Assurance Company Ltd. Thru. Manager
Legal Hub,Lucknow

Respondent :- Shallo Begum And 4 Others

Counsel for Appellant :- Jitendra Narain Mishra

Counsel for Respondent :- Nand Kishore Agarwal,Mayank
Agarwal,R.K.S. Chauhan

And

Case :- FIRST APPEAL FROM ORDER No. - 18 of 2023

Appellant :- Smt. Shallo Begum And 2 Others

Respondent :- Mahendra Singh And 2 Others

Counsel for Appellant :- R.K.S. Chauhan,Mayank Agarwal,Nand
Kishore Agarwal

Counsel for Respondent :- Jitendra Narain Mishra

Hon'ble Rajnish Kumar,J.

1. Heard Shri Jitendra Narain Mishra, learned counsel for the appellant in F.A.F.O. No.333 of 2023 and learned counsel for the respondent no.3 in F.A.F.O. No.18 of 2023 (here-in-after referred as learned counsel for the insurance company) and Shri R.K.S. Chauhan, learned counsel for the claimant-respondents no.1 to 3 in F.A.F.O. No.333 of 2023 and learned counsel for the appellant in F.A.F.O. No.18 of 2023 (here-in-after referred as learned counsel for the claimants). None appeared on behalf of the respondent nos.4 and 5 in F.A.F.O. No.333 of 2023 and for respondent nos.1 and 2 in F.A.F.O. No. 18 of 2023 i.e. the owner and driver of the offending vehicle i.e. truck.

2. The F.A.F.O. No.333 of 2023 has been filed assailing the judgment and award dated 16.09.2022 passed in Claim Petition No.953 of 2014; Smt. Shallo Begum and Others Vs. Mahendra Singh and Others by Motor Accident Claims Tribunal (here-in-after referred as M.A.C.T.), South, Lucknow. The F.A.F.O. No.18 of 2023 has been filed for modification of the judgment and award dated 16.09.2022 and enhancement of compensation. Hence both the appeals are being clubbed and decided together by this common judgment and order.

3. Learned counsel for the appellant i.e. insurance company in F.A.F.O. No.333 of 2023 submitted that contributory negligence of the deceased has not been considered, whereas as per the technical inspection report of scooter, on which the deceased was going, was damaged from the front side, therefore, the plea of the claimant-respondent that the truck insured with the appellant insurance company had dashed from the back side was not tenable and there was contributory negligence of the deceased also. He further submitted that the deceased was of 58 years of age at the time of accident and since the daughter of the deceased was given appointment on compassionate ground in his place after his death, therefore, there was no future loss of income, hence the future prospects could not have been allowed. He further submitted that the provision of Section 134(C) of the Motor Vehicles Act, 1988 (here-in-referred as Act of 1988) have not been complied and no information to the appellant insurance company was given after the accident by the driver or in-charge of vehicle, therefore, the appellant insurance company can not be held liable to pay the amount of compensation in view of Section 168 of the Act of 1988.

4. On the basis of above, learned counsel for the appellant submitted that impugned judgment and award passed by the tribunal is not sustainable in the eyes of law and is liable to be set aside. He relied on **Syed Basheer Ahmad & Others Vs. Mohammad Jameel**

& Another; (2009) 2 SCC 225, Divisional Controller, KSRTC Vs. Mahadev Shetty & Another; (2003) 7 SCC 197, State of Haryana & Another Vs. Jasbir Kaur & Others; 2003 (3) T.A.C. 569 (S.C.), State of Gujarat Vs. Shantilal Mangaldas & Others; 1969 (1) SCC 509, Gobald Motor Service Ltd. & Another Vs. R.M.K. Veluswami & Others; (1962) 1 SCR 929, Reliance General Insurance Company Ltd. Vs. Shashi Sharma & Others; 2016 (4) T.A.C. 149 (S.C.), Sebastiani Lakra & Others Vs. National Insurance company Ltd. & another; (2019) 17 SCC 465, 31, Sanjay Ramdas Patil Vs. Sanjay & Others; (2021) 10 SCC 306, Khub Chand and Others Vs. State of Rajasthan; (1967) 1 SCR 120 and National Insurance company Ltd. Vs. Pranay Shethi & Others; (2017) 16 SCC 680.

