



2023:DHC:8110



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

Reserved on: 16.10.2023
Pronounced on: 08.11.2023

+ **MAC.APP. 478/2019 & CM APPL. 18420/2019 & 7507/2022**

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr.Pradeep Gaur & Ms.Sweta
Sinha, Advs. (through VC).
versus

SONIA & ORS Respondents
Through: Mr.Manish Maini, Mr.Vibhor
Jain & Ms.Yashika Miglani,
Advs. for R-1 to R-5.

+ **MAC.APP. 368/2022**

SONIA AND ORS Appellants
Through: Mr.Manish Maini, Mr.Vibhor
Jain & Ms.Yashika Miglani,
Advs.
versus

UNITED INDIA INSURANCE COMPANY LTD AND ORS
..... Respondents
Through: Mr.Pradeep Gaur & Ms.Sweta
Sinha, Advs. (through VC) for
R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These appeals have been filed challenging the Award dated 05.02.2019 (hereinafter referred to as 'Impugned Award') passed by

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the learned Motor Accidents Claims Tribunal-02, (North-District) Rohini Courts, Delhi (hereinafter referred to as 'Tribunal') in MAC Petition No.6109/2016 (Old MAC Petition No. 74/2016) titled as ***Smt. Sonia & Ors. v. Sh. Satish Kumar & Ors..***

2. The above Claim Petition was registered on the Detailed Accident Report (in short, 'DAR') filed by the police corresponding to the investigation carried out in FIR No. 1484/15 under Sections 279/304A Indian Penal Code, 1860 registered at PS Narela.

3. As per the DAR, on 21.11.2015, the deceased-Arun Kumar was going on his motorcycle and at about 1:15 pm, when he reached at Singhu Border Road in front of the Deepak Apartments, Narela, Delhi, one Maruti Van bearing registration no. HR-55-L-6792 (hereinafter referred to as the 'Offending Vehicle'), which was being driven at high speed and in a rash and negligent manner, came and hit his motorcycle. As a result of the accident, the deceased fell from his motorcycle and he and his motorcycle came under the Offending Vehicle. They were dragged by the Offending Vehicle for a considerable distance. The deceased was rushed to the SRHC Hospital, Narela, Delhi, where he was medically examined and was declared as brought dead.

4. The learned Tribunal, by way of the Impugned Award, has held that the deceased sustained fatal injuries in the road accident due to the Offending Vehicle being driven in a rash and negligent manner. The learned Tribunal awarded Rs.69,56,000/- along with interest at the rate of 9% per annum with effect from the date of the filing of the petition, that is 28.01.2016, till the date of its realization, in favour of



the Legal Representatives of the deceased.

CHALLENGE OF THE INSURANCE COMPANY:

5. As far as the Insurance Company is concerned, it challenges the Impugned Award on the following grounds:

(a) that the learned Tribunal has erred in taking the income of the deceased as Rs.38,996/- per month. The learned counsel for the insurance company submits that from the salary slip of the deceased (Ex.PW-1/2), produced before the learned Tribunal, it would be evident that apart from the Basic Pay and the Grade Pay, the deceased was also drawing Transport Allowance of Rs.3504/-, Washing Allowance of Rs.90/-, Metro Pass Allowance of Rs.180/-, Ration Money of Rs.2,961/-, and Conveyance Allowance of Rs.90/-. He submits that in view of the judgment of the Supreme Court in *Kalpanaraj and Ors. v. Tamil Nadu State Transport Corpn.*, (2015) 2 SCC 764; and of this Court in *Asha Devi & Ors. v. Oriental Insurance Co. Ltd.*, 2015 SCC OnLine Del 7114, the above allowances should have been deducted from the income of the deceased for the purposes of determining the loss of dependency, as these allowances were personal to the deceased.

(b) the learned counsel for the Insurance Company further submits that the learned Tribunal has erred in adding the House Rent Allowance to the income of the deceased, which



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admittedly was not being paid to the deceased at the time of the accident.

(c) the learned counsel for the Insurance Company further submits that the learned Tribunal has also erred in considering the income of the deceased for 13 months instead of for 12 months for determination of the loss of dependency.

(d) the learned counsel for the insurance company further submits that the parents of the deceased were not living with the deceased and, therefore, cannot be considered as dependants on the deceased. He submits that only the widow and the children of the deceased were dependant on him, and a deduction of $1/3^{\text{rd}}$ should have been made towards his personal expenses instead of $1/4^{\text{th}}$ as has been done by the learned Tribunal.

(e) the learned counsel for the Insurance Company submits that as the deceased was aged 40 years and 9 months as on the date of the accident, multiplier of 14 should have been adopted in terms of the judgment of the Hon'ble Supreme Court in *Sarla Verma (SMT) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, instead of 15 as adopted by the learned Tribunal.

(f) the Insurance Company further challenges the rate of interest awarded in favour of the claimants. The learned counsel for the Insurance Company submits that the same is excessive and should not be more than 6% per annum.



CHALLENGE OF THE CLAIMANTS:

6. As far as the claimants are concerned, they challenge the Impugned Award on the following grounds:

(a) that the learned Tribunal has erred in reducing the income of the deceased by Rs.11,640/- per annum. The learned counsel for the claimants submits that merely because certain allowances received by the deceased are exempted from income tax, the same cannot be deducted from the income of the deceased.

(b) the learned counsel for the appellant further submits that the learned Tribunal has erred in taking the future prospects of income of the deceased at only 30%. He submits that as the deceased was aged 40 years and 9 months as on the date of the accident, future prospects should be determined for the age bracket of up to 40 years as prescribed in the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680. He submits that, therefore, future prospects of 50% should have been granted. In support of his submission, he places reliance on the judgment of the Supreme Court in *M.H. Uma Maheshwari & Ors. v. United India Insurance Company Limited & Anr.*, (2020) 6 SCC 400.

(c) the learned counsel for the claimants further submits that the learned Tribunal has erred in granting non-pecuniary compensation of only Rs.40,000/- towards loss of consortium. He submits that as there were five claimants,



each of them are entitled to loss of consortium and, therefore, the compensation amount should have been Rs.2,00,000/-.

7. The learned counsels for the parties dispute the contentions of each other.

ANALYSIS AND FINDINGS:

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

DEDUCTION OF ALLOWANCES:

9. As far as the plea of the learned counsel for the Insurance Company that the allowances received by the deceased should be deleted from his gross income, I find that, apart from the Washing Allowance of Rs.90/- and Metro Pass Allowance of Rs.180/-, no further deduction is to be made from the gross income of the appellant.

10. In *Sunil Sharma & Ors. v. Bachitar Singh & Ors.*, (2011) 11 SCC 425, the Supreme Court, while considering the challenge of the appellants/claimants therein against the deduction of House Rent Allowance (in short, 'HRA'), City Compensatory Allowance, Employees' Provident Fund, Group Insurance Scheme and computer advance from the income of the deceased, observed and held as under:

“(a) Computation of income

6. In National Insurance Co. Ltd. v. Indira Srivastava, S.B. Sinha, J. has observed that: (SCC p. 767, para 9)

“9. The term ‘income’ has different connotations for different purposes. A



court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.”

7. His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that:

“12. ... superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.”

8. This Court clarified that by opining that:

“‘just compensation’ must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost [in view of] death of the deceased. It is in the nature of compensation for future loss towards the family income.”

And that:

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which



were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

9. In *Raghuvir Singh Matolya v. Hari Singh Malviya* (2009) 15 SCC 363, this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

10. In the present case, Haryana Women Development Corporation Ltd. certified that the deceased had drawn her salary for the month of July 2006 as under:

Basic pay	Rs 7100
DP	Rs 3550
DA	Rs 2556
HRA	Rs 885
CCA	Rs 200
Medical Allowance	Rs 250
Gross Total	Rs 14,541
Deduction	
EPF	Rs 780
GIS	Rs 30
Computer Advance	Rs 500
Total Deduction	Rs 1310

Net Payable = Rs 14,541 – Rs 1310 = Rs 13,231

11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.

12. Thus, we calculate the income of the deceased by taking the abovementioned allowances into consideration. However, the computer advance should not form a part of



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the monthly income. The monthly income of the deceased thus amounts to Rs 15,351. Thus, the annual income of the deceased would amount to Rs.1,84,212.”

11. This Court in ***National Insurance Company Limited v. Manoj Prasad & Ors.***, Neutral Citation No.2023:DHC:5086 following the above judgment and after considering the judgments in ***Kalpanaraj and Ors.*** (Supra) and in ***Asha Devi & Ors.***(Supra), has held that the income of the deceased would not only be determined on the pay package that the employee carries home at the end of the month, but such income would also include other perks which are beneficial to the members of the entire family. The Court held that Conveyance Allowance would be for the benefit of the family as these are not shown to be reimbursement of actual expenses of the deceased.

