

**R.A. No.218-CII of 2017 (O&M) in
FAO No.1759 of 1998**

-1-

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**R.A. No.218-CII of 2017 (O&M) in
FAO No.1759 of 1998
Date of Decision. 12.10.2018**

New India Assurance Company LimitedAppellant

Vs

Simi and another ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anish Setia, Advocate
for the applicant-cross objector.

Ms. Anamika Mehra, Advocate
for the non-applicant/appellant.

-. -

AMIT RAWAL J.

C.M. No.25895-CII of 2017

For the reasons stated in the application, delay of 14 days
in filing the review application is condoned.

Application is allowed.

RA No.218-CII of 2017

Prayer in the application is for review of the order dated
08.09.2017 passed by this Court for grant of future prospects as while
deciding the aforementioned appeal, issue with regard to future
prospects was kept open.

Mr. Setia, learned counsel appearing on behalf of the
applicant-cross objector submitted that this Court did not grant future
prospects as the controversy with regard to same was pending
adjudication before the Hon'ble Supreme Court. However, in view of

the ratio decidendi culled out by the Constitution Bench of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) 13 SCALE 12** wherein particular category of claimants have been held entitled to future prospects. The deceased was aged 24½ years and was working as Chief Executive in International Testing Centre, drawing a salary of ₹8000/- per month and therefore, as per the ratio decidendi culled out in **Pranay Sethi's case** (supra), entitled to 40% increase on the salary as future prospects.

Upon notice, the insurance company opposed the application as the judgment rendered in **Pranay Sethi's case** (supra) could not have retrospective effect, even if question regarding future prospect was kept open, as it would open pandora of cases of such nature, which would not be in the interest of the insurance company and prayed for dismissal of the review application.

I have heard learned counsel for the parties and appraised contents of review application. It would be apt to reproduce relevant portion where while dealing with the question of future prospects in **Pranay Sethi's case** (supra), the Hon'ble Supreme Court observed as under:-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate

Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(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 48 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.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the

courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(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.”

I am afraid, there is no force in the contention of counsel appearing for the applicant-cross objector as the claimants would not be entitled to future prospects even if the question was kept open, for, on plain and simple reading of the ratio decidendi culled out in **Pranay Sethi's case** (supra), it has nowhere been held that the judgment would be applicable to cases which have already been decided. Scope of review is limited with regard to error apparent on the face of record or certain reasons enumerated in Section 114 and Order 47 Rule 1 CPC, which are reproduced as under:-

“114. Review.—Subject as aforesaid, any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred. (b) by a decree or order from which no appeal is allowed by this

Code, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Order 47 Rule 1. *Application for review of judgment.—*

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant

and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

The point tried to be raised in the present review application does not fall within the ambit of reasons as mentioned above, thus, no ground for interference is made out. The review application is dismissed.

**(AMIT RAWAL)
JUDGE**

October 12, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No