



\$~14.

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

%

Reserved on: 12.07.2022

Pronounced on: 03.08.2022

+ **MAC.APP. 962/2013**

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Ms. Rakhi Dubey, Advocate

versus

RAJADA & 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.

1. The Appellant has challenged the Award of the Motor Accident Claims Tribunal, whereby compensation of Rs.23,57,304/- has been awarded to the Respondent Nos. 1 to 5.

2. The accident dated 10.07.2012 resulted in the death of Sh. Sarwar. He was 24 years of age. It is the case of the respondents that the deceased was working as Driver (HTV) with M/s Yadav Transport Co. Pvt. Ltd. and was earning Rs. 15,000/- per month (Rs. 10,000/- as salary and Rs. 5,000/- towards food and other allowances). The deceased was survived by his widow, 2 minor daughters, mother and father. All the legal heirs together filed claim petition before the Motor Accident Claims Tribunal.



3. The Claims Tribunal treated the deceased as a matriculate labour and fixed his income for the purpose of loss of dependency as Rs. 8,528/- based on the rates of Minimum Wages as applicable to Delhi. Based on the legal principle as explained by the Hon'ble Supreme Court in *Rajesh & Ors Vs Rajvir Singh*, SLP(C) No.24825/2010, the monthly income of the deceased was fixed as Rs.12,792/-. Further based on the Judgement of the Hon'ble Supreme Court in *Sarla Verma vs. DTC* reported as 2009 (6) SCC 121, the monthly dependency was assessed as Rs. 9,594/- per month and loss of dependency was calculated as Rs. 20,72,304/-. In addition, the learned Tribunal has granted Rs. 25,000/- towards the funeral charges and Rs. 10,000/- towards the loss of Estate. Respondent No. 1 was granted Rs. 1,00,000/- towards loss of consortium. Regarding the Non-pecuniary Losses, the learned Tribunal awarded Rs.1,00,000/- for all the Respondents towards loss of love and affection and Rs. 50,000/- towards notional loss of care, attention and expenses. The total amount awarded comes to Rs. 23,57,304/-. The learned Tribunal also awarded 9% interest from the date of filing of the DAR till the date of realisation.

4. The learned counsel for the Appellant challenged the impugned Award majorly on the following grounds:-

- (i) Learned Tribunal erred in taking the minimum Wages of Delhi as base for calculating the income of the deceased as the deceased was employed with M/s Yadav Transport Co. Pvt. Ltd. located at Ghaziabad, UP. Hence Minimum Wages



as applicable to the State of UP at the relevant point in time should be taken for calculating the income of the deceased.

(ii) The learned Tribunal has erred in granting 50% towards future prospects as the Hon'ble Supreme Court in ***National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as 2017 AIR (SC) 5157 held that in case the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be granted where the deceased was below the age of 40 years.

(iii) Non-pecuniary compensation granted by the learned Tribunal is contrary to the dicta of Hon'ble Supreme Court in ***Pranay Sethi*** (supra) as the Hon'ble Supreme Court held that reasonable figures of Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/- should be granted towards the conventional heads namely Loss of estate, Loss of consortium and funeral expenses.

(iv) There is no evidence to show that the deceased put some signal regarding parking the vehicle in the middle of the road. Hence, the accident happened due to the mistake of the deceased.

5. That the learned counsel for the respondents submitted that even though the deceased was working at Ghaziabad, the same is part of National Capital Territory of Delhi. Hence, the learned Tribunal rightly applied the minimum wages as applicable in Delhi to the deceased while calculating his income. Regarding Loss of

MAC.APP. 962/2013 Page 3 of 17



future prospects, he conceded that in view of the law laid down by the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*, (2017) 16 SCC 680, the same should be granted @ 40%. Learned counsel for the respondents further submitted that each of the claimants shall be entitled to non-pecuniary compensation of Rs. 50,000/- and Rs. 40,000/- towards 'loss of love and affection' and 'loss of consortium' respectively, in terms of the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram*, (2018 (18) SCC 130). The Respondents further submitted that in terms of *Pranay Sethi* (supra), Rs. 15,000/- under each head shall also be payable towards 'funeral expenses' and 'loss of estate' to the claimants.

6. That regarding the first point raised by the Appellant, whether the minimum wages applicable to Delhi or State of UP is to be applied while calculating the income of the deceased, this Court notes the following facts:

- (i) It is the case of the respondents that the deceased was working as Driver (HTV) with M/s Yadav Transport Company Pvt. Ltd. located at Ghaziabad and he was earning Rs. 15,000/- (Rs. 10,000/- towards salary and Rs. 5000/- towards the food and other allowances).
- (ii) The deceased was a Heavy Vehicle Driver having valid license in this regard.
- (iii) The accident occurred at Delhi.



