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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 22.08.2022
Pronounced on: 07.09.2022

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MAC.APP. 808/2010**ANITA**

..... Appellant

Through: Mr. Saurav Kansal, Ms. Pallavi
Sharma Kansal and Mr. Arjun Giri,
Advocates.

versus

RAJU & ORS

..... Respondents

Through: Mr. J. P. N. Shahi, Advocate for
respondent No. 3.

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

1. In the present Appeal, the Appellant who is the mother of the deceased minor, is impugning the Award dated 15.09.2010 passed by the learned Presiding Officer, MACT, Delhi in Suit No.177/2009 titled as *Anita Vs. Raju*. The Appellant prays for the enhancement of the compensation amount. Vide the said award, the learned Tribunal was pleased to grant a total compensation of Rs.2,50,000/- (Rs.2,40,000/- towards loss of income, Rs.5,000/- towards loss of Estate and Rs.5,000/- towards funeral expenses) with interest @



7.5% p.a. from the date of presentation till the date of realization in favour of the Appellant herein.

2. The unfortunate accident dated 26.04.2009 resulted in the death of Alekh Kumar, who was aged 13 years and 4 months and was studying in the 10th-11th standard at the time of the alleged incident. On the day of the fateful accident, Alekh Kumar was travelling pillion with Vineet (PW2) on his scooter. At Jhuggi Village Sindhora Kalan, Sarai Rohilla, they were hit from behind by a bus bearing no. DL-1PB-3040 that was being recklessly and rapidly driven by Respondent No. 1. The deceased died in the accident which resulted after being falling on the road and being run over by the negligent vehicle. FIR No. 110/2009 dated 26.04.2009 was registered against the Respondent No. 1, the bus driver of Delhi Roadways, under Sections 279/337/304 of the Indian Penal Code at Police Station P.S. Sarai Rohilla, New Delhi.
3. The Appellant, mother of the deceased filed a claim petition before the Motor Accident Claim Tribunal. It is her case that her son was studying and was earning Rs.6,000/- p.m by selling vegetables on Rehri. However, the Appellant could not adduce any proof to the said effect and hence the learned Tribunal presumed the income of the deceased as Rs.15,000/- p.a as per second Schedule of the Motor Vehicles Act, 1988 and calculated the loss of income as Rs.2,40,000/-(Rs.15,000X16). In addition, the learned Tribunal granted Rs.5,000/- each towards 'Funeral Expenses' and 'Loss of Estate'. The learned Tribunal granted interest @ 7.5% p.a. from the date of presenting the claim petition till realization.



4. Aggrieved by the inadequacy of the amount awarded as compensation by the learned Tribunal, the Appellant preferred the present Appeal against the impugned award under Sections 140 and 166 of the Motor Vehicles Act, 1988 for enhancement of the compensation awarded to her.
5. Mr. Saurav Kansal, learned counsel for the Appellant argued that the deceased was around 15 years old and was in good health. The deceased was a student who supported his mother by doing part time jobs like selling vegetables and giving tuition to children. The deceased was a brilliant student who studied hard despite the family's poor financial situation and was confident of a bright future prospects. Therefore, it may be assumed that he had high aspirations for his future. It is the contention of the Appellant that the learned Tribunal erred in fixing the income of the deceased as Rs.15,000/- p.a. based on the second schedule of the Motor Vehicles Act. The learned Counsel for the Appellant further argued that in view of the law laid down by the Hon'ble Supreme Court in the case of *Sarla Verma & Ors. Vs DTC & Anr.* reported as **2009 (6) SCC 121** and *National Insurance Co. v. Pranay Sethi* reported as **2017 (16) SCC 680**, the Appellant is entitled for enhancement of the compensation.
6. Mr. J. P. N. Shahi, learned Counsel for the Respondent No.3 contended that the accident took place due to the rash and negligent driving of Vineet (PW-2). He further submitted that the Appellant has failed to prove the income of the deceased by leading any evidence and hence the learned Tribunal had rightly fixed the



income of the deceased based on the second schedule of the Motor Vehicles Act, 1988.

7. This Court has heard arguments advanced by both the parties and has examined the records placed before this Court. On perusal of the record, this Court observes that the learned Tribunal has fixed the income of the minor deceased as Rs.15,000/- p.a based on the second schedule of the Motor Vehicles Act, 1988. The Hon'ble Supreme Court had examined the issue of whether the notional income of Rs.15,000/- p.a. based on the second schedule of the Motor Vehicles Act, 1988 is adequate compensation for a non-earning member in ***Kurvan Ansari v. Shyam Kishore Murmu***, reported as (2022) 1 SCC 317 and held, inter alia, as follows:

“12. In the judgment in the case of Puttamma & Ors., this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163-A (3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non-earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr. also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988



as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr. where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non-earning members is not just and reasonable.

