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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1057 of 2012

Order reserved on 21.01.2021

Order pronounced on 07.06.2021

The New India Insurance Company Ltd., through Divi. Mana. Division No. 2, The New India Insu. Co. Ltd. 1 St Floor, Jeevan Beema Nigam Bhawan, Vyavsayiek Parisar Pandri, Dist. Raipur C.G., Chhattisgarh

--- Non-applicant No.2/**Appellant.**

Versus

1. Smt. Asha Soni, Wd/o Late Rakesh Soni, Aged About 33 Years,
2. Ku. Rashi D/o Late Rakesh Soni, Aged About 10 Years,
3. Ku. Ashi Soni D/o Late Rakesh Soni, Aged About 4 Years,

   (respondents No.2 & 3 are minor, through their natural guardian mother Smt. Asha Soni)
4. Dr. J.R.Soni S/o, Late B.R. Soni Aged About 57 Years,
5. Smt. Seema Soni W/o Dr. J.R. Soni Aged About 55 Years,

   All R/o D-95, Guru Ghashidas Colony, New Rajendra Nagar, Raipur, P.S. Rajendra Nagar, Dist. Raipur C.G.

(Claimants)

6. Tula Ram Patre S/o Dhansay Patre R/o Pandritarai, Raipur, Behind Ashoka Hotel, Near Basant School, P.S. Pandri, Tah. And Dist. Raipur C.G., District : Raipur(CG) *(Owner of the vehicle)*

---- Respondents.

For Appellant/Company	: Mr. Pankaj Agrawal, Adv.
For Respondents No.1 to 5	: Ms. Meena Shashtri, Adv.
For Respondent No.6	: Mr. Sumit Shrivastava, Adv.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

This appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed by the defendant No.2/appellant herein – The New India Insurance Company against the judgment and award dated 14.08.2012 passed by the Motor Accidents Claims Tribunal, Raipur in Claim Case No.33/2012, whereby the Claims Tribunal has partly allowed the claim petition and has held that defendants are liable to pay Rs.14,05,000/- jointly and severally with interest @ 6% per annum from the date of filing of claim petition.

2. The respondents No.1 to 5/Claimants have also filed a cross objection/cross appeal on 09.05.2016 for enhancement of compensation amount.

3. Facts of the case in brief are that on 01.01.2011 at about 9:30 PM the deceased namely Rakesh Soni met with an accident due to break fail (mechanical fault) in vehicle bearing Registration No.CG-04B – 1888 near village Telasi – Bhandarpuri. He received grievous injuries on his body and died on the spot. The vehicle was owned by the respondent No.6 – Tularam Patre and it was insured with the appellant/Insurance Company. The deceased was aged about 35 years. The claimants/respondents No.1 to 5 are family members of the deceased being widow wife, minor children and parents. The deceased working as an Assistant Manager in Bharti Fuels Sargaon, District Bilaspur and earned Rs.20,000/- per month.

4. Heard counsel for the parties and perused the material available on record.

5. Perused the driving licence Ex.P-13 and vehicle *Muhalija* report Ex.P-16. The Insurance Company has not adduced any oral or documentary evidence to establish that the deceased Rakesh Soni was not having a valid driving licence therefore, the Insurance Company cannot be exonerated from its liability to pay the compensation.

6. Sunil Paretkar (DW-2) posted as Administrative Officer in the Insurance Company in his affidavit under Order 18 Rule 4 CPC

admitted the facts contend in paragraphs 3, 4 & 5 in the cross-examination that the vehicle in question was insured the appellant/Insurance Company and the policy (Ex.D-1) covers all five persons including the driver who were boarded on the said vehicle. He has also admitted the fact that as per insurance policy deceased was third party and the premium amount of Rs.2875/- was paid to the Insurance Company with regard to third party insurance. He also admitted the fact that the deceased was not employed under the owner of the vehicle. The insurance policy has been exhibited as Ex.D-1. It is established from the material available on record that the accident took place by the offending vehicle was duly insured with appellant/ Insurance Company. The deceased suffered grievous injuries during the accident in question and died on spot. Witness Sunil Pavetkar (DW-2) specifically stated that the deceased was treated as third party and covered by the policy of the Insurance Company

7. Therefore, in view of above admitted facts and material evidence, appeal filed by the appellant/Insurance Company is liable to be dismissed.

As regards cross-objection filed by the claimants/respondents No.1 to 5.

8. The Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (**2017) 16 SCC 680** : 2017 (4) ACCD 2106 (SC):-

Para 59.

Now coming to the aspect of future prospects and claim of compensation in that head for those who are self employed. This issue is no more *res integra*. The Apex Court in Pranay Sethi (Supra) vide paras 56 and 57 has held thus:-

> **"56. The seminal issue is the fixation of future prospects in cases of deceased who is self employed or on a fixed salary. Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. reported in 2009 (6) SCC 121 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 said category.**
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> **57. 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 ones 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."