7. The Hon'ble Supreme Court in its recent judgement in ***Chandra @ Chanda @ Chandraram Vs Mukesh Kumar Yadav & Ors*** (Civil Appeal No. 6152/2021) had an occasion to examine an identical issue. The relevant portion of the said Judgment reads as below:

“10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving license and was earning Rs.15000/- per month. Possessing such license and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. this Court while dealing with the claim relating to an accident which occurred



on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency.”

8. The office of the deceased was situated at Ghaziabad which is also part of National Capital Territory of Delhi. The deceased is a Heavy Vehicle Driver having valid driving license. It is the case of the respondent No.1 that her husband was earning Rs.15,000/- per month. Even though, no documents have been produced to the said effect, there is no contrary evidence in this regard. Hence, applying the same principle as applied by the Hon'ble Supreme Court in **Chandra** (supra), this Court finds that there is no perversity in the order of the learned Tribunal in fixing the income of the deceased based on the minimum wages as applicable in Delhi. Hence, the contention of the Appellant in this regard is rejected.

9. The second contention of the Appellant is regarding the calculation of future prospects. The learned counsel for the Respondents conceded to this point as the Hon'ble Supreme Court in **Pranay Sethi** (supra) held that in case the deceased was self employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income should be granted. Hence,



in the present case, the same should be Rs.8,528/- + (Rs. 8,528/- X 40%) = Rs.11,940/-.

10. The third submission of the Appellant is that non-pecuniary compensation granted by the learned Tribunal is contrary to the dicta of Hon'ble Supreme Court in **Pranay Sethi** (supra). The Appellant contended that as per the Hon'ble Supreme Court, Rs.15,000/-, Rs.40,000/- and Rs.15,000/- should be granted towards the conventional heads namely Loss of estate, Loss of consortium and funeral expenses. Per contra, learned Counsel for the respondents further submitted that each of the claimants shall be entitled to non-pecuniary compensation of Rs. 50,000/- and Rs. 40,000/- towards 'loss of love and affection' and 'loss of consortium' respectively, in terms of the dicta of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram**, (2018 (18) SCC 130). The Respondents further submitted that in terms of **Pranay Sethi** (supra), Rs. 15,000/- under each head shall also be payable towards 'funeral expenses' and 'loss of estate' to the claimants.

11. In the present case,

- (a) the learned Tribunal granted Rs.25,000/- towards the funeral charges and Rs.10,000/- towards the loss of estate. As per the dicta of **Pranay Sethi** (supra), the Funeral Charges is reduced to Rs.16,500/- and compensation towards loss of estate is increased to Rs.16,500/-.
- (b) Regarding the compensation under the head 'Loss of consortium', the learned Tribunal granted Rs. 1,00,000/-



for respondent No. 1. The Tribunal further granted compensation of Rs. 1,00,000/- for all the respondents under the head ‘loss of love and affection’, and Rs.50,000/- towards ‘notional loss of care, attention and expenses’.

The three-judge Bench of the Hon’ble Supreme Court recently in the matter of *United India Insurance Company Limited V Satinder Kaur Alias Satwinder Kaur and Ors.* (2021) 11 SCC 780, held that there is no justification to award compensation towards ‘loss of love and affection’ as a separate head and directed the Tribunals and High Courts to award compensation for loss of consortium, which is a legitimate conventional head. The relevant part of the judgment is reproduced hereunder:

“(e) Three conventional heads

28. *In Pranay Sethi, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, 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, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held 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 Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads:

- (a) Loss of estate — Rs 15,000 to be awarded.*
- (b) Loss of consortium.*

- 29.** *Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.*
- 30.** *In Magma General Insurance Co. Ltd. v. Nanu Ram this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
- 31.** *Parental consortium is granted to the child upon the premature death of a parent, for loss*



of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

- 32. Modern jurisdictions world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.*
- 33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi.*
- 34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have*



been awarding compensation for both loss of consortium and loss of love and affection. 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.

35. The Tribunals and the High Courts are 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.”

12. This Court further noticed that in case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. In the present case, this is not a case of a parent losing ‘minor child’ or ‘unmarried son or daughter’. In **Chandra** (supra), the unfortunate parents of the deceased, who had survived with wife and minor son, approached the Hon’ble Supreme Court for enhancement of compensation granted to them by the Courts below. While granting parental Consortium of Rs. 40,000/- to the parents, the Hon’ble Apex Court reiterated that parents are also dependents of the deceased and entitled for compensation. Applying the same principle, this Court is of the considered view that parents are entitled to compensation under the head ‘filial consortium’.



13. Hence, in view of the dicta of the Hon'ble Supreme Court in *United India Insurance Company Limited* (supra), in the present case, this Court deems it appropriate to award loss of consortium including spousal, parental and filial consortium to the respondents @ Rs. 44, 000/- each.