5. Per contra, learned counsel for the claimant-respondents no.1 to 3 in F.A.F.O. No.333 of 2023 submitted that the contentions of learned counsel for the insurance company are misconceived and not tenable. There was no contributory negligence of the deceased because the F.I.R. was lodged immediately after the accident alleging that the truck insured by the appellant insurance company had hit the scooty from the back side, therefore, the deceased fell down from the scooty and came under the truck. He further submitted that on hitting from back, the vehicle may fell from the front side, also and damaged, therefore, merely on the basis of damage from front side, it can not be said that there was any contributory negligence of the deceased. He further submitted that the violation of Section 134(C) of the Act of 1988, though has been pleaded in the written statement, but not proved by adducing any cogent evidence. Even otherwise the violation of Section 134 (c) can not be a ground for denying for payment of compensation to the claimants.

6. Learned counsel for the claimants further submitted that the age of deceased and appointment of daughter of the deceased on

compassionate ground can not be a ground for denial of future prospects because the compassionate appointment or ex-gratia assistance can not be considered as a measure of future prospect on account of loss of life. Even otherwise, the daughter of the deceased has been appointed on very less emoluments in comparison to the salary of the deceased at the time of accident and prospective enhancement in his emoluments. He further submitted that it is settled proposition of law that just and fair compensation is to be awarded under the Act of 1988.

7. On the basis of above submission of learned counsel for the claimants is that the appeal filed by the insurance company is misconceived and the grounds taken are not tenable in the eyes of law, therefore, it is liable to be dismissed with cost.

8. Learned counsel for the claimants in regard to F.A.F.O. No.18 of 2023 filed by them for enhancement of compensation submitted that the learned tribunal has considered only the salary of the deceased and deducted the amount of over time being earned by him monthly, which was proved by the wife of the deceased Smt. Sallo Begum. He further submitted that the learned tribunal failed to consider the annual income of the deceased shown in Form-16 i.e. Rs.6,93,043/-, which was issued and proved by the department by adducing evidence. Thus, the submission is that the F.A.F.O. No.18 of 2023 is liable to be allowed and the amount of compensation is liable to be enhanced accordingly.

9. Learned counsel for the claimants relied on **Dinesh Kumar J. @ Dinesh J. Vs. National Insurance Company Ltd. & Others; (2018) 1 SCC 750, National Insurance Company Ltd. Vs. Pranay Shethi & Others; (2017) 16 SCC 680, National Insurance Company Ltd. Vs. Rekhaben & Others; 2017 (3) ACCD 1372 (SC)/ (2017) 13 SCC 547, The Oriental Insurance Company Ltd.**

Vs. Abhiraj Chetri & One Another; 2018 (2) ACCD 862 (All)/ 2017 SCC OnLine All 2384, National Insurance Company Ltd. Vs. Pushpa Rana & Others; 2009 ACJ 287, Smt. Anjali & Others Vs. Lokendra Rathod & Others; 2022 LiveLaw (SC) 1012 and National Insurance Company Limited Vs. Mannat Johal & Others; (2019) 15 SCC 260.

10. Learned counsel for the insurance company vehemently opposed the submissions of learned counsel for the claimants in regard to F.A.F.O. No.18 of 2023. He submitted that the over time income can not be considered for assessment of the compensation because over time is given only for the days an employee works over time, which can not be said to be fixed each and every month and treated regular monthly income. He further submitted that the departmental witness has admitted the income shown in Form-16 as the arrears of salary, therefore, it can not be said that the said income was annual income of the deceased, thus the appellant is not entitled for any enhancement in compensation and the appeal for enhancement of compensation has been filed on misconceived and baseless ground, which is liable to dismissed.

11. I have considered the submissions of learned counsel for the parties and perused the records.

12. The claim petition was filed alleging therein that the deceased was going on his scooty from ARTO office to his house on 08.05.2014. When he reached Barabirwa Crossing, Police Station-Krishna Nagar at 12:00 in the day, Truck No.U.P.-78-BT-3289, being driven rashly and negligently by its driver, hit the scooty from the backside without blowing horn, on account of which he fell down and came under the truck, in which he suffered serious injuries and died on the spot. The deceased was working on the post of driver in the Government service and getting Rs.34,351/- per month as salary and

Rs.23,400/- as over time, thus total about Rs.57,753/- per month. Accordingly the compensation of Rs.100,00,000/- was claimed.

