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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 23.08.2022***Pronounced on: 09.09.2022***

+ MAC.APP. 363/2013 and C.M. No. 6570/2013

PRABHAWATI DEVI AND ORS Petitioner

Through: Mr. S.N. Parashar, Advocate.

versus

SANJEEV KUMAR JHA AND ORS Respondents

Through: Mr. J.P.N. Shahi, Advocate
for respondent No. 3/ IFFCO-
Tokio General Insurance.**CORAM:****HON'BLE MR. JUSTICE GAURANG KANTH****J U D G E M E N T****GAURANG KANTH, J.**

1. The present appeal has been preferred by the Appellants under Section 173 of the Motor Vehicles Act for enhancement of compensation amount awarded by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, South East District/Saket Courts, New Delhi in Suit No. 327/2010 vide its Award dated 20.09.2012.
2. The learned Tribunal vide its impugned Award dated 20.09.2012 held Respondent No. 3 herein/Insurance Company of the car liable to pay compensation to the Appellants. The relief granted by the learned Tribunal is as under: -



1.	Loss of Dependency	Rs. 7,48,800/-
2.	Loss of Love and Affection	Rs. 25,000/-
3.	Funeral Expenses	Rs. 10,000/-
4.	Loss of Estate	Rs. 10,000/-
5.	Loss of consortium	Rs. 10,000/-

Facts of the case

3. Brief facts of the case as noted by the learned Motor Accident Claims Tribunal are as under: -

“On 11.02.10, the deceased was standing with his motorcycle bearing no. DL 38 BL 9905. He was waiting at the gate of RTO Office, Vasant Vihar to meet the RTO Officials. At about 10.00 AM a car bearing no. DL 30 BD 2733 being driven by respondent no.1 in a rash and negligent manner came at a fast speed from the side of Nelson Mandela Marg and took a sharp U-Turn. Respondent no.1 could not control the car, hit the motorcycle of the deceased and ran over him. He was taken to Trauma Centre, AllMS by a Constable in a private car where he was declared brought dead. Respondent no.2 was the owner of the car and it was insured with respondent no.3. A case was registered vide FIR 44/10 at the police station Vasant Vihar. SHO of the police station Vasant Vihar filed a Detailed Accident Report. It was clubbed with the petition filed on behalf of the petitioners. In the report, the Investigating Officer had verified the driving license of the respondent no.1 and also filed the copy of the charge sheet containing the postmortem report and other documents as per which the cause of death was shock due to multiple injuries produced by blunt force object”



4. The learned Tribunal awarded compensation of Rs. 8,03,800/- in favour of the claimants and directed Respondent No. 3/ Insurance Company to deposit the said amount with interest @ 9 % per annum from the date of filing of the petition till realization. Against the impugned Award, the present Appeal is preferred.

Submissions of the Appellants

5. Mr. S. N. Parashar, learned counsel for the Appellants contended that the learned Tribunal has erred in not assessing the income of the deceased as per his vocation. He further contended that deceased was 27 years of age and at the time of accident, he was pursuing MBA final year from Sikkim Manipal University. While pursuing his MBA he was working in a private company and was earning Rs. 8,000/- per month. Learned counsel further contended that the deceased has appeared for his final year MBA examination and has received an appointment letter for the post of Assistant Manager, Finance on a monthly salary of Rs. 30,000/- per month. He further contended that the appointment letter has been filed as **Ex. PW-1/17**, however, the learned Tribunal without taking into account the appointment letter, computed the head '*Loss of dependency*' on the basis of proved salary of Rs. 8,000/- which is arbitrary and in contravention of the law laid down by the Hon'ble Supreme Court in the case of ***AshvinBhai JayantiLal Modi Vs Ramkaran Ramchandra***



Sharma reported as **2014 (11) SCALE 427**. Learned counsel also relied upon the judgment of this Court dated 07.03.2018 passed in **MAC.APP. 376/2017** titled as ***Bharti AXA Gen. Insurance Co. Ltd. Vs Upender Kumar Shastri.***