Ultimately, the Court vide para 59 concluded thus:-

"59. In view of the aforesaid analysis, we proceed to record our conclusion:-

"59.1. The two judge Bench in Santosh Devi Vs. National Insurance Co. Ltd. (2012) 6 SCC 421 : 2012 (a) ACCD 973 (SC) should have been well advised to refer to matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma a judgment by a co-ordinate Bench. It is because a co-ordinate Bench of the same strength cannot take a contrary view than what has been held by another co-ordinate Bench.

"59.2. As Rajesh Vs. Rajbir Singh (2013) 9 SCC 54 2013 (2) ACCD 969 (SC) has not taken note of the decision in Reshma Kumari which was

delivered at earlier point of time, the decision of Rajesh (Supra) is not a binding precedent.

59.3 While determining the income, an addition of 50 % of actual salary to the income of the deceased towards future prospects, where the deceased has a permanent job and was below of age of 40 years, should be made. The addition should be 30 % of 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.

59.4 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.

59.5 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 hereinabove.

59.6 The selection of multiplies shall be as indicated in the table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely loss of estate loss of consortium an funeral expenses should be Rs. 15,000/-, 40,000/- and 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 % in every three years."

9. The above legal position has not been disputed and the compensation therefore, is to be awarded after its computation in terms of the judgment in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, **(2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC)** and **Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65 : 2013 (2) ACCD 977 (SC)** in the light of observations made and directions

issued by the Apex Court in constitution Bench. Judgment in Pranay Sethi (Supra).

10. In Pranay Sethi (Supra) the constitution Bench vide para 52 held thus :-

> **"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. *[(2013) 9 SCC 54]* It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards 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 *[(2012) 6 SCC 421]* 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 criteria on unlike quantification 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 obvious 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 or 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 year 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."**

11. On the point of deduction from income towards personal expense also the law is almost settled by the constitution Bench vide para 59.5 the Bench has approved paras 30 to 32 of judgment in Sarla Verma (supra). Paras 30, 31 and 32 of the judgment in Sarla Verma (supra) runs as under:-

> **"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra (2003) 3 SLR (R) 601, the general practice is to apply standardized deduction. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third(1/3 rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where of number of defendant family members is 4 to 6 and one-fifth(1/5th) where the number of dependent family members exceeds six.**
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> **31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors normally 50% is deducted as personal and living expense, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of this getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brother and sister will not be considered as dependents because they will either be independent and earning, or married or be dependent on the father.**
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> **32.Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be dependent, and 50% would be treated as personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income to the deceased, as in a case where he has a widowed mother and large number of younger**

non-earning sisters or brothers, his personal and living expenses, may be restricted to one-third and contribution to the family will be takes as two third."

12. It is undisputed fact that on the date of accident the deceased Rakesh Soni was 35 years, 2 months 26 days old. Deceased was drawing a salary of Rs.10,700/- per month.

13. Thus taking reliance in view of decisions of Hon'ble Supreme Court in Smt. Sarla Verma and others (supra), National Insurance Co. Ltd. Vs. Pranay Sethi (Supra) and Megma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in (2018) 18 SCC 130, the claimants are held entitled for compensation in the following manner :-

Age of deceased	-	35 years, 2 months, 26 days.
Notional income	-	Rs.1,28,400/- PA (Rs.10,700x12)
Future prospects (with 40% of the total income)	-	Rs. 1,79,760/- (Rs.51,360/- **+** Rs.1,28,400/-)
Deduction towards personal expenses 1/4	-	Rs.44,940/-
dependency	-	Rs.1,34,820/- (Rs.1,79,760/- **–** Rs.44,940/-)
Multiplier	-	16
Compensation	-	**Rs.21,57,120/-** (Rs.1,34,820/- x 16)
Loss of consortium	-	**Rs.40,000/-**
Loss of estate, love and affection and pain, suffering etc.	-	**Rs.15,000/-**
Funeral expenses	-	**Rs.15,000/-**
Total compensation	**-**	**Rs.22,27,120/-**

14. Since the Tribunal has already awarded Rs.14,05,000/-, after deducting the same from above amount the respondents No.1 to 5/claimants are held entitled for additional compensation of Rs.8,22,120/- with interest @ 6 % per annum from the date of

application till realization. However, rest of the condition of the impugned award shall remain intact.

15. Thus, in view of the above appeal filed by the Insurance Company stands **dismissed** and the cross objection/cross appeal filed by the respondents No.1 to 5/Claimants is **partly allowed**. The compensation awarded to the Claimants under the order of Tribunal is accordingly enhanced and award stands modified to the extent indicated here-in-above.

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay