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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25.08.2023

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MAC.APP. 273/2020 & CM APPL. 33433/2020

UNITED INDIA INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

SH. JAMALUDDIN KHAN & ORS.

..... Respondents

Through: Mr. Dev Bhardwaj, Adv. for R-1
& R-2.
Mr. Sarfaraz Khan, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The appellant challenges the Award dated 26.09.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (South-District), Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in Petition no. 323/2018, titled ***Sh. Jamaluddin Khan & Anr v. Sh. Gyanender Singh Sirohi & Ors.***

2. The claim petition arose out of the Detailed Accidents Report ('DAR') filed by the SHO, Police Station: Ambedkar Nagar, for the untimely death of a child, namely Shamim, aged about 15 years and 8 months, in a road accident on 04.12.2017 due to the vehicle bearing no. DL-1PC-3123 being driven in a rash and negligent manner by the respondent no. 3 herein.

3. The limited challenge of the appellant to the Impugned



Award is on the amount of Rs.4.89 lakhs and the equivalent amount determined by the learned Tribunal as compensation towards loss of dependency and non-pecuniary damages respectively based on the judgment of this Court in ***Chetan Malhotra v. Lala Ram & Ors.***, 2016 SCC OnLine Del 2981.

4. Placing reliance on the judgment of the Supreme Court in ***Rajendra Singh and Others v. National Insurance Company Limited and Others***, (2020) 7 SCC 256; and of this Court in ***National Insurance Co. Ltd. v. Master Shaurya & Ors.***, Neutral Citation no. 2023:DHC:5355, he submits that, even in case of death of a child, notional income of only Rs. 36,000/- per annum (by the Supreme Court) and Rs. 50,982/- (by this Court) has been considered as reasonable for determining the compensation.

5. The learned counsel for the respondent nos.1 and 2 does not seriously oppose the plea of the appellant that the judgment of this Court in ***Chetan Malhotra*** (Supra) would not be applicable to the facts of the present case. He, however, submits that the compensation amount has to be determined on a reasonable basis and for this purpose, the multiplier method be adopted by this Court. He also admits that there can be a deduction towards the personal expenses equivalent to $\frac{2}{3}$ rd of the assessed amount.

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

7. As the learned Tribunal has determined the compensation payable to the Claimant/respondent no.1 herein by placing



reliance on the judgment of this Court in **Chetan Malhotra** (supra), and as the learned counsel for the respondent no. 1 agrees with the submission of the learned counsel for the appellant that the said judgment would no longer be applicable, the Impugned Award cannot be sustained and is liable to be set aside.

8. One course open to this Court thereafter is to remand the Claim Petition to the learned Tribunal for a fresh determination of the compensation payable to the Claimants. However, in the facts of the present case, I deem it proper to lay down the principles that would govern the learned Tribunal in determining the compensation payable to the respondent no. 1 and 2.

9. As noted herein above, the learned counsel for the appellant has submitted that only notional compensation is to be awarded in favour of the respondent no. 1. He has submitted that as the respondent no. 1 was aged only 15 years, there cannot be any loss of income attributed to the accident for awarding compensation.

10. I do not find any merit in the submission of the learned counsel for the appellant.

11. In **R.K. Malik & Anr. v. Kiran Pal & Anr.**, (2009) 14 SCC 1, the Supreme Court, considering the claims arising on account of death of children, held as under:-

“8. Undoubtedly, the compensation in law is paid to restore the person, who has suffered damage or loss in the same position, if the tortious act or the breach of contract had not been committed. The law requires that the



party suffering should be put in the same position, if the contract had been performed or the wrong had not been committed. The law in all such matters requires payment of adequate, reasonable and just monetary compensation.

9. In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

10. To put it simply pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non-pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life, etc. The Act provides for payment of “just compensation” vide Sections 166 and 168. It is left to the courts to decide what would be “just compensation” in the facts of a case.

