



\$~7

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

Date of decision: 07.07.2023

+ **MAC APP. 89/2017**

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr.A.K.Soni, Adv.

versus

KANHAIYA LAL RATHORE & ORS Respondents

Through: Ms.Aruna Mehta, Adv. for
R-1 to 5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 27.10.2016 passed by the learned Motor Accidents Claims Tribunal, North-East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT no.336/2011, awarding a sum of Rs.17,55,000/- in favour of the respondent no.2.

2. The limited challenge of the appellant to the Impugned Award is on three accounts:

- i. That the learned Tribunal has assumed the income of the deceased as Rs.10,000/- per month without there being any evidence in support thereof;
- ii. That the Future Prospects have been taken as 50% instead of 40% as stipulated in the Judgment of the Supreme Court in

National Insurance Company Ltd. v. Pranay Sethi & Ors.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 12.07.2023

16:48:31

MAC APP. 89/2017



iii. That the learned Tribunal has awarded compensation towards Love and Affection of Rs.1,00,000/-, Funeral Expenses of Rs.25,000/-, and Loss of Estate of Rs.10,000/-, which again is not in terms of the Judgment of the Supreme Court in ***Pranay Sethi*** (supra).

3. As far as the first challenge, that is, of the income of the deceased being proved, the learned Tribunal has observed as under:

“Ld. counsel for petitioner has relied upon the testimony of PW1, who has deposed that he used to give raw material for stitching of purses to the deceased and deceased was an expert tailor. He also relied upon the testimony of PW 2 who had sold four swing machines to the deceased to stitch hand bags and purses etc. PW 3 has also deposed on similar lines as PW 1 and has stated that he used to give raw material for stitching purses to the deceased.

PW 4 employed of the deceased, as per his testimony was paid Rs. 7000/- p.m. As per the petitioner annual income of Rs. 1,80,000/-, the fact remains deceased was not an income tax payee and thus, it is presumed that the income of the deceased was not so much as to make him liable to pay income tax i.e non taxable income.

After going through the testimony on record and the bill books etc. which have been filed on record, I am of the opinion that deceased would be earning approximately amount of Rs. 10,000/- per month.”

4. It is evident from the above that the learned Tribunal has *inter alia* relied upon the testimony of PW1, who had stated that the deceased was an expert tailor. PW-2 had stated that he has sold 4 sewing machines to the deceased to stitch handbags and purses, etc.



paid a salary of Rs.7,000/- per month. Based on the evidence led, the learned Tribunal was of the opinion that the deceased would be earning approximately Rs.10,000/- per month. I find no infirmity in the above finding of the learned Tribunal. Accordingly, the first challenge to the Impugned Award is not sustained and is rejected.

As far as the challenge to award of Future Prospects is concerned, in ***Pranay Sethi*** (supra), the Supreme Court has held that where the deceased is aged below 40 years and is self employed, only an addition of 40% to the established income would be warranted as Future Prospects.

5. In the present case, as noted hereinabove, the claim has been awarded on the basis that the deceased was self employed. The deceased was aged 22/23 years. In view of the judgment in ***Pranay Sethi*** (supra), therefore, the Impugned Award, insofar as it awards 50% of income towards Future Prospects, deserves to be modified and reduced to 40% of the established income. The second challenge is decided accordingly.

6. On the third challenge, which is towards the amount awarded by the learned Tribunal towards Loss of Love and Affection, Loss of Estate, and Funeral Expenses, the learned counsel for the appellant has placed reliance on the Judgment of the Supreme Court in ***United India Insurance Company Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.***, (2021) 11 SCC 780, to submit that the parents of the deceased would be entitled to claim a Filial Consortium at the rate of Rs.40,000/- each and not Rs. 1 lakh towards Loss of Love and Affection, as awarded. He submits that in ***Pranay Sethi*** (supra), it has been held that on conventional heads of Loss of Estate and Funeral

Signature Not Verified

Digitally Signed By P. S. S. M.

Signing Date: 12.07.2023

16:48:31

Expenses, an amount of Rs. 15,000/- each, enhanced every three years

MAC APP. 89/2017



by 10%, can be awarded.

7. The above submission is not disputed by the learned counsel for the respondents.

8. In view of the above, the direction of the Impugned Award, so far as it grants compensation under the conventional heads, Loss of Love and Affection at Rs. 1,00,000; Loss of Estate at Rs.10,000/-; and Funeral Expenses at Rs. 25,000/-, are modified, and instead the respondent nos. 1 and 2 are held entitled to an amount of Rs. 40,000/- each towards Loss of Filial Consortium; Rs. 15,000/- towards Loss of Estate; and Rs. 15,000/- towards Funeral Expense, along with 10% increase on the above amounts every three years from the date of the Judgment in *Pranay Sethi* (supra), that is, 31.10.2017.

9. The Claimants shall also be entitled to interest on the amounts awarded in terms of the Impugned Award as modified by this order, at the rate as awarded in the Impugned Award.

10. The learned counsel for the respondents submits that the respondent no.2 is suffering from paralysis and is in urgent need of the amount to sustain her livelihood. She has also filed medical records of the respondent no.2 in support of the above submission.

11. Keeping in view the submissions made, the Impugned Award shall stand modified to the extent that instead of releasing the amount in favour of the respondent no.2 in a phased manner, the entire amount awarded in terms of the Impugned Award as modified by the present order, shall be released in favour of the respondent nos. 1 and 2.

12. The parties are directed to appear before the learned Tribunal on 24th July, 2023, along with their respective calculation of the amounts that will become payable in terms of the Award as modified by this



13. On confirmation of the amount payable, the learned Tribunal shall direct immediate release of the amount payable to the respondent nos. 1 and 2. In case the amount already deposited by the appellant falls short of the amount to be paid to the respondent nos. 1 and 2, the appellant shall make up the balance. In case the amount already deposited by the appellant is in excess of the claim of the respondent nos. 1 and 2, the excess amount along with interest accrued thereon, shall be released in favour of the appellant.

14. The statutory amount deposited by the appellant with the Registry of this Court shall be released in favour of the appellant along with interest accrued thereon.

15. The appeal is disposed of in the above terms.

JULY 7, 2023
RN/ss

NAVIN CHAWLA, J

भारतमेव जयते