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

Date of decision: 12.09.2023

+ MAC.APP. 118/2018
 RANVEER & ANR Appellants
 Through: Mr.S.N.Parashar, Adv.

versus

RAKESH CHAUDHARY & ORS (NATIONAL INSURANCE
 CO LTD) Respondents
 Through: Mr.Pankaj Seth, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants challenging the Award dated 28.11.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Patiala House Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No.66 of 2016 titled *Sh.Ranveer & Ors. v. Sh.Rakesh Chaudhary & Ors..*
2. It is the case of the appellants that on 24.03.2015, Sh.Yogesh Kumar alongwith his cousin brother, Sh.Vipin, was going on a motorcycle driven by Sh.Vipin. At about 1.30 PM, when they reached Jaitpur Bhatta Golchakkar, a Maruti Wagon-R car bearing Registration No.UP-16AT-5871, being driven in rash and negligent manner by the



respondent no.1 herein, hit the motorcycle with great force due to which they fell down and sustained injuries. The deceased Sh.Yogesh Kumar was taken to Kailash Hospital, Greater Noida, and from there, he was referred to All India Institute of Medical Sciences Trauma Centre (AIIMS). He unfortunately expired on 02.04.2015 during the course of the treatment. The deceased was aged about 19 years and was a Bachelor. The appellants further claimed that the deceased was working as a Property Dealer at Aaya Nagar, Delhi and was earning a sum of Rs.15,000/- per month.

3. The learned Tribunal, however, held that since no document with regard to the employment and income of the deceased had been filed, the income of the deceased would be taken on the basis of minimum wages as per his educational qualification. As the deceased was studying in the 9th standard in the year 2010, his income was taken on the basis of minimum wages notified for a non-matriculate at the time of the accident, as Rs.9,542/- per month. The learned Tribunal has awarded compensation on account of loss of dependency in favour of the appellants, considering the multiplier based on the age of the mother of the deceased, and deducting 50% towards the personal and living expenses, since the deceased was a bachelor.

MULTIPLIER

4. The learned Counsel for the appellants submits that the learned Tribunal has erred in considering the multiplier based on the age of the mother of the deceased. Placing reliance on the judgment of the Supreme



Court in *National Insurance Company Ltd. v. Pranay Sethi & Ors.*, (2017) 16 SCC 680, he submits that the multiplier should have been considered based on the age of the deceased himself. He further submits that the learned Tribunal has also erred in not considering the future prospects on the income of the deceased while awarding the compensation.

5. On the other hand, the learned counsel for the respondent no.3 submits that no fault can be found in the Impugned Award inasmuch as the deceased, being a Bachelor aged only 19 years, the multiplier is rightly considered on the basis of the age of the mother of the deceased. He, however, does not dispute that the future prospects should have been considered in terms of the judgment of the Supreme Court in *Pranay Sethi* (supra).

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

7. In *Pranay Sethi* (supra), the Supreme Court has clarified that it is age of the deceased, which should be the basis for applying the multiplier as stipulated in the judgment of the Supreme Court in *Sarla Verma (smt) and Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. I may quote from the judgment as under:

“59.7 The age of the deceased should be the basis for applying the multiplier.”

8. In view of the above, the adoption of the multiplier based on the age of the mother of the deceased cannot be sustained. The same is accordingly set aside. The compensation shall have to be determined by





taking the age of the deceased at the time of the accident, which was 19 years. Therefore, a multiplier of 18 should have been adopted by the learned Tribunal. It is ordered accordingly.

FUTURE PROSPECTS

9. On the aspect of future prospects, the Supreme Court in ***Pranay Sethi*** (supra) has held as under :-

“59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

10. As the deceased was aged only 19 years and was claimed to be self-employed, an addition of 40% of his income should have been added towards future prospects. It is ordered accordingly.

11. In view of the above, the compensation payable to the appellants is re-determined as under:



S. No.	Compensation Heads	Trial Court	High Court
1.	Loss of Dependency	$(9542 \times 1/2 \times 12 \times 13)$ = Rs.7,44,276/-	$(9542 \times 1/2 \times 12 \times 18 \times 140/100)$ = Rs.14,42,750.40/-
2.	Loss of Love and Affection	1,00,000	1,00,000
3.	Loss of Estate	10,000	10,000
4.	Funeral Expenses	25,000	25,000
Total		Rs.8,79,276/-	<u>Rs.15,77,750.40/-</u>
		<u>Enhanced Amount</u>	=Rs.6,98,474.40

INTEREST ON FUTURE PROSPECTS

12. The learned counsel for the respondents submits that interest should not be awarded on the future prospects. In support, he places reliance on the judgment dated 14.07.2023 of the High Court of Jammu and Kashmir in MAC. APP. No. 33/2022, titled *National Insurance Company v. Mst.Aisha Bano & Ors..*

13. I am unable to agree with the submission made by the learned counsel for the respondent no.3.

14. In *Sarla Verma* (supra), the Supreme Court has held that the assessment of compensation, though involving certain hypothetical considerations, should nevertheless be objective; while it may not be possible to have mathematical precision or identical awards in ascertaining compensation, the same or similar facts should lead to awards in the same range. The Court laid down the facts that are needed



to be established by the claimants for assessing compensation in case of death as under:

“18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death :

- (a) age of the deceased;*
- (b) income of the deceased; and*
- (c) the number of dependents.*

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

- (i) additions/deductions to be made for arriving at the income;*
- (ii) the deduction 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.*

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.”

15. The Supreme Court further held that to have uniformity and consistency, the Court should adopt the following methodology as under:

“19. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)





Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the “loss of dependency” to the family.

Thereafter, a conventional amount in the range of Rs5000 to Rs10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.”

16. As far as future prospects is concerned, in **Pranay Sethi** (supra), it was observed as under:

“55. Section 168 of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable

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degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of “standardisation” so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

56. The seminal issue is the fixation of future





prospects in cases of deceased who are self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees.





Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. 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.

58. 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.

59. In view of the aforesaid analysis, we proceed to record our conclusions:-

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59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

17. From the above, it is evident that compensation is determined on standardised formula stipulated by the Supreme Court so that there is consistency and objectivity in the compensation awarded. Future



Prospects is only an ingredient for determination of “just compensation”. Section 171 of the Act empowers the Tribunal to award interest on the Compensation amount. There is no reason to differentiate only a hypothetical ingredient of the formula that is used for purposes of computing the “just compensation” from award of interest on the whole of the compensation amount.

18. In view of the above, I respectfully disagree with the judgment of the High Court of Jammu and Kashmir on this aspect.

19. The compensation amount awarded hereinabove shall carry interest @ 9% per annum from the date of filing of the claim petition by the claimants before the learned Tribunal, that is, 09.09.2015, till realization of the amount.

20. The respondent no.3 shall deposit the enhanced amount with the learned Tribunal within a period of six weeks from today. The same shall be released in favour of the appellants in accordance with the Schedule of disbursement stipulated in the Impugned Award.

21. The appeal is allowed in the above terms.

22. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 12, 2023

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