13. The written statement was filed by the respondent no.1 in the claim petition i.e. the owner of the vehicle denying most of the averments made in the claim petition and admitting that he is the owner of the vehicle and respondent no.2 Prahlad in the claim petition is the driver. It has also been admitted that the vehicle was insured with the respondent no.3 i.e. the National Insurance Company Ltd. The vehicle was being driven with valid papers. It was also pleaded that no accident had occurred from his vehicle. The accident has occurred on account of negligence of the scooty, therefore, the liability of compensation is of the insurance company.

14. The National Insurance Company i.e. the respondent no.3 in the claim petition filed written statement denying most of the averments made in the claim petition and stating that the accident had occurred on account of negligence of the driver of the scooty. The relevant papers, such as first information report, charge sheet, postmortem report, R.C., insurance, etc. has not been produced, therefore, the claim petition is liable to be dismissed.

15. Considering the pleadings of the parties, nine issues were framed by the tribunal. Thereafter oral as well as documentary evidence was adduced by the parties. After considering the pleadings of the parties, the evidence and material on record, the tribunal held that the accident had occurred on account of rash and negligent driving of the Truck No.U.P.-78-BT-3289 and allowed the claim petition and awarded an amount of Rs.27,45,863.16 alongwith annual interest at the rate of 7% per annum from the date of filing of the claim petition and directed to the National Insurance Company Ltd. to make the payment of amount as the truck was validly insured and

running in accordance with the terms and conditions of the insurance policy.

16. The claim petition has been filed under Section 166 of Motor Vehicles Act, 1988. The claimants have proved the death of the deceased in the accident by the offending vehicle i.e. the Truck No.U.P.-78-BT-3289 on account of rash and negligent driving of it's vehicle. The accident has not been disputed by the insurance company. The only dispute raised in regard to accident by learned counsel for the insurance company is that since the scooty, on which the deceased was going was damaged from the front side, therefore, it can not be said that the accident was from the back side, therefore, there was negligence of the deceased also in the accident. The claim petition was filed alleging that the truck was being driven rashly and negligently by its driver, who hit the scooty from the back side without blowing horn. The accident had occurred on 08.05.2014 at 12:00 in the day. The F.I.R. of the accident was lodged on the same date at 18:30 by the son of the deceased alleging therein that while his father was going back to his home from ARTO office, where he had gone for renewal of his license, the driver of the Truck No.U.P.-78-BT-3289, driving the truck rashly and negligently hit the scooty from the back side at Bara Birwa, crossing on account of which he fell down and came under the front wheel of the truck and suffered serious injuries. PW-3 Syed Sikandar Mehdi is an eye witness of the accident, who had seen the accident from the distance of 40-45 steps. He has stated in his cross examination that the scooty was going on his side. The driver of truck driving the truck rashly and negligently had changed its side and hit the scooty from the back side. It has also been stated by PW-3 that there was divider on the road at the place of accident.

17. The perusal of the site plan i.e. Paper No.C-12/8 indicates that the place of accident is on the left side of the road from Kanpur

towards Chargbagh Lucknow. There is divider at the place of accident and both the vehicles have been shown going towards the same direction. The site plan has not been disputed by the insurance company, therefore, the contention of learned counsel for the insurance company that the truck had not hit from the back side as the scooty was damaged from the front side is misconceived and not tenable.

18. The perusal of the Accident Inspection Report of Scooty Activa i.e. Paper No.C-12/17 indicates that the body of the scooty was damaged from the right side and front right indicator and steering is also damaged, therefore, it can not be said that the scooty was damaged only from the front side. Even otherwise, if a truck, loaded with Morang, hit the scooty, it may fall on any side being a two wheeler. It is also not the case that the scooty was run over by the truck. The case, as pleaded, is that on being hit by the truck from the back side, the deceased had fallen and came under the front wheel of the truck, which is possible in an accident between a scooty which is a two wheeler and balanced on two wheels while driving and a four wheeler truck, therefore, the contention of the insurance company that there was contributory negligence of the deceased in the accident also has no legs to stand and it is liable to be repelled only and accordingly repelled. Even otherwise, no evidence has been produced in regard to allegation of contributory negligence.

