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

Reserved on : 29.08.2023
% ***Pronounced on : 04.09.2023***

\+ **MAC.APP. 321/2018**

SUNITA & ORS ..... Appellants

Through: Mr. S. N. Parashar, Advocate.

versus

MAHAVIR PRASAD YADAV & ORS(SHRIRAM GENERAL INSURANCE CO. LTD.) ..... Respondents

Through: Mr. Sameer Nandwani, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed by the appellants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28.01.2020 for enhancement of compensation awarded by the Ld. Tribunal with the following prayers:

> "*a) The appeal may kindly be admitted and allowed.*
> *b) The amount of compensation awarded by the Hon'ble Tribunal by order dated 26.09.2017 may kindly be enhanced.*
> *c) Cost of petition and appeal may kindly be awarded in favour of the appellants and against the respondents.*
> *d) Any other relief which this Hon'bie Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the appellants and against the respondents."*

2. In brief, the facts of the case are that on 14.05.2011, Naresh Kumar along with his sons, namely, Sachin & Master Ravi, were going in Santro Car bearing no. DL 4CAJ 4482 which was driven by him. When they reached in front of plot of Sri. Jeevan, Village Rawta, Dorala - Najafgarh, New Delhi, one Truck bearing no. RJ-32G-2704, driven by respondent no.1, in rash and negligent manner came from opposite side and hit against the Santro Car. As a result, all the occupants sustained serious injuries and Naresh Kumar succumbed to the injuries on 07.06.2011. Accordingly, a criminal case was registered against the driver of the Truck bearing no. RJ-32G-2704 at Police Station J.P. Kalan, Delhi vide FIR No. 33/2011 dated 15.05.2011, U/s 279/337 IPC.

3. I have heard the learned counsel for the appellant as well as learned counsel appearing on behalf of respondent no. 3 and have perused the records of this case.

4. It is submitted by learned counsel for the appellants that the learned Tribunal should have considered the future prospects and future rise in income of the deceased as according to the wage chart for the last 20 years, the minimum wages are rising constantly. It is further submitted that learned Tribunal failed to add 50% of actual income towards future prospects for computing the loss of dependency and a meager sum of Rs. 1, 30,000/- for loss of love and affection, Rs. 40,000/- for loss of consortium, Rs. 15,000/- for funeral expenses and Rs. 15,000/- towards loss of estate, the amounts of compensation awarded under these heads are on the lower side and thus, the appellants seek enhancement of the same. In support of his contentions, learned counsel for the appellants has placed reliance on ***National***

Insurance Co. Ltd. vs. Pranay Sethi & Ors. [2017 (16) SCC 680] *and* ***Rajesh & Ors. vs. Rajbir Singh & Ors. [2013(6) SCALE].***

5. On the other hand, it is submitted by learned counsel for the respondent no. 3- Insurance Company that the compensation awarded by learned Tribunal is on the higher side as the appellants have not placed any documentary proof of income of the deceased either before this Hon'ble Court or before the learned Tribunal, hence the income of the deceased should have been taken on the basis on minimum wages of an unskilled labourer but learned Tribunal has wrongly taken minimum wages of semi-skilled worker. It is further submitted that the non-pecuniary heads are on the higher side, and that the same should have been awarded in view of the judgment passed by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi (AIR 2017 SC 5157)*** as per which Naresh Kumar (deceased) is entitled to 40% future prospects and Rs. 70,000/- under Non-Pecuniary heads.

6. As far as the contention of the learned counsel for respondent no.3 with regard to income of deceased is concerned, the relevant paras where the learned Tribunal has observed regarding the ***Income of the deceased*** reads as follows:-

> *"16. It was argued on behalf of petitioners that deceased Naresh Kumar was an agriculturist and was earning Rs. 20,000/- per month. However, petitioner has not filed any documentary proof in this regard. In such circumstances, he will be covered by minimum wages which is applicable for semi-skilled person on the date of accident i.e. Rs. 7078/- (Rs. Seven thousand and forty eight only) per month. Accordingly, the income of deceased is assessed as Rs. 7078/- (Rs. Seven thousand and seventy eight only) per month and making his*

annual income as Rs. 84,936/- (Rs. Eighty four thousand nine hundred thirty six only) (Rs.7078 X 12)."