6. Learned counsel for the Appellants further contended that in terms of the dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as **2017 AIR (SC) 5157**, an addition of 40% of the established income should be granted under the head 'Future Prospects', however, the learned Tribunal erred in making an addition of 30% of the established income of the deceased.
7. Learned counsel for the Appellants further contended that the learned Tribunal erred in applying the multiplier of 9 according to the age of the mother of the deceased to compute the loss of dependency. Learned counsel contended that in terms of the dicta of Hon'ble Supreme Court in ***Pranay Sethi (supra)***, multiplier has to be applied in accordance with the age of the deceased instead of the age of the mother of the deceased and accordingly the multiplier to compute the loss of dependency should be 17.
8. Learned counsel further relied on the case of ***United India Insurance Company Limited V Satinder Kaur Alias Satwinder Kaur and Ors.*** reported as **(2021) 11 SCC 780** towards 'Loss of Filial Consortium', 'Loss of Estate' and 'Funeral Expenses'.



Submissions of Respondent No. 3/ Insurance Company

9. Mr. J. P. N. Shahi, learned counsel appearing on behalf of Respondent No. 3/ Insurance Company, at the outset, very fairly conceded that multiplier to be applied with reference to the age of the deceased and accordingly multiplier of 17 should be applied instead of 9. He also conceded for applying 40% increase in the salary of the deceased instead of 30% as held by the learned Tribunal for computation of compensation under the head '*Loss of future prospects*' in view of the law laid down by the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)***.
10. Learned counsel for Respondent No.3/ Insurance Company further contended that as far as assessing the income of the deceased as per his vocation is concerned, learned Tribunal has correctly come to a conclusion for calculating the income of the deceased to be Rs.8,000/- per month. He further contended that no cogent evidence has been placed on record by the Appellants herein to prove that the deceased who was final year MBA student would have earned Rs. 30,000/- per month and accordingly, no interference, under the head '*Loss of dependency*' is called for by this Court.
11. Learned counsel placing reliance on the case of ***Pranay Sethi (supra)*** contended that personal expenses/deduction in the present case should be calculated @ 50% of the assessed income of the deceased instead of 1/3 as computed by the learned Tribunal. As far as non-pecuniary compensation is



concerned, learned counsel contended that the legal heirs of the deceased are entitled to an amount of Rs.55,000/- only.

12. In rebuttal, Mr. S. N. Parashar, learned counsel for the Appellants fairly concedes that personal expenses/deduction of the assessed income of the deceased in the present case should be calculated @ 50% instead of 1/3 as computed by the learned Tribunal.

LEGAL ANALYSIS

13. The arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court. At the outset, we deem it appropriate to usher the finding dwelling on the decision passed by the Hon'ble Apex Court in the case of ***Pranay Sethi (supra)***. Relevant portion of the same is recapitulated as under: -

“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, Rs. 1,00,000/- 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, 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 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 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 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.

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59. 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 one's 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.

60. 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)

14. From the perusal of the aforesaid Judgment, it is emphatically clear that for the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, the amount of compensation is fixed at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively with an increase of 10% after a period of 3 years. Further, since the deceased was of the age of 27 years



at the time of alleged incident, an addition of 40% of the established income should be granted under the head ‘*future prospects*’. 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 & Ors. Vs DTC & Anr.*** reported as ***(2009) 6 SCC 121***. As far as multiplier is concerned, judgment in ***Pranay Sethi (Supra)*** followed the multiplier as indicated in column (4) of the Table in the case of ***Sarla Verma (Supra)***. The Hon’ble Supreme Court in the case of ***Sarla Varma (Supra)*** while determining the multiplier in an accident case has held that: -

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

(Emphasis supplied)

15. Multiplier to be used as per above dicta of in ***Sarla Verma (Supra)*** is as under: -

Column	Upt	15	21	26	31	36	41	46	51	56	61	Ab
	o	to	to	to	to	to	to	to	to	to	to	ov
	15	20	25	30	35	40	45	50	55	60	65	e



	yrs	yr	yr	yr	yr	yr	yr	yr	yrs	yrs	yrs	65
		s	s	s	s	s	s	s				yrs
(4)	15	18	18	17	16	15	14	13	11	9	7	5

