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

% ***Reserved on: 16.09.2022***
Pronounced on: 11.10.2022

\+ **MAC.APP. 237/2013**

THE NEW INDIA ASSURANCE CO. LTD...... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

SUKHWANT KAUR & ORS ..... Respondents

Through: Mr. Anshuman Bal, Advocate for respondent Nos. 1 & 2.

\+ **MAC.APP. 789/2014**

SMT. SUKHWANT KAUR & ORS ...... Appellants

Through: Mr. Anshuman Bal, Advocate

versus

THE NEW INDIA ASSURANCE CO. LTD ..... Respondents

Through: Mr. Pankaj Seth, Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G E M E N T

GAURANG KANTH, J.

1. Both these appeals are heard together and disposed of by this common judgment. These appeals arise out of the Awards passed by the learned Tribunal which arise out of the same incident.

2. **MAC. APP. 237/2013** is preferred by the Appellant/ The New India Assurance Co. Ltd. for setting aside the Award dated **29.11.2012** passed by learned Presiding Officer, Motor Accident Claims Tribunal, Karkardooma Courts, Delhi in MACT case no. 285/2010 (**"impugned Award"**) whereby the learned Presiding Officer accepted the claim and awarded a sum of *Rs.4,93,200/- (Rupees Four Lacs Ninety Three Thousand and Two Hundred only)* alongwith interest @ 7.5% per annum from the date of filing of the present petition till the date of realization in favour of the claimants and directed the Insurance Company to pay the compensation amount within a period of one month and **MAC. APP. 789/2014** is preferred by the Appellants/ Claimants for enhancement of compensation amount in terms of Award dated **29.11.2015** passed by learned Motor Accident Claims Tribunal, Karkardooma Courts, Delhi in MACT case no. 285/2010.

SUBMISSION ON BEHALF OF THE INSURANCE COMPANY

3. Mr. Pankaj Seth learned counsel for the Appellant contended that learned Tribunal erred in observing that the alleged incident took place due to negligent driving of the offending vehicle. He further contended that in terms of dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi &Ors*** reported as ***(2017) 16 SCC 680,*** compensation under the head '*Future Prospects*' is to be paid by adding 25% of the assessed income of the deceased. Learned counsel fairly concedes that multiplier should be adopted in terms of dicta laid down in case of ***Sarla Verma & Ors. Vs DTC & Anr*** reported in ***(2009) 6***

SCC 121 which is upheld in the judgment of ***Pranay Sethi (Supra)*** whereby it was held that for the purposes of selection of multiplier, the age of the deceased has to be taken into account.

SUBMISSION OF THE CLAIMANTS

4. Mr. Anshuman Bal, learned counsel appearing on behalf of respondent/claimant contended that the learned Tribunal erred in ignoring the testimony of PW-3, Sh, Gurdev Singh (Proprietor of M/s B. S. Engineering Works) which proved that the deceased was working in his company as "*Die Fitter on Lathe Machine*" and was drawing a salary of Rs.8,000/- per month. He further contended that since the salary of the deceased was proved before the learned Tribunal, the learned Tribunal ought not to have calculated the compensation taking into account the minimum wages for matriculates i.e. Rs. 4,150/- per month. Learned counsel while placing reliance on ***Pranay Sethi (supra)*** contended that compensation under the head '*Loss of Consortium*', '*Loss of Estate*' and '*Loss of Funeral Expenses*' needs to be modified/enhanced. Learned counsel further contended that in terms of dicta of ***Pranay Sethi (supra)*** since the deceased was of the age of 24 years at the time of the alleged incident, '*Future Prospects*' is to be paid by adding 40% of the assessed income of the deceased. Learned counsel further contended that for the purposes of selection of multiplier, the age of the deceased has to be taken into account. Learned counsel fairly concedes that in terms of judgment of ***Pranay Sethi***

(Supra) compensation under the head '*Love and Affection.*' has to be deducted.

REBUTTAL ARGUMENTS

5. Mr. Pankaj Seth learned counsel for the appellant/Insurance company in rebuttal contended that the learned Tribunal rightly disregarded the testimony of PW-3, Sh, Gurdev Singh (Proprietor of M/s B. S. Engineering Works) as it has come on record during the cross-examination of the witness that he was the real brother of the father of the deceased.

