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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on : 02.09.2022**Pronounced on: 13.09.2022*

+ MAC.APP. 520/2013 & CM APPL. 47053/2018  
(enhancement of compensation/Cross Objection), CM  
APPL. 47054/2018 (condonation of delay)

**RELIANCE GENERAL INSURANCE  
CO. LTD.**

**..... Appellant**

Through: Mr. A. K. Soni, Advocate

versus

**SMT PUSHPA BISHT AND ORS****..... Respondents**

Through: Mr. S. N. Parashar, Advocate

**CORAM:****HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

**CM. No. 47054/2018 (Condonation of delay in filing cross  
objections)**

1. Present application has been filed for condoning the delay in filing the cross objections.
2. Since the matter has been heard finally and also for the reasons stated in the application, the delay in filing the cross objections is condoned.
3. Application stands disposed of.

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**MAC. APP. 520/2013 & CM APPL. 47053/2018 (enhancement of compensation/Cross Objection)**

4. Both, the appeal and the cross objection, are heard together and disposed of by this common judgment as both arise out of the common Award dated 18.4.2013 (*"impugned Award"*) passed by the learned Tribunal which is impugned before this Court.
5. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the impugned award dated 18.4.2013 passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Central District, Delhi and the Cross Objection under Order XLI Rule 22 has been preferred by respondent Nos. 1 and 2 for enhancement of the compensation amount.
6. By way of the impugned Award dated 18.04.2013, the learned Tribunal Awarded a compensation of Rs. 74,76,027/- with interest @ 9% per annum from the date of filing of the claim petition i.e. 09.09.2010 till realization and directed the Insurance Company to deposit the entire awarded amount before the Tribunal.

**Submission on behalf of the Appellant**

7. Mr.A.K.Soni learned counsel for the Appellant contended that the impugned Award passed by the learned Tribunal is based on conjecture and surmises and is liable to be set aside on the ground that it was not proved whether the vehicle bearing registration no. HR-20R-7808 was driven in a rash and negligent manner. He further submitted that there was no

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cogent and reliable evidence to hold that respondent No.4/driver was guilty of causing the accident. He further submitted that the learned Tribunal erred in placing reliance on the testimony of PW-3 Sh. Shingara Singh, who is not an eye witness to the alleged accident. He further contended that the learned Tribunal ignored the statement of respondent no. 3 wherein he has categorically stated that the alleged accident took place while saving a buffalo calf which came suddenly on road.

8. Learned counsel further with regard to modification of quantum of compensation contended that learned Tribunal has erred in considering the amount of compensation to be paid under the head '*Future Prospects*' by adding 30% to the assessed income of the deceased as there was no material evidence to prove that the future income of the deceased would increase to such extent, who was in the employment for only 21 days and not was not a permanent employee.
9. Learned counsel 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 taking into account the age of the deceased, a deduction of 1/3 under the head '*Personal and Living Expenses*' is to be made. He further contended that in terms of judgment of ***Pranay Sethi (Supra)*** compensation under the head '*Love and Affection*' has to be deducted.



### **Submission on behalf of the Respondents**

10. Mr. S. N. Parashar learned counsel appearing on behalf of the respondents/claimants contended that the impugned Award passed by the learned Tribunal is based on cogent, consistent and reliable evidences of PW-3, Sh. Shingara Singh (eye witness), PW-2, Sh. Yashpal, Senior Executive, Tata Communications Ltd and PW-4, Sh. G.S. Sharma, Manager, Tata Communications Ltd which could not be impeached during the cross-examination. Learned counsel while placing reliance on the dicta of ***Pranay Sethi (supra)***, contended that an addition of 40% 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 Verma & Ors. Vs DTC & Anr.*** reported as ***2009 (6) SCC 121*** taking into account the age of the deceased and as such a deduction of 1/4 under the head '*Personal and Living Expenses*' is to be made. However, learned counsel fairly accepted that in terms of the dicta of the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)***, grant of compensation under the head '*Love and Affection*' has to be deducted from the total amount of compensation Awarded by the learned Tribunal. He further contended that the grant of compensation under the head '*Loss of Consortium*' is to be fixed @ Rs. 40,000/- with an increase of 10% after a period of

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3 years. Learned counsel further contended that in terms of *Pranay Sethi (supra)*, compensation under the head ‘Loss of Estate’ and ‘Funeral Expenses’ is required to be enhanced to the respondents/claimants, which has not been correctly considered by the learned Tribunal.