12. Applying the above principles to the facts of the present case, deduction of the Transport Allowance of Rs.3,504/- and Conveyance Allowance of Rs.90/- from the income of the deceased for purposes of determining Loss of Dependency, is not warranted. It is not shown that these were being paid as reimbursement of actual expenses. Therefore, these were perks that would benefit the entire family and should be added to the income of the deceased.

13. Similarly, once a deduction has been made from the income of the deceased towards his personal expenses, a further deduction of Ration Money would also not be warranted.

14. The same cannot, however, be said as far as the Washing Allowance of Rs.90/- and the Metro Pass Allowance of Rs.180/-. The same clearly are relatable to the expenses incurred by the deceased in



performance of his duty. The same had to be deducted from his income.

HOUSE RENT ALLOWANCE:

15. The learned Tribunal has rightly added the House Rent Allowance to the income of the deceased. In this regard, the learned Tribunal has placed reliance on the statement of Head Constable Anil Kumar (PW1), who deposed that though the deceased was entitled to HRA of 30% of his Basic Pay plus Grade Pay, he was not being paid the same as the deceased had been allotted a Government Accommodation.

16. In *Reliance General Insurance Company Ltd. v. Vikas*, 2012 SCC OnLine Del 5452, this court has held as under:

“7. As has been stated by me earlier, the deceased was not being paid any House Rent Allowance as he was provided official residential accommodation. Thus, addition of 30% in the basic pay of Rs. 11,180/- was required to be made as a component of HRA because facility of residential accommodation would be withdrawn by the employer on the death of the deceased.”

17. This Court also takes note of the fact that, with the death of the deceased, the family would have to vacate the Government Accommodation. The Government Accommodation allotted to the deceased was for the benefit of the entire family and the deceased was not being paid the HRA only due to the allotment of a Government Accommodation to him.



18. In terms of the judgment of the Supreme Court in *Sunil Sharma* (supra) and this Court in *Vikas* (supra), therefore, the amount which the deceased would otherwise have received towards HRA but for the allotment of the Government Accommodation to him, has been rightly added by the learned Tribunal towards his total income.

INCOME FOR 13 MONTHS:

19. The learned Tribunal has rightly taken the income of the deceased for 13 months for determining the Loss of Dependency.

20. The learned Tribunal has relied on the statement of PW1, Head Constable Anil Kumar, who stated that every police personnel, including the deceased, is entitled to an annual salary of 13 months. In fact, he has produced a Circular (Ex.PW1/1), which shows that all the non-gazetted personnel of the Delhi Police get thirty days' payment in addition to their yearly income subject to the conditions mentioned therein. He stated that the deceased was entitled to and was getting the benefit of the Circular.

21. Keeping in view the statement of PW1, therefore, the loss of dependency has rightly been determined by the learned Tribunal on the basis of income of the deceased that he would have drawn for the period of thirteen months.

22. I, therefore, find no merits in the challenge of the Insurance Company in this regard. The same is rejected.

DEDUCTION TOWARDS TAX EXEMPTED ALLOWANCES:

23. As regards the challenge of the Claimants to the deduction of



Rs.11,640/- from the annual income of the deceased, I find merit in the challenge.

24. The learned Tribunal, in the Impugned Award, has directed the deduction of the above amount as in Form No.16 for the Assessment Year 2015-16 (Ex.PW1/3), allowances to the extent of Rs.11,640/- were shown as exempted from Tax.

25. In my opinion, merely because certain allowances are not taxable in nature, the same would not warrant their deduction from the annual income of the deceased for the purposes of determining the compensation payable to the claimants towards Loss of Dependency. It is to be remembered that for determining the Loss of Dependency, what is relevant is the 'income' of the deceased and not the 'taxable income' of the deceased.

26. In view of the above, the Impugned Award, in so far as it deducts Rs. 11,640/- from the income of the deceased for purposes of awarding Loss of Dependency, is set aside.

DEDUCTION TOWARDS PERSONAL EXPENSES:

27. The submission of the learned counsel for the Insurance Company that as the parents of the deceased were not living with the deceased, they cannot be treated as dependant on him, cannot be accepted. The learned Tribunal has also rightly rejected the said submission by observing as under:

“24. PW2 has categorically deposed in her evidence by way of affidavit (Ex; PW2/A) that the petitioners were solely and fully dependent upon the income of deceased. However,



counsel for insurance company had given a suggestion that father of deceased was not financially dependent upon the deceased. The age of father of deceased was somewhere around 64 years (his date of birth being 01.01.1951 vide Ex. PW2/5). Apart from the bald suggestion put to the witness on behalf of insurance company, there is no iota of evidence brought on record from the side of insurance Company to show that father of deceased was independently working for gain at the time of accident. Hence, I am of considered opinion that father of deceased shall also be considered as dependent upon deceased in order to compute the loss of dependency. Considering the fact that there were five dependents at the time of accident, there has to be deduction of 1/4th as held in the case of Pranay Sethi mentioned supra.....”

