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

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Reserved on: 19.10.2022
Pronounced on: 10.11.2022

+ **MAC.APP. 664/2015**

**CHOLAMANDALAM MS GENERAL
INSURANCE CO LTD**

..... Petitioner

Through: Ms. Suman Bagga &
Mr. Pankaj Gupta, Advocates

versus

SANDESH KUMAR & ORS

..... Respondents

Through: Mr. M. K. Singh, Advocate
for R-1/claimant

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 21.05.2015 (hereinafter referred to as "**impugned Award**") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal-1, (North), Rohini, Delhi.
2. By way of the impugned Award dated 21.05.2015, the learned Claims Tribunal awarded a compensation of Rs. 18,50,409.60/- 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. Pankaj Gupta, learned counsel for the Appellant/Insurance Company contended that the Impugned Award is perverse and has been passed without appreciating the principles of law, documents and the evidence on record. 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) 16 SCC 680, compensation under the head 'Future Prospects' is to be paid by adding 40% of the assessed income of the claimant instead of 50%, as awarded by the learned Claims Tribunal. Learned counsel, while placing reliance on the judgment of *Pranay Sethi (supra)* further contended that the respondent No. 1/claimant was 30 years of age at the time of the incident and the learned Claims Tribunal erred in calculating the compensation under the head 'Loss of Future Income' by taking the multiplier of 30 instead of 17. Learned counsel further contended that as per the disability certificate the functional disability was assessed at 68% in relation to both lower limbs and learned Claims Tribunal took the functional disability as 68% for the whole body. Learned counsel further contended that the learned Claims Tribunal while calculating the compensation under the head 'Loss of Future Income' erred in ignoring the fact that the respondent No. 1/claimant has neither placed any proof on record with respect to his work nor placed any document to prove that because of his disability, he was unable to work. In order to substantiate his

arguments, learned counsel placed reliance on the judgment passed by Hon'ble Supreme Court in the case of *Raj Kumar Vs Ajay Kumar & Anr.* reported as *2011 (1) SCC 343*.

SUBMISSION OF THE RESPONDENT NO. 1/CLAIMANT

4. Mr. M. K. Singh, learned counsel appearing on behalf of respondent No. 1/claimant contended that the appeal is liable to be dismissed and no interference in the impugned order is called for by this Court. Learned counsel further contended that as per the disability certificate, the respondent No. 1/claimant has suffered 68% disability and the learned Claims Tribunal has correctly assessed the disability for the grant of compensation under the head '*Loss of Future Earning*' as 68% for the whole body.

COURT'S REASONING

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

"...on 17.04.2009, he alongwith his friend namely Vicky Jain was going to Bangalore for some work. They were on a motorcycle bearing no. DL 4S BE 8405. When they reached NH 211 road, Vasi, a truck bearing no. HR 55E 3412, driven by resp. no.1 (GaniMohd.) rashly and negligently came from front side and hit their motorbike. Both of them fell down on road and suffered multiple injuries. Some unknown persons took them to Civil hospital, Osmanabad, from where, they were referred to Sh CSM Hospital. Sholapur, Maharashtra...."

6. At this stage, it is relevant to mention that the Motor Vehicles Act, 1988 (herein after referred to as '*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.

7. In the case of ***Pappu Deo Yadav Vs Naresh Kumar and Ors*** reported as ***2020 SCC Online SC 752***, the Hon’ble Supreme Court while dealing with the issue of granting compensation to an accident victim has held that severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life of an individual under Article 21 of the Constitution), thus depriving the person of the essence of the right to a whole some life which she or he had lived, hitherto, relevant portion of the same reads as under:-

“In parting, it needs to be underlined that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts

nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim.”

8. Learned counsel for the Appellant contended that as per the disability certificate, the functional disability was assessed at 68% in relation to both lower limbs and learned Claims Tribunal while calculating the compensation under the head ‘Loss of Future Income’ erred in treating the functional disability as 68% for the whole body. In this context, it is necessary to recapitulate the observations made by the learned Claims Tribunal, relevant portion of which reads as under:-

“On the other hand. Id Counsel for petitioner submits that the injured was working in a manufacturing unit of leather garments and his job was to operate sewing machine. He had to use his legs. Due to permanent disability of his lower limbs, petitioner is not able to operate said machine now and hence, his functional disability should be calculated at the same percentage i.e. 68% as opined by the medical board. Ld. Counsel referred a case titled as Basappa V; T Ramesh and Another, 2014(9) LRC228(SC). It was a case of permanent disability of 58% of whole body. The Motor Accident Claim Tribunal as well as the High Court concerned accepted the injury certificate produced by the doctor. The High Court fixed functional disability of appellant at 25%. Holding that as the High Court had itself accepted the evidence of doctor, who treated the appellant and issued disability certificate as credible and reliable, the Apex court came to a conclusion that there was no reason to treat functional disability of the injured at 25%. It is worth mentioning that the appellant/ injured was working as a Gaundi i.e. at building construction sites i.e. such a work requires good health and extreme fitness, as it is a strenuous task, which involves lot of physical activities. There is no straight jacket formula, provided either by the legislature or by the higher Courts as to how functional disability is to be calculated for a person suffering permanent disability of some limbs. In such circumstances, it can vary from case

