

\$~R-389

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 02nd November, 2017

+ **MAC APPEAL 798/2011**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Suman Bagga and Mr.
Pankaj Gupta, Advocates

versus

POOJA & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first to third respondents (collectively, the claimants) had instituted accident claim case (case no.473/2010) on 18.10.2010 in the wake of a detailed accident report (DAR) submitted by the local police on the basis of investigation into the corresponding criminal case (first information report) that had been registered, seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 on account of the death of Jitender Uppal in a motor vehicular accident that took place on 15.08.2010 due to the negligent driving of a motor vehicle described as Tavera bearing registration no.DL-1YA-9291. From amongst the parties which were impleaded as respondents, the appellant herein, it admittedly being the insurer of the offending vehicle, only put in contest, the driver

and owner of the said vehicle, they being the fourth and fifth respondents in appeal, having failed to file any written statement.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 10.05.2011, accepted the case that death had occurred on account of the accident which had been caused due to the negligent driving of the said vehicle. The tribunal determined compensation in the total sum of Rs.13,78,016/- and directed the appellant (insurer) to pay with interest at the rate of 7.5% p.a., the said amount inclusive of Rs.12,38,016/- towards loss of dependency. While calculating the said amount, the tribunal, in absence of any cogent evidence about the nature of avocation or earnings of the deceased, adopted the minimum wages payable to a matriculate (Rs.6448) as the notional income on which the element of future prospects of increase to the extent of 50% was added and, after deduction on account of the personal and living expenses to the extent of one-third, the multiplier of 16 applied, the age of the deceased at the relevant point of time being 31 years.

3. The appeal of the insurer is pressed questioning the correctness of computation of compensation, reliance being placed on the judgment dated 31.10.2017 of a Constitution Bench of the Supreme Court in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*

4. The appeal was admitted and directed to be shown in the category of 'Regulars' to come up on its own turn by order dated 01.10.2012. When it is called out, there is no appearance on behalf of the claimants. The learned counsel for the insurer / appellant has been heard and the record perused.

5. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, a bench of two Hon'ble Judges of Supreme Court had ruled, *inter-alia*, that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, based in turn on *Santosh Devi vs. National Insurance Company Limited* 2012 (6) SCC 421, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

6. The issue has now been settled by a Constitution Bench of the Supreme Court by judgment dated 31.10.2017 in *Pranay Sethi* (supra). In view of the contentions that have been raised at the hearing on the appeal at hand, the following observations of the decision in *Pranay Sethi* (supra) need to be quoted in *extenso*:-

"57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the

compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of “standardization” so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at

the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But

not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. *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 thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. 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.*

(emphasis supplied)

7. The conclusions in *Pranay Sethi* (supra) are summarized (in para 61) and may be extracted, to the extent relevant here, as under :-

61.(iii). While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv). In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

8. In the case at hand, it was claimed that the deceased was a shopkeeper by profession. Reliance was placed on Income Tax Return (ITR) for the assessment year 2006-2007. It was also shown by document (Ex. PW1/1) that the deceased was a matriculate. The tribunal was not impressed with the evidence about the income on the basis of the ITR for one year. It, therefore, felt constrained to go by the minimum wages and adopted such wages payable to a matriculate on the date of the accident as the benchmark.

9. The submission of the learned counsel for the appellant (insurer) is that the Constitution Bench in its decision in *Pranay Sethi* (supra) has laid stress on income which is established by evidence. She submitted that the benefit of future prospects, therefore, cannot apply to cases where there is no clear proof of the avocation of the victim or as to his income, particularly where the income has to be notionally assessed with the help of minimum wages.

10. This court is not impressed with the above submissions. It may be noted here that in earlier portion of the judgment in *Pranay Sethi* (supra), the Supreme Court has taken note of the fact that the category of self-employed persons may include even an unskilled labourer. The court has gone by the expression “income” and has not drawn a distinction between the income earned in the form of “salary” or one earned by any other mode. The income may accrue as profits from business, fee or remuneration (by whatever name called) from the professional services or wages earned by services rendered, even such services as are rendered through manual labour.

11. The standardization for purposes of factoring in the future prospects has been adopted as the fair principle to determine “just compensation” taking into account various factors including not only the “*competing attitude in the private sector ... to get better efficiency*” but also others such as a self-employed person garnering his resources to raise his charges / fees to “*live with dynamism and move and change with the time*”, as indeed, and more particularly, taking into account the effect of “*price rise*” or “*purchasing capacity*” having a bearing on the efforts made to enhance one’s income “*for sustenance*”.