28. From the above, it would be apparent that the father of the deceased was around 64 years and was financially dependant on the deceased, though he may have been living separately. For purposes of considering dependency, the Claimants were not to prove their case beyond reasonable doubt, but on the touchstone of preponderance of probabilities. It can safely be presumed that given the age of the father, the father would have been largely financially dependent on the deceased. He, therefore, has been rightly considered for purposes of ‘just’ deduction to be made from the income of the deceased towards his personal expenses.

29. Even otherwise, in **Indrawati v. Ranbir Singh**, 2021 SCC OnLine Del 114, this Court held as under:-

“12. This Court is of the view that the parents of the deceased are considered in law as



dependent on their children, considering that the children are bound to support their parents in their old age, when the parents would be unable to maintain themselves and the law imposes a responsibility on the children to maintain their parents. Even if the parents are not dependent on their children at the time of the accident, they will certainly be dependent, both financially and emotionally, upon their children at the later stage of their life, as the children were dependent upon their parents in their initial years. It would therefore be unfair as well as inequitable to deny compensation for loss of dependency to a parent, who may not be dependent on his/her child at the time of accident per se but would become dependent at his/her later age."

(Emphasis added)

30. Accordingly, the challenge of the Insurance Company to the deduction from the income of the deceased towards his personal expenses, is rejected.

MULTIPLIER AND FUTURE PROSPECTS

31. The next challenge of the Insurance Company is towards the applicability of the multiplier of 15, while the Claimant challenges the Future Prospects being confined only to 30%. Both these challenge are dependent on the age of the deceased to be taken into account for the purposes of the Multiplier and the addition for Future Prospects of Income.

32. It has been established on record that the deceased was aged around 40 years and 9 months at the time of the accident.

33. In *Sheeba @ Shiva v. Tata AIG Gen. Ins. Co. Ltd. & Ors.*



2023:DHC:5084, this Court considering the question of the adoption of a proper multiplier, has held as under:

*“10. In **Shashikala and Ors. v. Gangalakshamma and Anr.**, 2015 ACJ 1239, relied upon by the learned counsel for the appellant, it has been held as under:*

“17. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident, i.e., 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the Tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier of 14 which is the appropriate multiplier and the same is maintained. The total loss of dependency is calculated at Rs.16,82,310 (Rs.1,20,165 x 14).”

*11. In **Navin Parcha & Ors. v. Deepak Kumar & Ors.**, Neutral Citation No-2019:DHC:4441, this Court has also held that where the deceased had not attained the age of 31 years, which is a next slab, the multiplier applicable to the previous slab would be applied.*

*12. Though in **Bajaj Allianz General Insurance Co. Ltd. v. Meenakshi & Ors.**, Neutral Citation No-2012:DHC:3735, relied upon by the learned counsel for the respondent no.1, it has been held that to apply the judgment of **Sarla Dixit v. Balwant Yadav** (1996) 3 SCC 179, purposely, the multiplier has to be taken as per the age which is nearer to the birth on the date of the accident, in view of the subsequent judgment in **Shashikala** (supra), I am bound by the judgment of the Supreme Court.*



13. Taking into account the multiplier as prescribed in **Sarla Dixit** (supra), and taking the age of the appellant as 25 years for purposes of the multiplier slab stipulated therein, it is held that the multiplier to be adopted was 18, which is applicable to the age group of 21-25, and the learned Tribunal has erred in adopting the multiplier of 17 for determining compensation. The Impugned Award is modified to the above limited extent.”

34. In **M.H. Uma Maheshwari & Ors.** (supra), the Supreme Court extended the benefit of the lower age slab for purposes of determining the Future Prospects to be applied, by holding as under:

“9. The Tribunal, by recording a finding that the deceased was in the age group of 40 to 50 years, applied the multiplier of 13 while calculating the compensation. The High Court, curiously while maintaining the multiplier of 13 as per the judgment of this Court in **Sarla Verma**, has reduced the compensation only on the ground that the deceased was aged 50 years 3 months on the date of the accident, as such the compensation is to be calculated on account of loss of dependency by granting future prospects at 15% but not 30%. So far as the application of multiplier of 13 by the Tribunal is concerned, the High Court has not interfered with the same. When the age of the deceased was considered in the group of 40 to 50 years, we are of the view that the High Court has committed error in granting only 15% towards future prospects instead of 30%. As per the judgments of this Court, primarily the age group is to be considered. Considering the age group as 40 to 50 years, when the multiplier of 13 is maintained by the High Court, there is no reason or justification for reducing the compensation by granting 15% towards future prospects. Though the learned counsel appearing for Respondent 1 Insurance



