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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 01.11.2022

Pronounced on: 16.11.2022

+ MAC.APP. 1067/2013

RAJINDER SINGH & ANR

..... Appellants

Through: Mr. Yash Pal Laroya,
Advocate.

versus

BALVINDER SINGH & ORS

..... Respondents

Through: Mr. Pradeep Gaur, Advocate
for R-3

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 29.07.2013 ("**impugned award**") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, (South-1), Saket Courts, New Delhi.
2. By way of impugned award dated 29.07.2013 the learned Claims Tribunal awarded a compensation of Rs. 29,99,038/- (inclusive of interim award, if any) with interest @ 9% per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to pay the entire awarded amount within a period of one month.

SUBMISSION OF THE APPELLANT

3. Mr. Y. P. Laroya, learned counsel for the appellant while seeking enhancement of the compensation contended that the

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learned Claims Tribunal has passed the impugned award without appreciating the principles of law, documents and the evidence on record. Learned counsel for the appellant further contended that the learned Claims Tribunal erred in calculating the monthly income of the deceased/victim as Rs. 35,000/- per month, however, taking into account the deposits made by the deceased/victim, the income of the deceased should be calculated at Rs. 40,000/- per month. Learned counsel further contended that the learned Claims Tribunal erred in granting compensation under the head '*Medical Expenses*' to the tune of Rs. 45,874/- as the medical bills which have been produced before the learned Claims Tribunal were for an amount of Rs. 1,18,818/-. Learned counsel further contended that in terms of dicta of Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as (2017) 17 SCC 680, compensation under the head '*Future Prospects*' is to be paid by adding 40% of the assessed income of the deceased/victim instead of 10%, as awarded by the learned Claims Tribunal. Learned counsel further contended 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. He further contended that the deceased/victim was 26 years of age at the time of the incident and 27 years at the time

of the death and the learned Claims Tribunal erred in calculating the compensation under the head '*Loss of Future Income*' by taking the multiplier of 11 instead of 17. 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 for the appellant further sought compensation under the head '*Conveyance*' as the deceased/victim has taken treatment in different hospitals and was shifted from one hospital to another. Learned counsel concluded his arguments seeking compensation under the head '*Pain and Mental Agony*' suffered by the family members of the deceased/victim.

SUBMISSION OF RESPONDENT NO. 3

4. Mr. Pradeep Gaur, learned counsel for Respondent no. 3 contended that the appeal is liable to be dismissed and no interference in the impugned award is called for by this Court. Learned counsel further contended that the learned Claims Tribunal has correctly assessed the income of the deceased/victim and no modification in the monthly income assessed by the learned Claims Tribunal is required. Learned counsel further contended that the compensation under the head '*Medical Expenses*' have already been paid to the claimants and as such no modification/enhancement is called for by this Court. Learned counsel for Respondent No. 3 further sought grant of recovery rights to the Insurance company. Learned

counsel fairly concedes for grant of compensation under the head '*Loss of Consortium*' '*Loss of Estate*' and '*Loss of Funeral Expenses*' in the terms of *Pranay Sethi (supra)*.

COURT'S REASONING

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

"...on 15.07.2008 at about 11.30 to 11:45 pm, the victim riding on his motorcycle bearing registration no. DL-6SV-4200 alongwith Sh. Chan Preet Singh as a pillion rider were going towards Tilak Nagar, New Delhi and when they reached Safdarjung flyover, at that point of time, a truck bearing registration no. HR-38K-0751 being driven by its driver namely Balvinder Singh in a rash and negligent manner came from behind and hit into motorcycle, as a result of which occupants of motorcycle fell down and victim namely Nitin Verma sustained grievous injuries....."

6. Mr. Nitin Verma, the victim succumbed to injuries on 26.09.2009, 14 months after the unfortunate accident.
7. Learned counsel for the appellant prayed for calculation of monthly income of the deceased/victim at Rs. 40,000/- per month instead of Rs. 35,000/-. In this context, it is necessary to recapitulate the findings of the learned Claims Tribunal, which reads as under:-