to case particularly as per occupation of injured. As mentioned above, appellant/ injured in Basappas case (Supra) was a worker at building construction site, such a work required good health and extreme fitness. Considering all this, the apex court fixed functional disability of injured at 85%. While according to treating doctor the said patient/ injured had suffered 58% permanent disability in relation to his whole body. Coming to the case in hands, as claimed by the petitioner, he was working in leather factory. He was required to operate sewing machine by legs and to sew leather pieces. In this way, petitioner was earning his livelihood, by use of his lower limbs particularly legs. In these circumstances, I think it proper to take 68% functional disability of petitioner, in calculating his future loss of income.”

9. The test for determining the effect of permanent disability on future earning capacity has been laid down by the Hon’ble Supreme Court in the case of ***Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company Limited*** reported as **2020 1 SCC 796**, relevant portion of which reads as under:-

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

10. While dealing with the issue of calculating the compensation under the head '*Loss of Future Earning*', the learned Claims Tribunal accepted the version of the claimant that he was working in a leather factory. The learned Claims Tribunal further accepted that the claimant was indulged in the sewing of leather pieces for which he has to operate sewing machine and treated 68% functional disability of claimant in calculating the compensation. Moreover, while deciding the issue of income of the claimant, the learned Claims Tribunal on the basis of evidence adduced by the claimant has accepted the testimony of the claimant and treated the claimant as skilled worker, however, on evaluating the documents produced by the claimant, the learned Claims Tribunal declared that the claimant failed to produce any evidence that he was earning Rs.10,000/- per month and took into account the prevailing rates of minimum wages for the purposes of determining the income of the claimant. It is pertinent to point out that no evidence was led by the Insurance Company during the trial to substantiate their objection in relation to the claimant not being a skilled worker employed in a leather factory indulging in sewing of leather pieces. As such, this Court is of the opinion that the learned Claims Tribunal has rightly assessed the functional disability of claimant as 68%.

11. 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)** case an addition of 40% of the established income of the respondent No.1/claimant has to be granted under the head 'Future Prospects' as respondent No. 1/claimant was of the age of 30 years at the time of the alleged incident. 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)

12. In the case of **Joginder Singh and Ors.**

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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)

13. Further, 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. 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)

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

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

15. Since in the present case, the age of claimant was 30 years at the time of alleged incident, multiplier of 17 is to be taken while computing the compensation under the head '*Loss of Future Income*'.

16. In view of the above discussion, the impugned Award dated 21.05.2015 is modified as under:-

1. Rs. 6537/- (monthly income) + 40% (Rs. 2615/-)
= Rs. 9152/-

2. Rs. 9152/- X 12 = Rs. 1,09,824/- (**Annual Income**)

3. Rs. 1,09,824/- X 68/100 = Rs. 74,680/-
(**Loss of Income due to functional disability**)

4. Rs. 74,680/- X 17 = Rs. 12,69,560/-
(**Future Loss of Income**)

17. Accordingly, the compensation granted by the learned Claims Tribunal is reduced/modified as under:-

S. No.	On account of	Amount (Rs.)
1.	Towards medical expenses	Rs. 25,152.50/-
2.	Towards conveyance	Rs. 25,000/-
3.	Towards future loss of income	Rs. 12,69,560/-
4.	Towards pain and suffering	Rs. 1,00,000/-

5.	Towards loss of enjoyment of life	Rs. 1,00,000/-
	Total	Rs.15,19,712.5-

18. The compensation amount is reduced from Rs. 18,50,409.60/- to Rs.15,19,712.5/-

19. This Court, vide order dated 21.08.2015, while staying the operation of the impugned Award in the present Appeal, directed the Appellant/Insurance Company to deposit the entire decretal amount with the Registrar General of this Court. This Court further directed for the release of the 50% of the decretal amount to respondent No. 1/claimant. Balance 50% was to be kept in an interest-bearing FDR with UCO Bank, Delhi High Court Branch. The registry is directed to deduct the differential amount from the said FDR and release the said amount with up-to-date interest to the Appellant/Insurance Company. Balance, if any, may be released to respondent No. 1/claimant in terms of the Award dated 21.05.2015. The statutory deposit may also be released to the Appellant.

20. With the above directions, appeal stands disposed of. No order as to costs.

**GAURANG KANTH
(JUDGE)**

NOVEMBER 10, 2022