Company has submitted that the compensation towards future prospects was awarded as per the Constitution Bench judgment of this Court in National Insurance Co. Ltd. v. Pranay Sethi but at the same time it is to be noticed that in the very same judgment in para 59.3, while considering the grant of future prospects, this Court has specifically said that the addition should be 30% if the age of the deceased was in the age group of 40 to 50 years. For application of multiplier, the High Court has also accepted the age group of the deceased between 40 and 50 years. In that view of the matter, there is no reason for reducing the compensation by granting future prospects at 15% only. In absence of any challenge to the findings recorded by the High Court confirming the application of multiplier of 13, we are of the view that the High Court has committed error in reducing the compensation on account of loss of dependency. For loss of love and affection, when the compensation of Rs 1,00,000 on account of loss of consortium was awarded to the first appellant, she was not entitled for another Rs 1,00,000 towards the same but, at the same time though the appellants have claimed Rs 2,00,000 towards transportation of dead body and funeral expenses, only an amount of Rs 20,000 and Rs 25,000 was awarded towards the respective heads. Taking into account the facts and circumstances of the case, we are of the view that even such grant of Rs 1,00,000 ought not have been reduced by the High Court."

35. Applying the above ratio, it has to be held that the multiplier to be adopted for the purpose of ascertaining the loss of dependency, as also for the purpose of consideration of future prospects, age of the deceased has to be taken as 40 years. The learned Tribunal has, therefore, rightly adopted the multiplier of 15, however, has erred in taking future prospects as only 30%. As the deceased was working as



a Head Constable with Delhi Police, in terms of the judgment of the Supreme Court in ***Pranay Sethi*** (supra), future prospects should have been considered as 50% of the established income.

36. The Impugned Award shall stand modified to the above extent.

LOSS OF CONSORTIUM

37. In terms of the judgment of ***Pranay Sethi*** (supra) as explained by the Supreme Court in ***United India Insurance Company Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.***, (2021) 11 SCC 780, loss of consortium can be loss of 'filial consortium', 'spousal consortium' or 'parental consortium'. Therefore, each of the claimants are entitled to loss of consortium of Rs.40,000/- in their own right.

38. In view of the above, compensation towards loss of consortium is enhanced to Rs.2 lakhs.

RATE OF INTEREST

39. The learned Tribunal has directed the Insurance Company to pay the compensation along with interest at the rate of interest of 9% from the date of the filing of the Claim Petitions, that is, 28.01.2016 till the date of realization of the compensation. Though the Insurance Company challenges the same to be exorbitant, no material has been placed on record in support of this challenge.

40. It is noticed that the date of the accident was 21.11.2015. The Award was passed on 05.02.2019. I find the rate of interest awarded by the learned Tribunal to be reasonable and as not warranting any interference from this Court.



CONCLUSION & DIRECTIONS

41. It is directed that the compensation amount shall stand re-determined in accordance with the above and shall carry interest at the rate and for the period as awarded by the learned Tribunal.

42. By the order dated 22.04.2019, this Court had directed that subject to deposit of 75% of the awarded amount with the learned Tribunal, the operation of the Impugned Award shall remain stayed for the balance awarded amount. It was further directed that the deposited amount shall be apportioned and disbursed amongst the claimants, that is, the respondent nos.1 to 5, in consonance with the terms and conditions of the Impugned Award.

43. As the compensation amount would now stand enhanced, the Insurance Company shall deposit the remaining and the enhanced amount alongwith interest accrued thereon at the rate and for the period as stipulated in the Impugned Award, with the learned Tribunal within a period of eight weeks from today. While depositing the amount, the Insurance Company shall also file with the learned Tribunal, the detailed calculation of the same. In case of any challenge by the claimants to the amount so deposited, the learned Tribunal shall determine the same.

44. The amount so deposited shall be released in favour of the claimants in accordance with the terms and conditions of the Impugned Award.

45. The appeals, along with pending applications, are disposed of in the above terms. There shall be no orders as to costs.



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46. The statutory amounts deposited by the Insurance Company shall be released in favour of the Insurance Company along with interest accrued thereon.

47. The Trial Court Record be returned to the learned Tribunal.

NAVIN CHAWLA, J.

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