15. In view of the judgments in the cases in Puttamma & Ors., R.K. Malik & Anr. and Kishan Gopal & Anr., we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors. relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company.

16. In view of the above, we deem it appropriate to take notional income of the deceased at Rs.25,000/- (Rupees twenty five thousand only) per annum."

8. In the present case, the deceased was 13 years 4 months old at the time of death. It is an undisputed fact that the deceased used to contribute to the family income by doing part time jobs. This Court also notes the age of the Appellant at the time of the accident was 34 years. Hence considering the overall circumstances of the present case and based on the parameters as applied by the Hon'ble Supreme Court in the case of ***Kishan Gopal & Ors Vs Lala & Ors*** reported as **2014 (1) SCC 244**, the income of the deceased is fixed at Rs.30,000/- p.a. Since the deceased was 13 years 4 months at



the time of death, multiplier of 15 is to be applied in terms of judgment passed by the Hon'ble Supreme Court in the case of **Sarla Verma (Supra)**. Further, since the deceased was aged 13 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 dependent 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."

9. It is borne out from the records that the deceased was survived by his mother. Accordingly, in terms of the aforesaid judgments deduction towards personal and living expenses of the deceased should be 50%. Hence, the Appellant is entitled for a compensation under the pecuniary head and under the conventional heads as per the law laid down by the Hon'ble Supreme Court in the case of *Pranay Sethi (Supra)*, *Magna General Insurance Company Ltd Vs Nanu Ram alias Chuhru Ram* reported as *2018(18) SCC 130* and *United India Insurance Company Ltd Vs Satinder Kaur* reported as *2020 SCC Online SC 410*.
10. In view of the above discussion the impugned Award dated 15.09.2010 is modified to the following extent:



i. '*Loss of dependency*' is calculated as

1. Rs. 30,000/- + 40% (Rs. 12,000/-) =

Rs. 42,000/-

2. Rs. 42,000/- less 1/2 deduction (Rs. 21,000/-)

= Rs. 21,000/-

3. Rs. 21000 X 15 = **Rs. 3,15,000/-**

ii. '*Loss of Consortium*' is computed as Rs. 44,000 X 1 = **Rs. 44,000/-** to be paid to the claimant.

iii. '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the claimant.

iv. '*Funeral Expenses*' is quantified as **Rs. 16,500/-** to be paid to the claimant.

11. Total compensation to be paid to claimant is; Rs. 3,15,000/- + Rs. 44,000/-+Rs. 16,500/-+Rs. 16,500/- = **Rs. 3,92,000/-**

12. Hence in view of the discussion herein above, the Appellant is entitled for a total compensation of Rs.3,92,000/- (Rs. 3,15,000/- + Rs. 44,000/-+Rs. 16,500/-+Rs. 16,500/-). The learned Tribunal granted interest at the 7.5% p.a. from the date of presentation till the date of realization. This Court finds no reason to interfere with the interest as awarded by the learned Tribunal.

13. In view of the above discussion, the present Appeal is allowed and compensation is enhanced to **Rs. 3,92,000/-** with interest @ 7.5.% p.a. from the date of presentation till the date of realization.

14. However, in view of the statement made by learned counsel for the appellant, the appellant shall not be entitled for interest during the

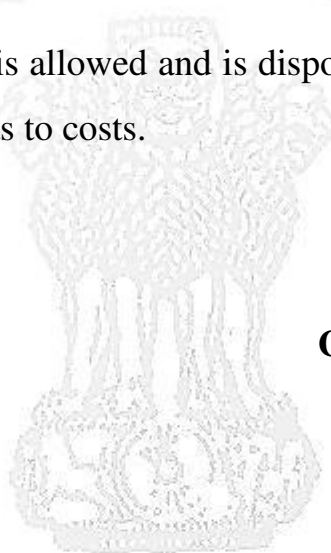


period when the petition stood dismissed i.e. from 05.08.2011 to 11.12.2018.

15. The Respondent No.3, Insurance Company is directed to deposit the differential amount between the original awarded amount and the present enhanced amount with the Registrar General of this Court within 4 weeks. Upon the deposit of the enhanced amount, the same shall be released to the Appellant immediately in accordance with law. The statutory deposit shall also be released to the Appellant.
16. The present Appeal is allowed and is disposed of in terms of above direction. No order as to costs.

SEPTEMBER 07, 2022

GAURANG KANTH, J.



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