"The aforesaid TDS certificates shows that during the period from 01.04.2006 to 31.03.2007, the deceased received Rs. 4,17,000/-. For the same period, the total deposit in the bank account comes to Rs.3,28,170/- and some these entries bears the name of Glint Entertainment. In these circumstances, the monthly income of deceased can be construed to be Rs. 35,000/- per month. It is not out of place to mention that bank deposit total for the next financial year 01.04.2007 to 31.03.2008 is closed to Rs. 5,00,000/-. This further gives strength to the assumption that after reducing professional expenses, the monthly

income of deceased can be taken to Rs. 35,000/- equal to Rs. 4,20,000/- per annum. For the purpose of calculating compensation 10% of enhancement as a future prospects is taken in this case keeping in view progression in economic market, therefore, and after adding 10% it would come to be Rs. 4,62,000/- (Rs. 4,20,000/-+10%)”

8. Perusal of the record depicts that the deceased/victim was an Animation and Graphic Designer. The deceased/victim was working in I-Stylus company on contractual basis as graphic designer. The avocation and salary statement has been proved on record by PW-4/Mr. Rajender Singh, father of the deceased/victim and PW-6/Chan Preet (Graphic designer). The learned Claims Tribunal has carefully gone through the document produced in support of the income of the deceased/victim and assessed the income at Rs. 35,000/- per month. This Court does not find infirmity in the finding with regard the assessment of monthly income of the deceased/victim and as such the argument raised by learned counsel for the appellant for enhancement of monthly income from Rs. 35,000/- to Rs. 40,000/- holds no ground.
9. As far as argument with regard to grant of enhanced compensation for medical expenses is concerned, the perusal of the record depicts that the claimants have filed medical bills to the tune of Rs. 8,80,038/- and the learned Claims Tribunal has granted all the amounts without any deduction hence the prayer for enhancement of medical expenses holds no ground.
10. The claimants have sought compensation under the head ‘Conveyance’ and also ‘Pain and Mental Agony’ suffered by

the claimants. In this regard, it is relevant to peruse the testimony of the relevant witnesses produced before the learned Claims Tribunal. As per PW-8/Mr. Pyara Singh, Medical Record Officer, Sir Ganga Ram Hospital, the deceased/victim during his treatment was admitted in their hospital from 08.09.2008 to 18.07.2009 and thereafter he was transferred to AIIMS. PW-9/Dr. Anurag Srivastav, Professor of Surgery, AIIMS deposed that the deceased/victim was referred to AIIMS from Sir Ganga Ram Hospital. The deceased/victim was operated upon to take care of his wounds on both lower limbs by a flap surgery. He further deposed that the wound created by the skin graft harvesting did not heal and more skin grafts were under taken. He further deposed that thereafter the deceased/victim was admitted in the Surgical Department on 17.07.2009 and was discharged on 17.09.2009. He further deposed that since the wounds were not healing, a special plastic surgery was conducted at Jai Prakash Narayan Apex Trauma Centre, AIIMS on 17.09.2009 because of which he developed septicemia and died on 26.09.2009. PW-10/Mr. Maneesh Singhal, Plastic Surgeon, Jai Prakash Narayan Apex Trauma Centre, AIIMS confirms the admission and surgery of the deceased in the Trauma Centre and deposed that the deceased was admitted in the their hospital and expired on 26.09.2009 due to his wounds.

11. It has been unequivocally proved on record that the deceased/victim was initially taken to Safadarjung Hospital

thereafter to B.L.K. Medical Centre and then the deceased/victim was taken to Sir Ganga Ram Hospital where he remained for treatment for more than 1½ years. The deceased/victim was thereafter referred to AIIMS for treatment. From AIIMS, the deceased/victim was further referred for surgery to Jai Prakash Narayan Apex Trauma Centre, AIIMS and ultimately succumbed to injuries on 26.09.2009.

12. At this stage, it is relevant to mention that the Motor Vehicles Act, 1988 (hereinafter referred to as '*the Act*') is a beneficial legislation, the Hon'ble Supreme Court time and again has reiterated that the Act stipulates that there should be grant of "*Just Compensation*". Thus, it becomes a challenge for the court of law to determine "*Just Compensation*" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance. The Courts should pragmatically compute the loss sustained which has to be in the realm of realistic approximation.
13. In view of the above discussion, despite being a death case, having regard to peculiar facts and circumstances of the present case, there is no impediment in granting compensation under the head '*Conveyance*' to the claimants. Accordingly, this Court grants compensation of Rs. 25,000/- under the head '*Conveyance*'.
14. Learned counsel for the Respondent/Insurance Company contended for grant of recovery rights. In this regard, this Court finds that in paragraph 30 of the impugned judgment, the

learned Claims Tribunal has already granted recovery rights to the Respondent/ Insurance Company as such there is no requirement for passing a separate direction qua recovery rights.