### **Courts Reasoning on the preliminary question of negligence**

11. The learned Tribunal after going through evidence and considering the submissions made by respective parties on issue of negligence has concluded as under:-

*“13. PW-3 Sh.Shingara Singh, who is an eyewitness of the case has also tendered in evidence his examination-in-chief by way of affidavit Ex.PWS/A, wherein he testified that on 17.08.2009 at about 6:30pm he was going by his taxi from Taxi Stand Faridkot to Bhatinda via Lambh Wali to drop some passengers. When he reached near Bus Stand Lambh Wali suddenly a white car bearing registration no. HR-99- CN-2215 overtook his Taxi. The driver of the car was driving the car very rashly, negligently and at high speed of about 90-100 Kilometer per hour. The car driver lost control of his car and hit a Teak tree about 10 meters away from the road on the right side. According to him the car in accident was badly damaged and the driver and passenger of the said car were seriously injured. Many persons gathered there and took out both injured persons from the car. The passenger on the front seat besides the driver whose name was Mohan Singh Bisht had died while the driver whose name was Harish Kumar was seriously injured. He further testified that he had given his statement on the next date when the police had inquired him. He testified*



*that the accident had taken place due to rash and negligent driving of the driver of the car.*

*On being cross-examined by Ld. counsel for respondent no.3, Insurance Company he testified that the accident had taken place the city. He testified that he had remained at the spot of accident for about 1/2 hour. He denied the suggestion that he had not seen the accident and he is deposing falsely.*

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*As such in view of testimonies of the petitioner No.1 as PW-1 and Sh.Shingara Singh an eyewitness of the accident as PW-3, certified copies of criminal record produced, no doubt is left in respect of the having suffered fatal injuries in road traffic accident on 17.08.2009 due to rash and negligent driving of the vehicle/Tata-Indica Car bearing registration No. HR 20 R7808 by respondent-No. 1/driver of the offending vehicle. The contention of Ld. Counsel for Insurance Company that the accident in this case had taken place without the negligence of anyone and therefore, the petitioners are not entitled to any compensation simply does not hold water. Issue No.1 is accordingly decided in favour of the petitioners and against the respondents.”*

12. This Court has gone through the evidence produced by the respondents in their support. There is no reason to disbelieve the testimony of PW-3, Sh. Shingara Singh (eye witness), who also withstood the test of cross-examination. Learned Tribunal has also evaluated the testimony with great care and has ascertained the veracity of the testimony by corroborating the same with other records available on record. Accordingly, this

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Court is in conformity with the decision of the learned Tribunal with regard to asserting that the alleged incident, whereby the deceased lost his life, has taken place as the offending vehicle bearing registration no. HR-20R-7808 was driven in a rash and negligent manner.

13. As regards arguments of learned counsel for the appellants that the learned Tribunal has erred in determining the correct income of the deceased is concerned, this Court has gone through the evidence of PW-2/Sh. Yashpal, Senior Executive, Tata Communications Ltd and PW-4/Sh. G.S. Sharma, Manager, Tata Communications Ltd. PW-2/Sh. Yashpal, Senior Executive, Tata Communications Ltd., during his examination proved before the learned Tribunal that the deceased joined their company i.e. Tata Communications Ltd., on 27.07.200. PW-4/Sh. G.S. Sharma, Manager, Tata Communications Ltd., during his examination proved the compensation sheet before the Tribunal that the annual package of the deceased was Rs. 4,80,016/-. From conjoint reading of the testimonies of the witnesses i.e PW-2 and PW-4, it is evident that the employment and annual package of the deceased has been proved on record without any realm of suspicion. Learned Tribunal has also deducted the Income Tax and conveyance allowance to be paid by the deceased in arriving at the figure of Rs. 4,43,199/- as the annual income of the deceased. This court finds no error in calculation or finding of the learned Tribunal with regard to assessment of

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annual income of the deceased for the purposes of grant of compensation.