12. All the above considerations apply in equal measure, if not with greater force, to the marginalized sections of society dependent on minimum wages, a right which is guaranteed by the Constitution and by the law through enactments such as Minimum Wages Act, 1948. In these circumstances, it is most unfair on the part of the insurer to seek to draw a new distinction by attempting to interpret the judgment of the Constitution Bench in *Pranay Sethi* (supra) on above lines and deny to

the poorest of the poor the benefit of future prospects, a factor intended to apply universally.

13. The submission of the counsel for the insurer that such benefit of future prospects be granted only if there is a proven income ignores the ground realities. If this argument were to be accepted, the marginal sections of the society who are unable to muster formal proof as to the nature of avocation or their earnings will always be denied just compensation. To illustrate the point, a rickshaw puller (or a cobbler, hawker, porter or similar other daily earner) can perhaps never bring on record proof of the earnings he brings home to the family for their sustenance at the end of each working day. Such labour class do not have the resources to earn sufficiently to make the two ends meet and, more often than not, cannot even dream of saving any money for the rainy day. They generally would not have access to a bank to collect (or invest) the savings from which they would be able to arrange proof from the authorities, should the unfortunate need arise, as to the level of their earnings.

14. In above view, in the case at hand, the element of future prospects of increase will have to be factored in but (given the self-employed category) restricted to 40%. The loss of dependency is re-calculated accordingly as $[Rs.6,448/- \times 140/100 \times 2/3 \times 12 \times 16]$ Rs. 11,55,481.60, rounded off to Rs.11,55,482/-. Since the tribunal had computed the amount under this head as Rs.12,38,016/-, the award on this score would need to be reduced by $[Rs.12,38,016/- (-) Rs.11,55,482/-]$ Rs.82,534/-.

15. The tribunal has included in the award certain other components under the non-pecuniary heads of funeral charges (Rs.25,000/-), loss of love and affection (Rs.1,00,000/-), loss of consortium (Rs.10,000/-) and

loss to estate (Rs.5,000/-). The learned counsel for the insurer submits that non-pecuniary heads of damages will have to be restricted to the total of Rs.70,000/- only, in view of the dispensation in *Pranay Sethi* (supra).

16. In the above context, it may be noted that damages towards funeral expenses, loss of consortium and loss of care and guidance for minor children as granted in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 have been re-visited by the Constitution Bench in *Pranay Sethi* (supra) as under :-

54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh*. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- 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* refers to *Santosh Devi*, 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 supplied)

17. Thus, while summarizing the conclusions in para 61 (viii), the court has ruled as under:-

“(viii) 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 aforesaid amounts should be enhanced at the rate of 10% in every three years.”

18. In above view, the plea of the insurer must be accepted. The non-pecuniary damages are reduced, in terms of decision in *Pranay Sethi* (supra), to Rs. 70,000/-, it inclusive of Rs. 15,000/- each under the heads of loss of estate and funeral expenses and Rs. 40,000/- towards loss of consortium. The Constitution Bench decision does not recognize any other non-pecuniary head of damages. This would mean further reduction in total award by (Rs.1,40,000 (-) Rs.70,000) Rs.70,000/-.

19. Thus, there shall be a net reduction in the award by [Rs.82,534 (+) Rs.70,000] Rs.1,52,534/-. The total compensation is, therefore, reduced to [Rs.13,78,016 (-) Rs.1,52,534] Rs.12,25,482/-, rounded off to Rs.12,26,000/- (Rupees Twelve Lakh and twenty six thousand only).

20. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the

petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

21. The insurance company had been directed by order dated 05.09.2011 to deposit the entire awarded amount with up-to-date interest with the Registrar General. By subsequent order dated 07.08.2012, seventy five percent (75%) of the said deposited amount was permitted to be released to the claimants. The Registry shall calculate the amount payable to the claimants in terms of the modification ordered above and release the balance from the remainder in deposit while refunding the excess, if any, to the insurance company. Conversely, if there is any deficiency in the deposit, the insurance company will be obliged to pay the same by requisite deposit through the tribunal within 30 days.

22. The statutory amount shall be refunded.

23. The appeal is disposed of in above terms.

NOVEMBER 02, 2017

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R.K.GAUBA, J.