

\$~8 & 21

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

%

Decided on: 06.09.2019

+ MAC.APP. 17/2019 & CM APPL. 245/2019

ROYAL SUNDARAM GENERAL
INSURANCE CO LTD

..... Appellant

versus

KAMLESH DEVI & ORS

..... Respondents

+ MAC.APP. 770/2019, CM APPL. 40021/2019 & CM APPL.
40022/2019

KAMLESH DEVI & ORS

..... Appellants

versus

PAWAN KUMAR & ORS (ROYAL SUNDARAM GENERAL
INSURANCE CO LTD)

..... Respondents

Through: Mr. Sanjay Sharma and Mr. Lalit
Sharma, Advocates.

Mr. Pankaj Gupta, Advocate on
behalf of Mr. Suman Bagga,
Advocate for insurance company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. Issue notice.
2. The learned counsel named above accepts notice on behalf of the insurance company.

3. This appeal impugns the award of compensation on the ground that it is on the higher side and there is an addition of 10% to the monthly income, as computed on the basis of ITR for the year 2015-16.

4. It is argued that the said addition of 10%, will effectively be twice over, because the impugned order has already awarded 40% towards 'loss of future prospects'.

5. The learned tribunal has dealt with the issue as under:

“19. It is the income tax return of a person which would show the actual income of the person. In these circumstances ITR being the best evidence for the purpose of income of a person, the income shown therein will have to be taken into consideration to ascertain loss of dependency. Petitioner No. 1 has filed ITRs of deceased for the assessment years 2013-14 to 2017-18 From Ex. PW-1/J to Ex. PW-1/N. Last 2 ITRs i.e. for assessment years 2016- 17 Ex. PW-1/M and for assessment year 2017-18 Ex. PW-1/N were filed on 29.03.2018 i.e. after death of the victim (date of accident 13.11.2017). As such, these 2 ITRs would not represent true income of the deceased. ITR for the assessment year 2015-16 Ex. PW-1/L which was filed on 31.03.2017 i.e. during life time of deceased shows his annual income as Rs.3,74,623/- i.e. Rs.31,218/- per month. Assuming 10% increase in the income of the deceased, his income can safely be considered at Rs.35,000/- per month or Rs.4,20,000/- per annum.

20. The age of the deceased at the time of accident was 38 years, therefore, the multiplier of 15 will apply. In National Insurance Co. Vs. Pranay Sethi & Ors. 2017 SCC Online 1270 40% increase towards future prospects was prescribed for those upto the age of 40 years who

had income from self employment. This court sees no reason as to why future prospects should not be factored into while calculating the loss of income. On this analogy, there will also be an addition of 40% towards future prospects in view of the spirit of the aforesaid judgment of the Hon'ble Supreme Court. There would be 40% enhancement towards future prospects. Since there are 3 dependents, the deduction for personal expenses will be one-third. Therefore, the total financial loss for the family would be Rs.4,20,000/- plus Rs.1,68,000/- (40% of Rs.4,20,000/-) minus Rs.1,96,000/- (1/3rd deduction for personal expenses) = Rs.3,92,000/- X 15 = Rs.58,80,000/-."

6. What emanates from the above is that the ITR for Assessment Year 2015-16 was taken into consideration although the deceased passed away in the Assessment Year 2017-18. In effect, the considered ITR related to approximately 15 months prior to his demise. The deceased was within his statutory rights to file ITRs for Assessment Years 2016-17 and 2017-18, which were filed after the 2015-2016 ITR's, but because of his demise, his claimants had filed the said ITR's.

7. The ITRs for the subsequent years show a quantum jump of approximately 20% from the previous years which were filed by the claimants, whereas for the preceding year, the increase was merely under 10%. The ITRs of the deceased filed on record show his increase in earnings as under:

Assessment Year	Absolute Income (in Rs.)	Year on Year Change (in Rs.)	Year on Year Change (%)
2013-14	3,06,000	11,000	3.5%

2014-15	3,17,000	57,000	18%
2015-16	3,74,000	44,000	12%
2016-17	4,18,000	88,000	21%
2017-18	5,06,000		

8. The deceased was stated to be a priest in a religious place, therefore, his earning would largely be dependent upon the donations or contributions made to the religious institution. However, the learned counsel for the respondent submits that the deceased was a trader i.e. supplier of man power and his record would show that his earnings were primarily from supply of man power. However, this issue was never raised by the claimants, therefore, it was not dealt with by the learned Tribunal. ITRs filed shows his relevant income upto his demise as under:

Assessment Year	Gross Total Income (in rupees)
2014-15	3,17,833
2015-16	3,74,623
2016-17	4,18,630
2017-18	5,06,210

9. What emanates from the above is that the increase in his income between Assessment Years 2013-14 and 2014-15 was 3.5%. For the subsequent years, there were increase in income as 18%, 12% and 21%. There is an increase and a decrease in the amounts.

10. The returns were filed within the permissible statutory period, there is no reason to doubt the same. Accordingly, the income of the deceased as for the Assessment Year 2016-17 i.e. which shows an increase of 12% will be taken into consideration instead of for the year 2015-16, i.e. Rs. 3,74,267/-

from Rs. 4,18,630/-. However, Mr. Gupta, the learned counsel for the insurance company states that this gross income includes income from other sources Chapter (iv) F i.e. Rs. 1,980/-. Therefore, the same would be required to be deducted. It was so ordered.

11. The gross income would, therefore, be Rs. 4,16,650/- divided by 12 i.e. Rs. 34,721/-. Accordingly, the monies payable to the appellant would be Rs. 34,721/-. There will be an addition of 40% towards 'loss of future prospects' in terms of the dicta of Supreme Court in **National Insurance Co. Vs. Pranay Sethi & Ors.** (2017) 16 SCC 680 and 1/4th towards personal expenses. The added money payable towards 'loss of dependency' would be $\text{Rs. } 34,721 \times 140/100 \times 12 \times 15 \times 1/4 \times 66.6/100 = \text{Rs. } 14,56,823/-$.

12. Similarly, each of the claimants shall be entitled to compensation for 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, in terms of the **Magma General Insurance Co. Ltd. vs Nanu Ram @ Chuhru Ram & Ors.** 2018 SCC OnLine SC 1546. It is so granted. Additionally, the claimants shall also be granted compensation @ Rs. 15,000/- towards 'Funeral Expenses' and 'Loss of Estate' under each of the heads. Accordingly, the amount payable would be $\text{Rs. } 50,000 \times 5 + \text{Rs. } 40,000 \times 5 = \text{Rs. } 4,50,000/- + \text{Rs. } 15,000 \times 2 = \text{Rs. } 4,80,000/-$.

13. The aforesaid amounts be deposited alongwith interest @ 9% before the learned Tribunal within three weeks of receipt of copy of this order for disbursement to the beneficiaries of the award in terms of scheme of disbursement specified therein.

14. Statutory amount of Rs. 25,000/- alongwith interest accrued thereon will be adjusted towards the amount payable by the insurance company in terms of this order.

15. The appeal alongwith the pending applications stands disposed-off.
16. A copy of this order be given *dasti* to learned counsel for both the parties under the signature of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 06, 2019/AB