14. Further, as held by the Hon'ble three-judge bench of the Hon'ble Supreme Court in the aforementioned judgment, the compensation under the non-conventional heads 'loss of love and affection' and 'notional loss of care, attention and expenses' is comprehended in loss of consortium. Accordingly, the judgment of MACT in respect of 'loss of love and affection' and 'notional loss of care, attention and expenses' and 'loss consortium' is modified and clubbed into the head 'loss of consortium'.

15. The appellant lastly argued that the accident happened because of the negligence of the deceased as there is no evidence on record to show that he put some signal regarding the parking of the vehicle in the middle of the road. This Court had the benefit of examining the Lower Court record. PW-2, who was an eyewitness to the incident, categorically deposed that there was a lalten put on the back of their truck. He categorically denied the suggestion that the vehicle was stopped in the middle of the road and there was no signal. There is no reason to disbelieve the statement of PW-2.

16. This Court also notes that the learned Claim Tribunal had dealt with this issue in detail and held in paragraphs 7 and 8 of the judgment that the accident took place because of the rash and



negligent driving on part of the driver/Ashmajan. Relevant part of the judgment is reproduced hereunder:

“7. As the onus of proving the issue No.1 was on the petitioners who are the legal heirs of deceased who expired due to accidental injuries of accident. The petitioners examined two witnesses in all out of which PW2 Savej is the eyewitness of the accident. He deposed the manner in which the accident took place and blamed the respondent No.1 for causing the said accident due to rash and negligent driving, He was cross examined by the respondent No. 3/insurance company/and during cross examination he specifically denied the suggestion that the saria was coming out of the body of truck 4 and half meter from the back portion of the truck. He further denied that the vehicle in which he was sitting stop in sudden in middle of road and that he was not present at the spot. He further deposed that he had put a lalten on the back of the truck. He further denied the suggestion that because of night and they have not put a signal and accident took place. Hence, the respondent No.3 failed to shake the testimony of PW3.

8. The copies of the criminal case record/DAR report is also placed on the record which shows that the police has prosecuted the respondent No. 1/driver of the offending vehicle for driving the offending vehicle in rash and negligent manner and causing the accident in question. It is not the case of the respondents that they had lodged any complaint to any higher authority against alleged false implication of respondent no. 1 in criminal case. It is also not their case that they had any previous enmity with petitioner or I.O of the case which facilitated them to



involve respondent no. 1 in the alleged false case. Accordingly, it is held that accident had taken place due to rash and negligent driving of offending vehicle No. HR 47P 6771 by respondent no. 1 by which injured had suffered fatal injuries and there was no negligence on his part. Accordingly, this issue is thus decided in favour of the petitioners and against the respondents.”

17. It is well settled principle of law that hyper technical approach should not be adopted in a case of compensation under the Motor Vehicles Act, 1988. The Hon’ble Supreme Court reiterated this well settled principle in **Sunita Vs Rajasthan SRTC**, (2020) 13 SCC 486, as under:

“21. We have no hesitation in observing that such a hyper technical and trivial approach of the High Court cannot be sustained in a case for compensation under the Act, in connection with a motor vehicle accident resulting in the death of a family member....

24. It will be useful to advert to the dictum in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal, (1980) 3 SCC 457 : 1980 SCC (Cri) 774], wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negated the said argument by observing that the nature of proof required to establish culpable rashness, punishable under IPC, is more stringent than negligence sufficient



under the law of tort to create liability. The observation made in para 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus: (SCC pp. 458-59)

‘3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the



jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”

18. This Court is in full agreement with the reasons provided by the learned Claim Tribunal which had granted this issue in favour of the respondents. Hence, the objection of the Appellant is overruled.

19. Hence, in view of the discussion herein above, the impugned Award is modified as follows:

S. No	Head	Compensation awarded
1.	Loss of Dependency (Rs.11,940- Rs.2,985(1/4 th) X 12 X 18)	Rs. 19,34,280/-
2.	Funeral charges	Rs. 16,500/-
3.	Loss of estate	Rs. 16,500/-
4.	Loss of Consortium	Rs. 2,20,000/- (Rs.44,000/- X5)
Total Compensation awarded		Rs. 21,87,280/-

20. While issuing notice, the Appellant informed this Court that the learned Tribunal attached the complete awarded amount. Hence,
MAC.APP. 962/2013



this Court, earlier vide order dated 25.10.2013 directed for the release of 60% of the awarded amount in favour of the respondents and balance 40% to be kept in FDR as per the terms and conditions as fixed by the learned Tribunal. In view of the disposal of the present Appeal, the differential amount to be refunded to the Appellant and the balance of the awarded amount is to be released to the respondents as per the order of the learned Tribunal.

21. The statutory deposit is to be released to the Appellant.
22. The present Appeal is disposed of with these modifications.

GAURANG KANTH, J.

AUGUST 03, 2022



नित्यमेव जयते