19. The Hon'ble Supreme Court, in the case of **Dinesh Kumar J. @ Dinesh J. Vs. National Insurance Company Ltd. & Others (Supra)**, has held that the insurance company had not produced any evidence in regard to the contributory negligence.

20. A Division Bench of this Court, in the case of **Oriental Insurance Company Ltd. Vs. Abhiraj Chetri & One Another (Supra)**, has held that since the offending vehicle had hit the motor

cycle from the back side, therefore, the principle of contributory negligence is not applicable.

21. The Delhi High Court, in the case of **National Insurance Company Limited Vs. Smt. Pushpa Rana and Others (Supra)**, has held that proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard.

22. The next contention of learned counsel for the insurance company was that since the son of the deceased was given appointment on compassionate ground in his place, therefore, there was no future loss of income hence the future prospects could not have been allowed. The deceased Firoz @ Firoz Alam was a driver in Uttar Pradesh Rajya Setu Nigam Ltd. He died in harness in the aforesaid accident on 08.05.2014. He was getting Rs.34,351/- at the time of accident. The son of the deceased was appointed in his place on compassionate ground on a remuneration of about Rs.12000-13,000/- as per evidence of PW-1, therefore, firstly it can not be said that there was no loss of income to the family; secondly the compassionate appointment given on account of death during service can not be equated with the future prospect because the compassionate appointment is given on account of death of the bread earner of the family so that the family may come out from the distress and penury and their survival may not be in difficulty and it may be on account of death in any manner i.e. natural, illness etc., whereas the future prospects are allowed on account of loss of increase in income on account of accident and thus enhancement of living.

23. The Hon'ble Supreme Court, in the case of **National Insurance Company Ltd. Vs. Rekhaben & Others (Supra)** has held that financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount, which is liable to be

paid either by the owner/ the driver of the offending vehicle or the insurer. The relevant paragraphs 14 and 15 are extracted here-in-below:-

"14. While awarding compensation, amongst other things, the Tribunal takes into account the income of the deceased and calculates the loss of such income after making permissible deductions to compensate the injured claimant for the loss of earning capacity in case of an injury, and to compensate the claimants dependent on him in case of death. Thus, the income of the deceased or the injured, which the claimants have lost due to the inability of the deceased or the injured to earn or to provide for them is a relevant factor which is always taken into consideration. The salary or the income of the claimant in case of death is generally not a relevant factor in determining compensation primarily because the law takes no cognizance of the claimant's situation. Though in case of an injury, the income of the claimant who is injured is relevant. In other words, compensation is awarded on the basis of the entire loss of income of the deceased or in a case of injury, for the loss of income due to the injury. What needs to be considered is whether compassionate appointment offered to the dependants of the deceased or the injured, by the employer of the deceased/injured, who is not the tortfeasor, can be deducted from the compensation receivable by him on account of the accident from the tortfeasor. Certainly, it cannot be that the one liable to compensate the claimants for the loss of income due to the accident, can have his liability reduced by the amount which the claimants earn as a result of compassionate appointment offered by another viz. the employer.

15. The submission on behalf of the appellant in these cases is that the salary of the claimants receivable on account of compassionate appointment must be deducted from the compensation awarded to them. Reliance is placed in this regard on the judgment of this Court in Bhakra Beas Management Board v. Kanta Aggarwal [Bhakra Beas Management Board v. Kanta Aggarwal, (2008) 11 SCC 366 : (2009) 1 SCC (Cri) 154] in which compensation was claimed against the employer of the deceased who was also the owner of the offending vehicle i.e. the tortfeasor. The tortfeasor offered employment on compassionate grounds to the widow of the deceased i.e. the claimant. In the facts and circumstances of the case, this Court took the view that the salary which flowed from the compassionate appointment offered by the tortfeasor, was liable to be deducted from the compensation which was payable by the same employer in his capacity as the owner of the offending vehicle. We find this decision as being of no assistance to the appellant in the cases before us. In the present cases, the owner of the offending vehicle is not the employer who offered the compassionate appointment. As observed earlier, it is difficult to see how the owner can contend that the compensation which he is liable to pay for causing the death or disability should be reduced because of

compassionate employment offered by another. In any case, it is difficult to determine how much the person offered compassionate appointment would earn over the period of employment which is not certain, and deduct that amount from the compensation."

