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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 01.09.2022*
Pronounced on: 07.09.2022

\+ **MAC.APP. 360/2013**

UNITED INDIA INSURANCE CO. LTD. ..... Appellant
Through: Mr. Ravi Sabharwal, Advocate

versus

SURESH & ORS. ..... Respondents
Through: Mr. S. N. Parashar, Advocate for R- 1 to 4
Ms. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Tania Ahlawat, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for DTC

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.02.2013 passed in Suit No. 591/2012 by the Court of learned Presiding Officer, Motor Accident Claims Tribunal/(North)/Tis Hazari Courts, Delhi (hereinafter referred to as "***Impugned Award***").
2. By way of the impugned Award dated 20.02.2013, the learned Tribunal Awarded a compensation of Rs. 13,85,344/- with interest @ 9% per annum from the date of filing of the claim

petition till realization of the same and held that the Insurance Company shall pay the awarded compensation to the claimants.

3. Mr. Ravi Sabharwal learned counsel for the Appellant while placing reliance on the dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd. Vs Pranay Sethi & Ors.*** reported as ***2017 AIR (SC) 5157,*** contended that an addition of 25% of the established income of the deceased should be granted under the head '*Future Prospects*'. He further contended that the Hon'ble Supreme Court in ***Pranay Sethi (Supra)*** upholds the deduction ascertained in the case of ***Sarla Varma & Ors. Vs DTC & Anr***. reported as ***(2009) 6 SCC 121*** taking into account the age of the deceased and as such a deduction of 1/3 under the head '*Personal and Living Expenses*' is to be made. He fairly conceded that compensation @ Rs. 40,000/- per legal heir is to be paid under the head '*Loss of Consortium*'. He further stated that compensation with respect to '*Funeral Expenses*' and '*Loss of Estate*' is also to be granted in terms of judgment of ***Pranay Sethi (Supra).***

4. Mr. S. N. Parashar learned counsel appearing on behalf of respondent Nos. 1 to 4/claimants agreed to the computation referred to by Mr. Ravi Sabharwal, Advocate.

5. 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. The Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** has held 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. ***<u>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</u>****. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric.* ***<u>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.</u>***
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.,* ***<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>***

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*)

6. 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 aged 45 years at the time of alleged incident, an addition of 25% of the established income should be granted under the head '*Future Prospects'*. With regard to the 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 Varma (Supra)***. As per the Judgment passed by the Hon'ble Supreme Court in the case of ***Sarla Varma (Supra)*** deduction 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 dependent 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 dependent on the father. ***Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, 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 dependent 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.***"

7. It is borne out from the records that deceased was survived by four legal heirs i.e. her Husband/Respondent No. 1, married Daughter/Respondent No. 2, Son/Respondent No. 3 and

married Daughter/Respondent No. 4. Accordingly, in terms of the aforesaid judgments, deduction towards personal and living expenses of the deceased should be one-third (1/3rd).

8. In view of the above discussion, the impugned Award dated 20.02.2013 is modified to the following extent:

(a) '*Loss of dependency*' is calculated as

(i) Rs. 8,008/- + 25% (Rs. 2,002/-) = Rs. 10,010/-

(ii) Rs. 10,010/- less 1/3 deduction (Rs. 3,337/-) = Rs.6,673/-

(iii) Rs. 6,673 X 12 X 14 =**Rs. 11,21,064/-**

(b) '*Loss of Consortium*' is computed as Rs. 44,000 X 4 = **Rs.1,76,000/-** to be paid to the Respondent Nos. 1 to 4/claimants.

(c) '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the Respondent Nos. 1 to 4/claimants.

(d) '*Funeral Expenses* is quantified as **Rs. 16,500/-** to be paid to the Respondent Nos. 1 to 4/claimants.

(e) Total compensation to be paid to Respondent No. 1 to 4 is: Rs.11,21,064/- + Rs. 1,76,000/- + Rs.16,500/- + Rs.16,500/- = **Rs. 13,30,064/-**

9. Accordingly, the computation of compensation by the learned Tribunal is reduced from **Rs. 13,85,344/-** to **Rs. 13,30,064/-** and the differential amount to be refunded to the Appellant/ Insurance Company comes to **Rs. 55,280/-**.

10. Registry is directed to release the balance amount alongwith interest to Respondent Nos. 1 to 4/claimants after deducting an

amount of **Rs. 55,280/-**, within a period of 4 weeks. Registry is further directed to release Rs.55,280/- along with interest accrued thereupon to the Appellant. The Appellant is also entitled for the statutory deposit.

11. Appeal stands disposed of. No order as to costs.

GAURANG KANTH
(JUDGE)

SEPTEMBER 07, 2022
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