7. In absence of any documentary evidence of the proof of income, the court can ascertain the monthly income on basis of minimum wages is well settled by a catena of judgments. Reliance can be placed upon ***Neeta vs. Maharashtra SRTC (Civil Appeals No. 348-349/2015 decided on 13.01.2015), The New India Assurance Co. Ltd. vs. Ramesh & Ors. (MAC APP. No.342/2008 decided on 26.08.2009) and Kumari Chunni Kumari & Ors. vs. Balwant & Ors. (MAC APP.No.378/2004 decided on 01.02.2010).***

8. In the instant case, the deceased was aged 39 years at the time of the accident and as per the appellants, he was working as an agriculturist and was earning Rs. 20,000/- per month. In my view, the Ld. Tribunal has legitimately assessed the income of deceased to be as Rs. 7078/- on the basis of minimum wages which is applicable for semi-skilled person on the date of accident and the same does not call for any interference on this count.

9. Perusal of the impugned award shows that the tribunal failed to award any future prospects considering that the appellants have not led any evidence to prove the income of the deceased much less than progressive rise in the income of deceased.

10. In ***Hem Raj vs. Oriental Insurance Co. Ltd. [(2018) 15 SCC 654]***, decided by the Hon'ble Supreme Court on 22.11.2017, it is observed and held as under:

"7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the

present case, addition of 40% to the income assessed by the Tribunal is required to be made.."

11. In ***Kirti & Anr vs. Oriental Insurance Company, Civil Appeal No. 19-20 of 2021 (Arising out of SLP (C) No. 18728-29 of 2018),*** decided by the Hon'ble Supreme Court on 05.01.2021, it is observed and held as under:

> *"14. Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation induced increase in wages."*

12. Insofar as the grant of compensation under non pecuniary head is concerned, the deceased left behind his father, mother, widow and two children as his dependants. On the basis of the judgments in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680], Magma General Insurance Co. Ltd. vs. Nanu Ram & Ors [(2018) 18 SCC 130], United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015)*** and ***The New India Assurance Company vs. Somwati, Civil Appeal No. 3093 of 2020 (Arising out of SLP (Civil) No. 23478 of 2019)***, amount of compensation for '*Loss of Estate', 'Loss of Consortium'* and '*Funeral Expenses'* is fixed at Rs 15,000/-, Rs 40,000/- and Rs 15,000/-, respectively with an increase of 10% after a period of three years.

In view of the above, the following amounts are awarded under the conventional heads:

i) Loss of Estate: Rs. 16,500/-
ii) Loss of Consortium: Rs. 44,000 x 5 (dependants) = Rs. 2,20,000/-
iii) Funeral Expenses: 16,500/-

13. In ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015)*** decided by the Hon'ble Supreme Court, it is observed and held as under:

> *"The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra). 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 High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), 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 (supra), 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.*
>
> *The Tribunals and 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."***

14. Accordingly, the amount of Rs. 1,30,000/- awarded by the Tribunal towards *"loss of love and affection"* shall be deducted from the awarded amount.

15. Furthermore, keeping in view the settled legal principles laid down by the Hon'ble Supreme Court of India in ***S. Chandrasekharan & Ors. vs. M. Dinakar & Anr., Civil Appeal Nos. 4688-4689 Of 2022 (Arising out of SLP (C) Nos. 8119-8120 of 2019)*** and ***National Insurance Company Ltd. vs. Mannat Johal & Ors., Civil Appeal Nos.4079-4081 of 2019(Arising out of SLP (C) Nos. 742-744 of 2019),*** the rate of interest stands reduced from 9% per annum to 7.5% per annum from the date of filing of the claim petition till the date of realization.

16. In view of the above, the impugned award to the said extent requires a modification, therefore, it is directed that as the deceased was below 40 years of age, the future prospects shall be taken at 40% of the established income of the deceased. On that basis, after taking into account the established income of deceased alongwith future prospects, the compensation granted by this court towards non pecuniary heads and the reduced rate of interest, the Tribunal shall re-compute the entitlement of the appellants in terms of the directions contained herein.

17. After deducting the aforesaid amount of Rs. 1,30,000/- awarded by the learned Tribunal towards *"loss of affection"*, the compensation amount along with interest accrued thereon, shall be deposited by the respondent - Insurance Company, with the Tribunal within a period of four weeks of the computation by the Tribunal. The same be released to the beneficiaries of the award in terms of the scheme of disbursement which shall be specified therein.

18. Accordingly, the appeal along with pending applications, if any, stands disposed of subject to the above said modifications in the award. Trial

Court Record be sent back along with a copy of this Judgment for compliance.

19. The matter shall be listed before the concerned tribunal on 14th September, 2023 for the purpose of re-computation and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

SEPTEMBER 04, 2023/p