11. For calculating pecuniary loss or loss of dependency, this Court has repeatedly held that it is the multiplier method which should be applied. The said method is based upon the principle that the claimant must be paid a capital sum, which would yield sufficient interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependants, if the deceased had lived and earned. The multiplier method is based upon the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course



on the capital sum invested. The capital sum would be the compensation for loss of dependency or the pecuniary loss suffered by the dependants. Needless to say, uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

***11.** For calculating pecuniary loss or loss of dependency, this Court has repeatedly held that it is the multiplier method which should be applied. The said method is based upon the principle that the claimant must be paid a capital sum, which would yield sufficient interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependants, if the deceased had lived and earned. The multiplier method is based upon the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course on the capital sum invested. The capital sum would be the compensation for loss of dependency or the pecuniary loss suffered by the dependants. Needless to say, uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.*

***13.** The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination can it be said that the parents, who are the appellants herein, have not suffered any pecuniary loss. In fact, loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in *Taff Vale Railway Co. v. Jenkins* [1913 AC 1 : (1911-13) All ER Rep 160 (HL)] as follows:*

“11. ... In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily



bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.” [Ed.: As observed in Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197, at pp. 210-11, para 11.]

Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grandparents, etc. in the case of non-working student?”

12. The Court adopted the Second Schedule to the Act for determining the notional income of the children, as the accident had occurred barely three years from the date of its enactment.

13. In **Kajal v. Jagdish Chand & Ors.**, (2020) 4 SCC 413, the Supreme Court, considering a case of award of compensation on account permanent disability suffered by a girl child aged around 12 years, has held as under: -

“Loss of earnings

20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for



the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000.

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Attendant charges

22. The attendant charges have been awarded by the High Court @ Rs 2500 per month for 44 years, which works out to Rs 13,20,000. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. This system was recognised by this Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami, AIR 1962 SC 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of “just compensation” within the meaning of the Act.

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24. This Court has reaffirmed the multiplier method in various cases like MCD v. Subhagwanti, AIR 1966 SC 1750, U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Sandeep Khanuja v. Atul Dande (2017) 3 SCC 351. This Court has also recognised that Schedule II of the Act can be used as a guide



for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court.”

(Emphasis supplied)

14. In **Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd. & Anr.**, (2022) 7 SCC 738, the Supreme Court had again awarded compensation towards loss of income in the case of a 5 year old victim of the road accident, by placing reliance on the minimum wages notified in the State of Karnataka as was applicable in that case.

15. In **Minor Roopa v. The Divisional Manager, New India Assurance Company Ltd.**, Civil Appeal No.5069 of 2022 decided on 03.08.2022, the Supreme Court again relied upon and assessed the compensation based on minimum wages notified by the State of Karnataka in that case.

16. In **Baby Raksha & Ors.** (Supra), this Court, placing reliance on the judgment of the Supreme Court in **Kajal** (Supra), has held as under: -

“15. In my view, in a case of a child, as the actual income or potential thereof cannot be determined, the minimum wages as notified and applicable on the date of accident would give a reasonable basis for determination of the income of the child. There can, however, be no hard and fast rule laid for this purpose. It would depend on a case-to-case, and for various circumstances, it can be shown as to why reliance on the Notification of the minimum wages may not be an appropriate method. However, in the present case, no such exceptional circumstance has been pointed out either by the appellant or the respondent no.1.”



17. The learned counsel for the appellant would contend that the above cases would have no application in the facts of the present case as, unlike the cases cited above, the present case seeks compensation on account of the death of a child. I am unable to agree to the said submission. In case of compensation payable on account of death of a person due to a motor vehicle accident, loss of dependency has to be granted as a pecuniary measure of damages. In my view, instead of leaving such determination to the subjective satisfaction, a uniform methodology should ideally be adopted. Of course, in given facts, the same may be deviated from. Keeping in view the above judgments, therefore, the ideal method for determining loss of dependency shall be the minimum wages notified by the State Government that a person/child can notionally earn. In case of a child, its application would also be determined based on the education being pursued by the child at the time of the death.

18. In **Rajendra Singh** (supra), the Supreme Court was considering an appeal against an Award passed by the Motor Accidents Claims Tribunal, with the appeal against the Award being dismissed by the High Court, which had determined the notional income of a child aged 12 years at Rs. 36,000/- per annum. The Supreme Court found the said determination to be fair in the facts of the said case.

19. In **Master Shaurya & Ors.** (supra), recently another learned Single Judge of this Court, has held that in **Rajendra Singh** (supra), the Supreme Court has not laid down any such



principle that the notional income of a minor who dies in a motor accident should always be taken as Rs.36,000/- per annum. The Court held that the notional income cannot be an abstract figure but has to be fixed by the learned Tribunal taking into consideration the facts and circumstances of each case. The court refused to interfere with the Award passed by the learned Tribunal therein, fixing the notional income of the deceased child therein, aged about 9 years, at Rs. 50,982/- per annum.