24. The Hon'ble Supreme Court, in the case of **Smt. Anjali & Others Vs. Lokendra Rathod & Others (Supra)**, has held that the provisions of the Motor Vehicles Act, 1988 gives paramount importance to the concept of 'just and fair' compensation.

25. The Hon'ble Supreme Court, in the case of **Syed Basheer Ahmad & Others Vs. Mohammad Jameel & Another (Supra)**, has held that section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation which appears to be just." However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards. In the matter of computation of compensation, there is no uniform rule or formula for measuring the value of a human life. In a catena of decisions it has been observed that in a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered and likely to be suffered by them as a result of abrupt termination of life. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the

other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained. In the present case there was loss as discussed above.

26. The Hon^{ble} Supreme Court, in the case of **Divisional Controller, KSRTC Vs. Mahadev Shetty & Another (Supra)**, considered the definition of compensation and held that the compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. It has also been held that it is to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. The relevant paragraphs 10 to 13 are extracted here-in-below:-

"10. The term "compensation" as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. "Damages" on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of "full compensation". That concept was first stated by Lord Blackburn in Livingstone v. Rawyards Coal Co. [(1880) 5 AC 25 : 42 LT 334 : 28 WR 357 (HL)]

11. The "rule of law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. "Compensation" means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay; it need not, therefore, necessarily be in terms of money, because law may specify principles on which and the manner in which compensation is to be determined and given. Compensation is an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as an equivalent; rendering of equivalent in value or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage

of every description. The expression “compensation” is not ordinarily used as an equivalent to “damages”, although compensation may often have to be measured by the same rule as damages in an action for a breach. The term “compensation” as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; “damages” on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. “Compensation” is a return for the loss or damage sustained. Justice requires that it should be equal in value, although not alike in kind.

12. It is true that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, as stated by Lord Morris in West v. Shephard [1964 AC 326 : (1963) 2 All ER 625 : (1963) 2 WLR 1359 (HL)] . Justice requires that it should be equal in value, although not alike in kind. The object of providing compensation is to place the claimant as far as possible in the same position financially as he was before the accident. Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded. Upjohn, L.J. in Charterhouse Credit v. Tolly [(1963) 2 QB 683 : (1963) 2 All ER 432 : (1963) 2 WLR 1168 (CA)] remarked, “the assessment of damages has never been an exact science; it is essentially practical” (All ER p. 443 C).

13. The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. In case of personal injury the position is different from loss of property. In the latter case there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically non-existent. In Parry v. Cleaver [(1969) 1 All ER 555 : 1970 AC 1 : (1969) 2 WLR 821 (HL)] Lord Morris stated as follows : (All ER p. 564 I)

“To compensate in money for pain and for physical consequences is invariably difficult but ... no other process can be devised than that of making a monetary assessment.”

27. The Hon'ble Supreme Court, in the case of **State of Haryana & Another Vs. Jasbir Kaur & Others (Supra)**, has held that the statutory provisions clearly indicate that the compensation must be

"just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

28. The Hon'ble Supreme Court, in the case of **State of Gujarat Vs. Shantilal Mangaldas & Others (Supra)**, has held that in ordinary parlance the expression "compensation" means any thing given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay; it need not therefore, necessarily be in terms of money.

29. The Hon'ble Supreme Court, in the case of **Gobald Motor Service Ltd. & Another Vs. R.M.K. Veluswami & Others (Supra)**, has held that the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained.

30. The Hon'ble Supreme Court, in the case of **Reliance General Insurance Company Ltd. Vs. Shashi Sharma & Others (Supra)**, has held that two cardinal principles run through the provisions of the Motor Vehicles Act of 1988 in the matter of determination of compensation. Firstly, the measure of compensation must be just and adequate and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. It has further been held that the claimants are legitimately entitled to claim for the loss of "pay and wages" of the deceased Government employee against the tortfeasor or Insurance Company, as the case may be, covered by the first part of Rule 5 under the Act of 1988. It has also been held that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia

financial assistance on compassionate grounds under Rule 5 (1) because the Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just.