COURT'S REASONING

6. Brief facts of the case as noted by learned Tribunal are as under:-

> "*1. By a common judgment, 1am disposing of these two petitions as the claims are arising from the same accident involving the same vehicle, In MAC Petition No. 266/10, the claimants put up a claim for Rs. 20,00,000/- (Rs. Twenty Lacs) towards the death of Sh. Ajaj Ahmed @ Ajaj (27 years). In MAC Petition No. 285/10, the claimants put up a claim for Rs. 20,00,000/- (Rs. Twenty Lacs) towards the death of Sh. Manjeet Singh (24 years).*
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> *2. The brief facts, as stated by petitioners, are that on 20.09.2008, one Sh. Manjeet Singh and Sh. Izaz Ahmad were going on a motorcycle from Manesar to Gurgaon and when they reached near Laxmi Hotel, a Dumber bearing no. HR-55E-3338 came from behind at a very high speed, driven rashly and negligently and hit the divider and over turned and both the motorcyclist came underneath the dumper and died on the spot. It is stated that accident took place because of rash and negligent driving on the part of respondent no. 1.*"

7. Mr. Pankaj Seth, learned counsel for the Appellant/Insurance Company raised an argument that the learned Tribunal erred in observing that the alleged incident took place due to negligent driving of the offending vehicle. This Court has gone through the records in the present case and has also perused the impugned judgment. Perusal of the impugned judgment transpires that the learned Tribunal has very carefully dealt with the aspect of negligence and this Court is in conformity with the findings of the learned Claims Tribunal in relation to the issue of negligence. For the benefit of understanding, on the issue of negligence, the relevant portion of the impugned judgment reads as under:-

> "*1 have gone through the material on record. The FIR, charge sheet, postmortem reports, site-plan, and the testimony of the PW-4, taken together fully establish the death of the deceased Sh. Manjeet Singh and Sh.Ajaj Ahmed@ Ajaj caused by the injuries sustained by them involving vehicle bearing registration No, HR-55E-3338 in a road accident. There is nothing on record to dispel the inference that deceased Sh. Manjeet Singh and Sh, Ajaj Ahmed @Ajaj, died on account of injuries sustained by them in the road accident which occurred on 20.09.2008 because of rash and negligent driving of vehicle bearing No. HR-55E-3338 being driven by respondent no, 1, There is no evidence in rebuttal. Issues no. 1 are accordingly decided in favour of petitioners and against the respondents*"

8. Learned counsel for the respondents/claimants emphatically argued that the learned Tribunal erred in ignoring the testimony

of PW-3, Sh, Gurdev Singh (Proprietor of M/s B. S. Engineering Works) which proved that the deceased was working in the company of PW-3 as *Die Fitter on Lathe Machine* and was drawing a salary of Rs.8,000/- per month. He further contended that since the salary of the deceased was proved before the learned Tribunal, the learned Tribunal ought not to have calculated the compensation taking into account the minimum wages for a matriculate i.e. Rs. 4,150/-. This Court has gone through the evidence of the PW-3, Sh, Gurdev Singh (Proprietor of M/s B. S. Engineering Works) who during his cross examination has deposed that:-

> "*I have not brought the registration record of proprietorship in the name and style of M/s. B. S. Engineering works. I have not brought the books of account maintained for this concern. I have not brought the salary disbursement register or the receipt / voucher in connection with any salary received by Sh. Manjit Singh from M/s. B. S. Engineering work. I have not issued any form -16A of income tax Act which would reflect the salary paid to Sh. Manjit Singh. I have not brought the appointment letter for appointment of Sh. Manjit Singh in this concern. It is wrong to suggest that I have deposed falsely about the employment of Sh. Manjit Singh with M/s. B. S. Engineering work. It is wrong to suggest that I have made the false statement in order to extend benefit to the claimants of this petition. I am not a summoned witness. The father of Sh. Manjit Singh is my real brother. It is wrong to suggest that because of relationship with the family of the deceased 1have come today to depose before the court and make statement in favour of the claimants*"

9. Perusal of the above testimony depicts that PW-3, Sh, Gurdev Singh (Proprietor of M/s B. S. Engineering Works) failed to produce any documentary evidence to support his statement that the deceased was paid a monthly salary of Rs. 8,000/- per month. No document *vis-à-vis* appointment letter, salary certificate or Income Tax Return or Form-16 has been produced by the witness to substantiate his declaration. Moreover, during cross-examination, it has been brought on record that PW-3 is the real brother of father of the deceased and hence his testimony alone without support of any documentary proof cannot be relied upon to ascertain the income of the deceased. Accordingly, the finding of the learned Tribunal in calculating the income of the deceased by taking into account the minimum wages of a matriculate does not warrant any interference.

