IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

FMAT-3 of 2021

WITH

IA NO. CAN 1 OF 2022
Jyotsna Singh & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

For the Appellants	**:**	**Mr. Jayanta Kumar Mondal, Adv.** **Mr. Sayantan Rakshit, Adv.**
For the Respondents	**:**	**Mr. Sanjay Paul, Adv,**
Judgment on	**:**	**26.08.2022**

<u>Subhendu Samanta, J.</u>

The CAN 1 of 2022 is in respect of an application under Section 5 of Limitation Act filed by the appellant for condonation of delay in preferring the instant appeal.

Heard, the Learned Advocate for the appellant, sufficient cause has been shown for not preferring this appeal within the statutory period of Limitation. Learned Advocate for the respondent raises no objection. Thus the application under Section 5 of Limitation Act (CAN 1 of 2022) is allowed. The delay in preferring the instant appeal is hereby condoned.

The FMAT has been preferred against the judgment and Award dated 03.08.2019 passed by the Additional District & Sessions Judge and Judge, Motor Accident Claims Tribunal Durgapur (Paschim Bardhaman) in MAC Case No. 24 of 2012.

The Motor Accident Claim Case was filed under Section 166 of Motor Vehicles Act by the claimants who were the legal heirs of one Utpal Sing (Deceased); who died in a road traffic accident (RTA) on 18.09.2021.

Learned Tribunal has heard the matter and awarded a compensation to the claimants to the tune of Rs 6,42,000/-along with 7% interest per annum from the date of filing of the claim petition.

The instant appeal has involved only short two points.

Firstly, Learned Advocate for the appellant submitted before this court that at the time of assessing the just compensation, Learned Tribunal did not calculate the income of the deceased towards future prospects;

Secondly, the assessment of general damages by the Learned Tribunal on the head of loss of Estate, cost of funeral expenses and loss of consortium is not proper.

Basically he argued enhancement of the award.

Learned Advocate Mr. Sanjay Paul appearing on behalf of the Oriental Insurance Company Limited submitted that the Tribunal has correctly assessed the compensation which is just and proper in respect of the peculiar facts and circumstances of this case. He further argued that the submission made by the Learned Advocate for the appellant cannot be considered at this stage as it was not pointed out before the Learned Tribunal.

Learned Advocate for the appellant places his reliance upon some decisions; they are **National Insurance Company Limited vs. Pranay Sethi and others.** 2017(4) TAC 673 (SC), 2022(1) TAC 549 (CAL) and 2022 ITAC 791(CAL).

Learned Advocate for the appellant submitted that Hon'ble Apex court in **Pranay Sethi** Case has specifically formulated a principle for granting future prospects to the deceased who was self employed or on fixed salary. In that case an addition of 40 % of the income should be made in each case. He also pointed out that the general damages should be Rs. 15,000/- , Rs. 40,000/- and Rs 15,000/- conventional heads namely loss of estate, loss of consortium and funeral expenses respectively.

Leaned Advocate Mr. Sanjay Paul appearing for the respondent has frankly admitted the principle laid down in the **Pranay Sethi** Case and he also admitted that the ratio of **Pranay Sethi** was followed by this court in several Judgments.

Heard, the Learned Advocate perused the citation of **Pranay Sethi** in Paragraph 54 the Hon'ble Apex court has held that :-

> *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, Rs1, 00,000/- loss of consortium and 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 consistence 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 beat 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.*

After going to the said Paragraph it is crystal clear that the Hon'ble Apex court has formulated the reasonable figures on conventional heads namely loss of estate, loss of consortium and funeral expenses to be Rs. 15,000/-,Rs. 40,000/- and Rs. 15,000/- respectively.

In considering the facts and circumstances of this particular case in my view the ratio of **Pranay Sethi** is very much applicable in this case. Learned Tribunal has awarded Rs. 30,000/-(In Total) for conventional heads; which, in any view should be enhanced according to the direction of Hon'ble Apex Court in **Pranay Sethi** case

In Paragraph 61 (iii and iv) of **Pranay Sethi**, Hon'ble Supreme Court has held that:-

> *(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.*

In view of the above dictum of the Hon'ble Apex court, it appears to me that sudden and untimely death of the deceased, i.e. the sole bread earner of family, put the family in extreme financial hardship. To compensate the bereaved family the legislature has enacted the instant statute of Motor Vehicles Act, the legislature is a public beneficial legislature. The person who uses to earn an amount with his reasonable capacity and capability of working prospect must have earned more at time to time to face the escalation of price hike in the essential commodities. Thus the family of a deceased may have expectation that the deceased will have earned more at time to time in future.

In considering the above notion in my view the ratio laid down in **Pranay Sethi** case regarding the assessment of future prospects is justifiable in the present facts and circumstances of this case.

On the basis of the discussion made above it appears to me that the submission made by the Learned Advocate for the appellant has a substance in the instant appeal and the appeal is appears to be the meritorious one.

In view of the above discussion impugned Award is hereby enhanced and modified in the following manner.

Computation of Awarded Amount :

Yearly Income	
(Rs. 4000 X 12)	Rs. 48000.00
Add:-Future Prospect (40%)	Rs. 19200.00

	67,200 .00
Less ¼ (for personal Exp. Of	
the deceased(Age of the deceased -26 yrs.)	16,800.00

Applicable-Multiplier –		50,400.00
		X 17

		8,56,800.00
Add: - General Damages		
(40,000 + 15000+15000)		70,000.00

Total Award-		9,26,800.00
Less: - Awarded Amount		
Already paid	(-)	6,42,000.00

Enhanced Amount		2,84,800.00

Learned Advocate for both the parties has agreed that the interest amount would be Rs 6% per annum from the date of filing of the claim application and such interest has been followed by this Court in several cases. Accordingly I have no hesitation to pass an order that award shall carry 6% interest per annum from the date of filing of the claim application.

Having result thereof: - Instant appeal is allowed.

The impugned award is modified and enhanced to Rs. 2,84,800/- The respondent Oriental Insurance Company Limited is directed to pay the enhanced amount, of Rs 2,84,800/- to the claimants directly to their bank account through any electronic mode, The Learned Advocate for the appellant is directed to supply the bank account details to the Learned Advocate to Respondent within a fort- night of passing of this Judgment.

The respondent, Insurance Company shall pay the enhanced amount along with 6% interest per annum from the date of filing of the claim application within 45 days from the date of supply the Bank account of the appellant; failing which the enhanced award shall carry further 9% interest per annum up to it actual realisation.

Accordingly, the instant appeal along with connected application CAN 1 of 2022 is disposed of without any further order of cost.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis. All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Subhendu Samanta, J.)