16. Regarding the contention of learned counsel for the Appellants for enhancement of compensation on the head '*Loss of Dependency*' on the basis of appointment letter issued in favour of the deceased offering him a salary of Rs. 30,000/- p.m. is concerned, this Court finds that the appointment letter was produced by the mother of the deceased i.e., PW-1 and the same was exhibited as **Ex. PW-1/17**. This Court has gone through **Ex. PW-1/17** which is issued by Trustee-cum-Principal Secretary, NGO Helpline, India dated 14.12.2009. Nothing has been brought on record by the Respondent No.3/Insurance Company to disbelieve the appointment letter as well the testimony of **PW-1**. Similarly, no efforts have been made by the Appellants to substantiate the authenticity of the Appointment Letter dated 14.12.2009 which is an exhibited document. The onus lies on the Appellants to prove the validity of **Ex. PW-1/17** which they failed to prove. As such this Court cannot take into account the amount of salary referred in the said Appointment Letter for ascertaining the future income of the deceased. However, there is no denial of the fact that the deceased could have obtained higher salary after completing his MBA degree. The documents attached with the case file



shows that he has already appeared in the final year MBA examination. The deceased was a Commerce Graduate and has completed 'Office Assistant Course' from Bhartiya Vidya Bhavan and has also done a six months' 'Master Accountant' certificate course from the Institute of Computer Accounts. The deceased has also done an 80 hours course in Finance and Control. It is evident from the testimony of PW-2, Shelly Arora proprietor of M/s. Rajiv Arora and Shelly Arora that the deceased was working as an Accountant in their firm and was earning Rs. 8,000/- per month. The record further shows that the deceased was a striving individual and had desire to obtain a better living. He had appeared in his Final Year MBA examination and would have obtained a professional degree. The appointment letter also shows that he was offered the post of Assistant Manager Finance before completion of his MBA degree course.

17. From the perusal of the above records, this Court has no hesitation in enhancing the future income determined by the learned Tribunal. This Court determines the future income of the deceased at Rs. 15,000/- per month i.e., Rs. 15,000 X 12 = 1,80,000/- per annum.
18. In the case of in ***K. Suresh v. New India Assurance Co. Ltd.*** reported in (2012) 12 SCC 274, the Hon'ble Supreme Court of India while observing that Tribunal and Courts have to be broad based in computing compensation, has held as under: -



“10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered.”

(Emphasis supplied)

19. Further in the case of ***Jagdish v. Mohan*** reported in ***AIR 2018 SC 1347***, the Hon'ble Apex Court observed that the Courts must provide a realistic compensation for the pain of loss and the trauma of suffering of the victim and has held that:-

“14. In making the computation in the present case, the court must be mindful of the fact that the Appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing at least in the facts of this case can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and



***the trauma of suffering. Awards of compensation are not law's doles.** In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.”*

(Emphasis supplied)

20. In view of the above observations, the appellants shall be entitled to enhanced/modified compensation as mentioned below: -

S. No.	Heads	Awarded compensation
1.	Loss of dependency	Rs. 15,000/- X 12 = Rs.1,80,000/- <u>Adding future prospect</u> Rs. 1,80,000/-+ 72000/- (40% of Rs. 1,80,000/-) = Rs. 2,52,000/- <u>Deducting personal and living expenses</u> Rs. 2,52,000/- X ½ = Rs. 1,26,000/- Rs. 1,26,000/- X 17= Rs. 21,42,000/-



2.	Loss of consortium	Rs. 44000/- X 2= Rs. 88,000/-
3.	Loss of Estate	Rs. 16,500/-
4.	Funeral Charges	Rs. 16,500/-
	Total compensation	Rs. 22,63,000/-

21. Accordingly, the computation of compensation by the learned Tribunal is enhanced/ modified as detailed in the table above. The compensation of Rs. 22,63,000/- alongwith interest @ 9% per annum from the date of institution of the claim petition is awarded to the appellants.
22. Respondent No. 3/ Insurance Company is directed to deposit the entire Awarded compensation i.e., Rs. 22,63,000/- deducting the amount which has already been deposited or kept in the form of FDR within a period of 4 weeks.
23. After deposit of the Awarded amount as mentioned in the above paragraph, Registry is directed to release entire deposited amount within two weeks to the Appellants. Appellants are also entitled for the statutory deposit.
24. Appeal stands disposed of. No order as to costs.

GAURANG KANTH, J.

SEPTEMBER 09, 2022

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