10. The other arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of ***Pranay Sethi (supra)*** and ***Sarla Verma (supra).***

11. As admitted by the learned counsel for the parties, the multiplier should be adopted in terms of dicta laid down in the case of ***Sarla Verma (supra)*** which is upheld in the judgment of ***Pranay Sethi (Supra)*** whereby it was held that for the purposes of selection of multiplier, the age of the deceased has to be taken into account. Since the deceased was of the age of 24 years at the time of alleged incident multiplier of 18 is to be taken into consideration. Further in the case of ***Pranay Sethi (supra)***, the

Hon'ble Supreme Court has held that for the conventional heads, namely, '*Loss of Estate*', *Loss of Consortium*' and '*Funeral Expenses*' amount of compensation is fixed as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years.

12. As far as future prospect is concerned admittedly the deceased was 24 years of age at the time of alleged incident and accordingly in terms of ***Pranay Sethi (Supra)*** an addition of 40% of the established income of the deceased should be granted under the head '*Future Prospects'*. The Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** with regard to grant of compensation under the head '*Future Prospects'* has held as under:-

> "*….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.,* ***<u>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.</u>***
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> *58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due*

> *to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*"
>
> *(emphasis supplied)*

13. With regard to deduction to be made towards '*Personal and Living Expenses*', the Hon'ble Supreme Court in ***Pranay Sethi (Supra)*** upholds the deduction ascertained in the case of ***Sarla Verma (supra)***. As per the Judgment passed by the Hon'ble Supreme Court in the case of ***Sarla Verma (Supra)***, deductions are to be calculated as under:-

> *"14. 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, the general practice is to apply standardized deductions.*
>
> ***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 (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six****.*
>
> *15. 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 expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his 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 dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of 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 taken as two-third.”

(emphasis supplied)

14. It is borne out from the records that the deceased was a bachelor and accordingly, in terms of the aforesaid judgments, deduction towards personal and living expenses of the deceased, should be one half (1/2).

15. In view of the above discussion the impugned Award dated 29.11.2012 is modified to the following extent:

(a) ‘*Loss of dependency*’ is calculated as

1. Rs. 4,150/- + 40% (Rs. 1,660/-) = Rs. 5,810/-
2. Rs. 5,810/- less 1/2 deduction (Rs. 2,905/-) = Rs.2,905/-
3. Rs. 2,905 X 12 X 18 = **Rs. 6,27,480/-**

(b) '*Loss of Consortium*' is computed as Rs. 44,000 X 2 = **Rs. 88,000/-** to be paid to the claimants.

(c) '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the claimants.

(d) '*Funeral Expenses* is quantified as **Rs. 16,500/-** to be paid to the claimants.

(e) Compensation under the head '*Love and Affection*.' = Nil.

(f) Total compensation to be paid to claimants is; **Rs.6,27,480/-+ Rs. 88,000 + Rs. 16,500/- + Rs.16,500/- = Rs. 7,48,480/-.**

16. Accordingly, the compensation granted by the learned Tribunal is enhanced from **Rs. 4,93,200/-** to **Rs. 7,48,480/-**.

17. The Appellant/Insurance Company is directed to deposit the entire differential amount with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire amount, the modified Award alongwith interest and the balance amount lying deposited with the registry of this Court be released to the claimants within a period of two weeks. Statutory amount, if deposited, be released to the appellants/claimants in MAC Appeal No.789/2014.

18. There would no change in the rate of interest awarded by the learned Tribunal.
19. Appeals stands disposed of. No order as to costs.

GAURANG KANTH
(JUDGE)

OCTOBER 11, 2022