31. The Hon'ble Supreme Court, in the case of **Sebastiani Lakra and Others Vs. National Insurance Company Limited and Another; (2019) 17 SCC 465**, considered section 168 of the Motor Vehicles Act, 1988, and held as under in paragraphs 4 to 6:

"4. Section 168 of the Motor Vehicles Act, 1988 (for short 'the Act') mandates that "just compensation" should be paid to the claimants. Any method of calculation of compensation which does not result in the award of 'just compensation' would not be in accordance with the Act. The word "just" is of (2016) 9 SCC 627 (1999) 1 SCC 90 (2002) 6 SCC 281 (2017) 16 SCC 680 a very wide amplitude. The Courts must interpret the word in a manner which meets the object of the Act, which is to give adequate and just compensation to the dependents of the deceased. One must also remember that compensation can be paid only once and not time and again.

5. The traditional view was that while assessing compensation, the Court should assess the loss of income caused to the claimants by the death of the deceased and balance it with the benefits which may have accrued on account of the death of the deceased. However, even when this traditional view was being followed, it was a well settled position of law that the tortfeasor cannot not take benefit of the munificence or gratuity of others.

6. In Helen C. Rebello case (supra), the issue was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, in cash, bank balance, shares, fixed deposits etc., are 'pecuniary advantages' received by the heirs on account of death of the deceased and liable to be deducted from the compensation. This Court held that these amounts have no correlation with the compensation receivable by the dependents under the Motor Vehicle Act. The following observations were made by the Court:

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the

happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

32. The Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Mannat Johal and Others (Supra)**,

considering the aforesaid judgment and issue of just compensation and as to when the deduction of ex-gratia payment would be warranted, has held that in a case relating to the death of the vehicular accident victim, any process of awarding "just" compensation involves assessment of such amount of pecuniary loss, which could be reasonably taken as the loss of dependency suffered by the claimants due to the demise of the victim. In regard to the deduction of ex-gratia payment the Hon'ble Supreme Court has taken a view that if any ex gratia amount received by the claimants has been under any Rules of Service and would be of continuous assistance, it may have been deducted.

33. One of the contention of learned counsel for the insurance company was that the claimants are not entitled for the future prospects on the ground of his 58 years of age. The contention of learned counsel for the appellant is misconceived and not tenable because the death of bread earner of family is always loss to the family, who would have contributed to the family in future and his earnings may have increased in any manner.

34 The Hon'ble Supreme Court, in the case of **National Insurance company Ltd. Vs. Pranay Shethi & Others (Supra)**, has held that Judicial notice can be taken of the fact that salary does not remain the same and when a person is in a permanent job, there is always an enhancement due to one reason or the other. It has further been observed that to lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept and allowed the addition in the compensation in the age groups of 50 to 60 years. The relevant paragraph 58 is extracted here-in-below:-

"58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] thinks it appropriate not to add any amount and the

same has been approved in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts."

35. The next contention of learned counsel for the insurance company was that there was violation of Section 134 (c) of the Act of 1988, therefore, the appellant insurance company is not liable to pay the amount of compensation in view of Section 168 of the Act of 1988. Section 134 (c) provides the duty of driver in case of accident and injury to a person. Section 134 (c) is extracted here-in-below:-

"134. Duty of driver in case of accident and injury to a person.

—When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a)

(b)

[(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

***Explanation.*—For the purposes of this section the expression “driver” includes the owner of the vehicle.]”**

36. In view of above under Section 134 the duty has been cast upon the driver of the vehicle or other person in-charge of the vehicle to give information of insurance policy number and period of its validity,

date, time and place of accident, particulars of the person injured or killed in the accident and name of the driver and the particulars of the driving license in writing to the insurer, who had issued the certificate of insurance. As per explanation, the "driver" includes the owner of the vehicle. Section 168 of the Act of 1988 provides the award of the claims tribunal, which is extracted here-in-below:-

"168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

37. The aforesaid Section 168 provides for holding an enquiry by the claims tribunal on an application moved under Section 166 for compensation after affording opportunity to the parties including the insurer before making an award determining the compensation, which appears to it to be just. Section 149 of the Act of 1988 provides the duty of insurer to satisfy the judgment and award against the persons insured in respect of third party risks. Sub-section (2) of Section 149

provides that the grounds on which insurer can defend the action.