14. The rest of 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. 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. **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)*

15. 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 as 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 the age of 30 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 (supra)*. As per the Judgment passed by the Hon'ble Supreme Court in the case of *Sarla Verma (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 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.”**

16. It is borne out from the records that admittedly the deceased was aged 30 years and he was survived of four legal heirs i.e. his mother, father, wife and minor daughter. Accordingly, in terms of the aforesaid judgments deduction towards personal and living expenses of the deceased, should be one-fourth (1/4<sup>th</sup>). As far as grant of compensation under the head ‘Love and Affection’ is concerned, this Court relies on the judgment of the Hon’ble Supreme Court in the case of ***United India Insurance Company Limited V Satinder Kaur alias Satwinder Kaur and Ors*** reported as (2021) 11 SCC 780 which held that



*‘The Constitution Bench in Pranay Sethi, has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium’.*

17. The Hon’ble Supreme Court in the case of **Satwinder Kaur (Supra)** has further directed to *‘award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head’*. Accordingly, in terms of law settled by Hon’ble Supreme Court, the grant of compensation of Rs. 1,00,000/- under the head *‘Love and Affection’* is unwarranted and deducted from the total compensation.
18. In view of the above discussion the impugned Award dated 18.04.2013 is modified to the following extent:
  - (a) *‘Loss of dependency’* is calculated as
    1. Rs. 4,43,199/- (Annual income) + 40%  
(Rs.1,77,280/-) = Rs. 6,20,479/-
    2. Rs. 6,20,479/- less 1/4<sup>th</sup> deduction (Rs. 1,55,120/-)  
= Rs. 4,65,359/-
    3. Rs. 4,65,359/- X 17 = **Rs. 79,11,103/-**



- (b) '*Loss of Consortium*' is computed as Rs. 44,000 X 4 = **1,76,000/-** to be paid to the Respondents/claimants.
- (c) '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the Respondents/claimants.
- (d) '*Funeral Expenses*' is quantified as **Rs. 16,500/-** to be paid to the Respondents/claimants.
- (e) Compensation of Rs. 1,00,000/- paid under the head '*Love and Affection*' is comprehended under the head '*Loss of Consortium*' and is deducted from the total amount Awarded by the Tribunal.
- (f) Total compensation to be paid to Respondents/claimants is ; **Rs. 79,11,103/-** + Rs.1,76,000/- + Rs. 16,500/- + Rs. 16,500/- = **Rs.81,20,103/-**.

19. Accordingly, the computation of compensation by the learned Tribunal is enhanced from **Rs. 73,46,027/-** to **Rs. 81,20,103/-** to be paid to the respondents/claimants.
20. The Appellant is directed to deposit differential amount within a period of 4 weeks. On deposit of the differential amount, Registry is directed to release the balance amount alongwith interest to the respondents/claimants after taking into the account the modification of compensation made by the present order, within a period of 4 weeks. Statutory amount, if deposited, be released to the appellant.



21. There would be no change in the rate of interest awarded by the learned Tribunal.
22. Registry is further directed to place the matter before this Court for directions, if the differential amount as mentioned above, is not deposited by the appellant within the time stipulated above.
23. Appeal and Cross Objection stand disposed of. No order as to costs.

**GAURANG KANTH  
(JUDGE)**

**SEPTEMBER 13, 2022**

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