20. The above judgments, therefore, have not laid down the basis on which notional income in case of a child is to be determined by the Tribunal, but have, on facts of those cases, held that the notional income determined by the learned Tribunal did not warrant any interference.

21. In view of the above decisions of the Supreme Court and of this Court, in my opinion, the most reasonable basis for determining the loss of dependency, even in the case of a minor, would be the minimum wages notified by the State Government where the minor resides at the time of the accident. As the notional income is being determined on basis of the minimum wages, I deem it appropriate also to add future prospects to such income at the rate of 40% by applying the principle laid down by the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi And Others***, (2017) 16 SCC 680.

22. Accordingly, it is directed that the compensation towards loss of dependency shall be assessed by taking minimum wages as notified by the Government of NCT of Delhi for the relevant period, that is 04.12.2017 for a skilled worker; 40% is to be



added towards future prospects to such income; multiplier shall be 18.

23. Out of the above amount so assessed, deduction has to be made towards the personal and living expenses of the deceased. As the deceased was a bachelor, 50% has to be deducted on account of personal and living expenses in terms of the judgment of the Supreme Court in *Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation &Anr.*, (2009) 6 SCC 121, and *United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.*, (2021) 11 SCC 780.

24. The learned counsel for the appellant submits that in case of death of a child, the loss assessed should be confined to only 1/3rd of the compensation amount that would otherwise be determined, that is an additional 2/3rd amount be deducted from the notional loss of dependency as determined by the methodology stipulated herein above.

25. I find no merit in the above submission. In my view, once the deduction towards personal expenses has been made, there can be no further deduction for determination of the loss of dependency. The method suggested by the learned counsel for the appellant would lead to a double deduction on the same reasons; this cannot be allowed.

26. As far as the direction of the learned Tribunal awarding an equivalent amount towards non-pecuniary heads by placing reliance on the judgment of this Court in *Chetan Malhotra* (Supra) is concerned, the same shall stand set aside. Instead, the respondent nos. 1 and 2 shall be entitled to the compensation on



non-pecuniary heads in terms of the judgment of the Supreme Court in ***Pranay Sethi*** (supra).

27. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding interest at the rate of 9% per annum on the compensation amount in favour of the respondent nos.1 and 2. Placing reliance on the judgment of this Court in ***National Insurance Co. Ltd. v. Yad Ram and Others***, 2023 SCC OnLine Del 1849, he submits that in case of an accident on 04.12.2017, this Court had found the rate of interest at 7.5% per annum to be reasonable.

28. The learned counsel for the respondent nos.1 and 2 is not in a position to dispute the same.

29. Accordingly, the rate of interest on the compensation amount shall stand reduced to 7.5% per annum from the date of the filing of the Detailed Accidents Report/Claim Petition till the date of deposit of the compensation amount by the appellant. The amount already deposited by the appellant shall stand adjusted in the same.

30. In view of the above, the matter is remanded back to the learned Tribunal to make a fresh determination of the compensation to be awarded in favour of the respondent nos. 1 and 2 in accordance with the principles laid down herein above.

31. Such exercise be completed within a period of four weeks of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 21st September, 2023.

32. In terms of the *interim* order dated 18.12.2020, the



appellant was directed to deposit the entire awarded amount along with interest, with the learned Tribunal. Out of the amount so deposited, Rs.5.50 lacs were to be disbursed to the respondent nos.1 and 2 in terms of the scheme of disbursement specified in the Impugned Award. On the re-determination of the compensation amount, if any additional amount is to be deposited by the appellant, the same shall be deposited by the appellant with the learned Tribunal, within a period of eight weeks of such re-determination. In case excess amount has already been deposited by the appellant, the same shall be refunded to the appellant along with interest accrued thereon.

33. The compensation amount so determined, on remand, shall be released in favour of the respondent nos.1 and 2 in accordance with the schedule of disbursal stipulated by the learned Tribunal in the Impugned Award.

34. The statutory amount deposited by the appellant in the Registry of this Court be released to the appellant alongwith interest accrued thereon.

35. The appeal as also the pending application is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 25, 2023/rv/ss