Sub-section (2) is extracted here-in-below:-

"149.

(1)

(2) *No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—*

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

....."

38. In view of above, the grounds of section 134 (c) of the Act of 1988 is not provided under Section 149 (2) on which an insurer can defend the action, therefore, this ground is not available to the appellant. Even otherwise, once an enquiry has been held by the

tribunal after affording sufficient opportunity to the appellant insurance company, the plea of the appellant that since provisions of Section 134 (c) of the Act of 1988 have not been complied, therefore, the insurance company is not liable to make the payment of compensation is misconceived and not tenable because it has no concern with the claim of the dependents and family members of the deceased. Even otherwise, the appellant has failed to prove by any evidence that the provisions of Section 134 (c) was not complied. Thus, the judgment relied by learned counsel for the appellant in this regard in the case of **Khub Chand & Others Vs. State of Rajasthan & Others (Supra)** and **Sanjay Ramdas Patil Vs. Sanjay & Others (Supra)** are not of any assistance to the appellant.

39. In view of above, the grounds taken by the insurance company for assailing the impugned judgment and award in F.A.F.O. No.333 of 2023 are not tenable in the eyes of law. The appeal has been filed on misconceived and baseless grounds which is liable to be dismissed.

40. The F.A.F.O. No.18 of 2023 has been filed for enhancement of compensation on the ground that the tribunal has considered only the salary of the deceased and deducted the amount of over time being earned by him monthly on the ground that it was proved by the wife of the deceased Smt. Sallo Begum. It has also been alleged that the tribunal has failed to consider income of the deceased shown in Form-16 i.e. Rs.6,93,043/-, which was issued and proved by the department by placing evidence. The same has been vehemently opposed by the learned counsel for the insurance company on the ground that the over time income can not be considered for assessment of compensation because over time is given only for the days employee works over time, which can not be said to be fixed each and every month and treated regular monthly income. Even otherwise, the departmental witness has admitted the income shown in Form-16 as the arrears of salary, therefore, it can not be said that the said income was the annual

income of the deceased. Thus the claimants are not entitled for any enhancement.

41. Perusal of the Form-16 filed before the tribunal does not indicate any over time income separately. Only the income has been shown. Shri Sanjeev Kumar Khandalwal, in-charge, salary appeared as PW-4 to prove the salary of the deceased. He stated that Paper No.27C/1 is salary slip of April, 2014. Paper No.27C/2 is a certified copy of the pay register. Paper No.27C/3 is a certificate of sending the copy of salary register. Paper No.27C/4 is the authorization letter for evidence. He admitted that Paper No.C4/7 indicate Rs.6,93,043/-, which is arrears of salary. He Stated in his cross-examination by opposite party no.3 that the total gross salary of the deceased in April 2014 was Rs.34,351/- and net Rs.27,380/-. He has also stated that the deceased used to get the salary after deduction of TDS.

42. In view of above, the department admitted that the salary shown in Paper No.C4/7, which is copy of Form-16, Part-B is the arrears of salary amounting to Rs.6,93,043/- and total gross salary of April, 2014 was Rs.34,351/- and accident had occurred on 08.05.2014 . He has not deposed that the appellant used to get the over time regularly and it was part of salary, therefore, the contention of learned counsel for the appellant for enhancement is misconceived and not tenable. Thus the judgments relied by the learned counsel for the respondent in this regard are of no help to the claimants. The appeal for enhancement has been filed on misconceived and baseless grounds, which is liable to be dismissed.

43. In view of above, both the appeals filed by the insurance company as well as the claimants are liable to be dismissed being devoid of merit. The First Appeal From Order No.333 of 2023 and First Appeal From Order No.18 of 2023 are, accordingly, **dismissed**. No order as to costs.

44. The statutory deposit and any other amount, if any, deposited before this court in aforesaid appeals shall be remitted to the concerned tribunal expeditiously and in any case within four weeks from today to be adjusted towards the payments to be made to the claimant-respondents. The lower court record shall also be remitted within the aforesaid period.

(Rajnish Kumar, J.)

Order Date :- 25.10.2024
Haseen U.