

HIGH COURT OF CHHATTISGARH AT BILASPURREVP No. 71 of 2018

I.C.I.C.I. Lombard General Ins. Co. Ltd. Through The Branch Manager,
Branch Office, Lal Ganga Shopping Mall, G.E. Road, Raipur, District
Raipur Chhattisgarh. (Respondent No. 3).

---Petitioner

Versus

1. Dhawal Baghel S/o Late Shri Ajay Baghel, Aged About 21 Years, R/o House No. 59, Gol Chowk, Behind Sahnai Garden, Rohinipuram, P.S. D.D. Nagar, Raipur, District And Tehsil Raipur Chhattisgarh.
2. Rasil Singh S/o Shri Singara Singh, R/o C.G.R. Transport, Ring Road No. 1, Tatibandh, P.S. Amanaka, Raipur, District And Tehsil Raipur Chhattisgarh. (Respondent No. 1).
3. Mahinder Singh S/o Shri Sardar Hardayal Singh, R/o C.G.R. Transport, Ring Road No. 1, Tatibandh, P.S. Amanaka, Raipur, District And Tehsil Raipur Chhattisgarh. (Respondent No. 2).
4. Mukesh Kumar S/o Shri Umend Ram, Aged About 21 Years, R/o Village And Post Nawagaon, Tehsil Dongargarh, District Rajnandgaon Chhattisgarh. (Respondent No. 4).
5. Mohammad Vakil Ahamed S/o Shri Mohhammad Nawab Ahamed, R/o 5/1, Ispat Nagar, Risali, Sector Bhilai, District Durg Chhattisgarh. (Respondent No. 5).
6. The National Insurance Co. Ltd., Through Divisional Manager, Divisional Office, Mobin Mahal, G.E. Road, Raipur Chhattisgarh. (Respondent No. 6).

---Respondents

For petitioner	:	Shri P.Acharya, Advocate.
For respondent No.1	:	Shri Pawan Kesharwani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/08/2018

1. The present Review Petition has been filed seeking review in the order dated 22/11/2017 passed in MAC No.780/2013.

2. The only ground on which the Review Petition has been filed is that, while passing the award, this Court has held that, the claim of the petitioner would be sustainable keeping in view the larger Bench decision of the Hon'ble Supreme Court in the case of **National Insurance Co.Ltd. v. Pranay Sethi**, decided on 31/10/2017 in SLP(C) No.25590 of 2014.

3. However, while computing the compensation, the future prospects has been calculated at 50% whereas the deceased in the instant case was aged around 49 years and as per the judgment of Pranay Sethi (Supra), the future prospects to be calculated would be only 30% and thus the counsel for the petitioner prayed for the calculation to be redone accordingly.

4. The counsel for the claimants have been represented through Shri Pawan Kesharwani and on due consideration of the facts he fairly submits that, the judgment of the Supreme Court in the case of Pranay Sethi (Supra) does envisage the calculation of future prospects in respect of the deceased person aged group between 40-50 at 30%.

5. However, he opposes the Review Petition on the ground that, the ground raised in the Review Petition may not be one one which could be raised within the ambit of review jurisdiction.

6. According to the counsel for the claimants, the respondents ought to have preferred an appeal against the order and should have got the order interfered under the appellate jurisdiction and thus prayed for dismissal of the Review Petition.

7. Having heard the contentions put forth on either side and on perusal of record, what is undisputed by either side is that the law which has been laid down by the Supreme Court in the case of Pranay Sethi (Supra) the calculation of future prospects while computing the compensation in respect of the deceased in the age group between 40-50 is 30%.

8. However, it appears that inadvertently, this Court while passing judgment has awarded 50% towards future prospects when infact the deceased in the instant case was aged around 49 years at the time of accident.

9. Thus, the future prospects which the claimants would be entitled for would be only 30% of the yearly income and not 50% as has been assessed by this Court in its order under review.

10. So far as the review is concerned, the review can be entertained in a case where there is an error apparent on the face of record and glaring too.

11. In the instant case, admittedly, this Court took into consideration the larger Bench decision of the Supreme Court in the case of Pranay Sethi (Supra) while deciding the appeal, yet due to oversight, the future prospects have been calculated at 50% of his yearly income which ought to had been 30%.

12. Given the aforesaid factual matrix of the case, this Court is of the opinion that, the applicants were justified in filing Review Petition and to seek for recalculation of the compensation awarded.

13. The Review Petition thus deserve to be and is accordingly allowed and the compensation stands recalculated in the present Review Petition itself.

14. The yearly income after deduction of personal expenses in the instant case was 1,63,976/- of which if 30% i.e. Rs.49,193/- is added towards future prospects, the amount would become Rs.2,13,169/-. Thus, the yearly income for the purpose of calculating the compensation is Rs.2,13,169/- to which if multiplier of 11 as assessed by this Court is applied, the compensation comes to Rs.23,44,859/-.

15. Thus, it is ordered that the claimants towards loss of dependency would be entitled for Rs.23,44,859/- instead of Rs.27,05,604/-.

16. To the above said amount, if Rs.70,000/- is added towards lump sum compensation, the total amount of compensation payable to the claimants would come to Rs.24,14,859/- which for convenience of calculation is been rounded off at Rs.24,15,000/- instead of Rs.27,75,604/- as was calculated by this Court originally while deciding the appeal vide its order dated 22/11/2017.

17. Accordingly, the order dated 22/11/2017 stands modified to the extent that, the total amount of compensation payable to the claimants towards loss of dependency would be Rs.23,44,859/- and after adding compensation under the conventional head, the compensation payable to the claimants is quantified at Rs.24,15,000/-.

18. The Review Petition accordingly stands allowed to the aforesaid extent and disposed off.

19. Let the order passed in this Review Petition be made part of the record of MAC No. 780/2013.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit