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

Date of decision: 06.10.2023

\+ **MAC.APP. 89/2021**

BEBI & ORS. ..... Appellants
Through: Mr.S.N. Parashar, Adv.

versus

JITENDER CHAUDHARY & ORS. ..... Respondent
Through: Mr.Pankaj Gupta and Ms.Suman Bagga, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 18.02.2020 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Tribunal'), in MACT No. 289/2019, titled ***Smt. Bebi & Ors. v. Sh. Jitender Chaudhary & Ors.***.

2. At the outset, the learned counsel for the respondent no.3 raises a preliminary objection on the maintainability of the present appeal. He submits that the respondent no.3 had also filed an appeal challenging the Impugned Award, being MAC.APP. 245/2020, titled as ***Bharti Axa General Ins Co. Ltd. v. Smt. Bebi & Ors.***. The said appeal was allowed

by this Court vide its order dated 26.11.2020. The order was passed with the consent of the learned counsel for the appellants. He submits that, therefore, the present appeal would be barred by the principle of *res judicata* and cannot be entertained by this Court.

3. I find no merit in the above contention of the learned counsel for the respondent no.3.

4. As pointed out by the learned counsel for the appellants, the present appeal had been filed on 22.10.2020, that is prior to the passing of the order dated 26.11.2020 on the appeal filed by the respondent no.3 herein, that is, MAC.APP. 245/2020. The appeal filed by the respondent no.3 was limited in nature and challenge the amount awarded to the appellants herein towards 'loss of love and affection' and on the ground of the deduction to be made towards personal expenses of the deceased. These issues were conceded by the learned counsel for the appellants herein and, accordingly, the award was modified to that limited extent. The Court had no occasion and, in fact, did not consider the challenge now sought to be raised by the appellants in the present appeal nor there is even a hint in the order dated 26.11.2020 of this Court that the challenge of the appellants to the Award was given up by them.

5. The learned counsel of the appellants has also pointed out that the order dated 26.11.2020 was, in fact, passed on the very first date of hearing of the appeal and when the appellants were appearing on advance notice of the said appeal. The Court only considered the limited

challenge of the respondent no. 3 to the Impugned Award, and passed order thereon. A reading of the said order would also substantiate the above contention of the learned counsel for the appellants.

6. Accordingly, the preliminary objection raised by the respondent no.3 is rejected.

7. The appellants challenge the Impugned Award on the ground that the learned Tribunal has failed to determine the income of the deceased on the basis of minimum wages as notified by the Government of National Capital Territory of Delhi (in short, 'GNCTD') for a non-matriculate.

8. The learned counsel for the appellants submits that the appellants, in support of their claim of income of the deceased, had produced Mr.Prabir Chakraborty, Senior Advisor of Sulabh International Social Service Organisation as PW-2. In his testimony, he had stated that the organisation, that is, Sulabh International was paying to the deceased, minimum wages as per the circular rate of GNCTD, and besides that an amount of Rs.80/- per day as cash towards the food and transportation. He submits that only Rs.12,355/- was paid by way of banking transactions, while the food and transportation allowances were paid in cash. The learned counsel for the appellants submits that, therefore, the income of the deceased should have been determined, at least, on the basis of minimum wages as notified by the GNCTD.

9. On the other hand, the learned counsel for the respondent no.3 submits that as PW-2 had produced before the learned Tribunal a copy of the payment proof in the form of bank statements for the months of June to

July, 2018, the learned Tribunal, therefore, has rightly relied upon the maximum salary received by the deceased for the month of August, 2018 of Rs.12,355/- for determining the income of the deceased.

10. I have considered the submissions made by the learned counsels for the parties.

11. PW-2, Sh. Prabir Chakraborty in his statement had stated as under:

> *"I am summoned witness, I have brought the copy of payment bank statement for month of June to July - 2018, same is marked as mark PW2/A (colly four pages) of Mr. Jitender, who was working with Sulabh International Social Service Organization since 2010. He was entitled for minimum wages as per circular rate of GNCT of Delhi, besides this we used to pay Rs. 80/- per day as cash towards his food and transportation. Due to water logging at the basement of house no. 74 K-1 Extension Mohan Garden, New Delhi 59, all documents pertaining up to September 2018 has been destroyed. The copy of police complaint is Marked as mark as PW2/B"*

12. In the course of cross-examination, the respondents, in fact, tried to show that PW-2 is not a reliable witness, however, was unable to do so.

13. Be that as it may, once it is proved that the deceased was working with Sulabh International Social Service Organization and was entitled to minimum wages as per circular rate of GNCTD, as deposed by PW-2, and as the same was Rs. 15,296/- per month, which is approximately the same with Rs. 12,355/- being added to Rs.80/- per day as cash towards the food and transportation, the learned Tribunal should have taken the minimum wages as notified by the GNCTD for a non-matriculate for

the purpose of determining the income of the deceased. The Impugned Award shall stand modified to this extent.

14. The other challenge of the appellants to the Impugned Award is to the compensation of only Rs.40,000/- awarded towards loss of consortium, instead of loss of consortium being awarded in favour of all the claimants at the said rate. In support the learned counsel for the appellants places reliance on the judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, and as explained by ***United India Insurance Company Limited v. Satinder Kaur and Others***, (2021) 11 SCC 780.
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15. The learned counsel for the respondent no.3 submits that, in the present case, the loss of consortium has been awarded as Rs.40,000/- to the appellants and, therefore, deserves no enhancement. He places reliance on the judgment of the Supreme Court dated 27.03.2023 in Civil Appeal Nos. 2410-2412 of 2023, titled ***Shri Ram General Insurance Co. Ltd. v. Bhagat Singh Rawat & Ors***

16. I find merit in the submission made by the learned counsel for the appellants.

17. As far as the loss of consortium is concerned, the Supreme Court in ***Satinder Kaur*** (supra), considering the judgment in ***Pranay Sethi*** (supra), has observed as under:-

> *"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 (2018) 18 SCC 130 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 recognized 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 of 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.

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37.12 Insofar as the conventional heads are concerned, the deceased Satpal Singh has left behind a widow and three children as his dependents. On the basis of the judgments in Pranay Sethi and Magma General, the following amounts are awarded under the conventional heads:

(i) Loss of estate: Rs.15,000/-

(ii) Loss of consortium:

(a) Spousal consortium: Rs.40,000/-

(b) Parental consortium:Rs.40,000x3

=Rs,1,20,000/-

(iii) Funeral expenses: Rs15,000/-"

18. In ***Anjali v. Lokendra Rathod***, 2022 SCC OnLine SC 1683, and ***Rahul Ganpatrao Sable v. Laxman Maruti Jadhav***, 2023 SCC OnLine SC 780 also, the Supreme Court has awarded compensation towards loss of consortium to each of the claimants therein.

19. In ***Bhagat Singh Rawat*** (supra) also, the Supreme Court observed as under:

> *"We are, however, of the view that the total amount has to be assigned under a particular heading and **that will go depending on the number of legal heirs present.***
>
> *The amounts fixed in terms of Pranay Sethi's case(supra) are Rs.50,000/- and Rs.40,000/- respectively under the two heads and that should be the total amount payable."*
>
> *(Emphasis supplied)*

20. In ***Bhagat Singh Rawat*** (supra), the attention of the Supreme Court was not drawn to the judgment of ***Satinder Kaur*** (supra). In any case, the Supreme Court has held that the compensation will depend on the number of legal heirs present.

21. Therefore, each of the claimants would be entitled to the loss of consortium, be it loss of *'spousal'*, *'parental',* or *'filial'*, at the rate of Rs.40,000/- each.

22. Accordingly, the compensation amount for the loss of consortium is redetermined as Rs.2,80,000/-.

23. As far as loss of dependency is concerned, the same is re-determined as under:

> *Income of the deceased (minimum wages rate for the non-matriculate): -Rs.15,296/-*
> *Future prospects @40%*
> *1/4th Deduction towards personal and living expenses of the deceased.*
> *Monthly loss of Dependency: = Rs.16,061/-*
> *Multiplier taken as 15 (as per the age of the deceased)*
> ***Total Loss of Dependency: -****Rs. 16,061/-x12x15*
> *= **Rs.28,90,944/-***

24. The respondent no.3 shall deposit the enhanced amount of compensation with the learned Tribunal within a period of six weeks from today. The same shall be disbursed to the appellants/claimants in accordance with the scheme of disbursal prescribed by the learned Tribunal in the Impugned Award.

25. The appeal is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 6, 2023/ns/AS