15. The other argument raised by the learned counsel for the appellant is purely legal and based on the law settled by the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*. In terms of *Pranay Sethi (Supra)* an addition of 40% of the established income of the deceased/victim has to be granted under the head 'Future Prospects' as the deceased/victim was of the age of 26 years at the time of the alleged incident and 27 years at the time of death. 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., 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)

16. In the case of **Joginder Singh and Ors. Vs. ICICI Lombard General Insurance Company** reported in **2012 SCC Online Mad 3922** the Hon'ble Supreme Court while dealing with issue of multiplier in an accident case, has held that:-

“The issue with respect to whether the Multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer res integra. This issue has been recently settled by a three Judge bench of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud and Ors. , (2019) 5 SCC 554 wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased. The Court held that:

10. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari and Ors. v. Madan Mohan and Anr. : (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at

the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

11. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.”
(emphasis supplied)

17. Further, in terms of dicta laid down in 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. The Hon’ble Supreme Court in the case of **Sarla Verma (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)

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

Column	Upto 15 yrs	15 to 20 yrs	21 to 25 yrs	26 to 30 yrs	31 to 35 yrs	36 to 40 yrs	41 to 45 yrs	46 to 50 yrs	51 to 55 yrs	56 to 60 yrs	61 to 65 yrs	Above 65 yrs
(4)	15	18	18	17	16	15	14	13	11	9	7	5

19. Since in the present case, the deceased/victim was of the age of 26 years at the time of accident and of 27 years at the time of death, multiplier of 17 is to be taken while computing the compensation under the head '*Loss of Future Income*'.
20. Further in the case of *Pranay Sethi (Supra)*, the Hon'ble Supreme Court for the conventional heads, namely, '*Loss of Estate*', '*Loss of Consortium*' and '*Funeral Expenses*' has fixed the amount of compensation at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years.
21. 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."

22. It is borne out from the records that the deceased/victim was a bachelor and accordingly, in terms of the aforesaid judgments, deduction towards personal and living expenses of the deceased/victim, should be one half (1/2).
23. In view of the above discussion the impugned Award dated 29.07.2013 is modified as under:-

(a) 'Loss of dependency' is calculated as

1. Rs. 35,000/- + 40% (Rs. 14,000/-) = Rs. 49,000/-
 2. Rs. 49,000/- less 1/2 deduction (Rs. 24,500/-) = Rs. 24,500/-
 3. Rs. 24,500 X 12 X 17 = **Rs. 49,98,000/-**
- (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) *Compensation* under the head '*Medical Expenses*' = **Rs. 8,80,038/-** to be paid to the claimants.
- (g) *Compensation* under the head '*Conveyance*' = **Rs. 25,000/-** to be paid to the claimants.
- (h) Total *compensation* to be paid to claimants is;
Rs.49,98,000/- + Rs. 88,000 + Rs. 16,500/- + Rs.16,500/- + Rs. 8,80,038/- + Rs. 25,000/- = Rs.60,24,038/-.
24. Accordingly, the compensation granted by the learned Claims Tribunal is enhanced from **Rs. 29,99,038/-** to **Rs. 60,24,038/-** (inclusive of interim award, if any).
25. It is pertinent to mention that the Appellant/Mr. Rajender Singh had expired during the pendency of this appeal and his name has been deleted from the array of parties vide order dated

06.09.2021 and appellant no. 2/sister of the deceased is the only remaining appellant/claimant in this case. As per her affidavit dated 19.03.2020 filed alongwith CM No. 6033/2021, she is aged 34 years and residing with her husband at Ahmedabad, Gujarat.

26. The Respondent/Insurance Company is directed to deposit the entire compensation amount with the Registrar General of this Court within a period of 4 weeks. If any amount is deposited with the learned Claims Tribunal, the same shall be reduced from the total amount mentioned above and the differential amount be deposited by the Respondent/Insurance Company with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire amount as mentioned above, the same shall be released to the claimant within a period of two weeks. Statutory amount, if deposited, be released to the appellant.
27. There would be no change in the rate of interest awarded by the learned Claims Tribunal.
28. Appeals stands disposed of. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 16, 2022