

\$~

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

%

Reserved on: 13.01.2023
Pronounced on: 07.02.2023

+ **MAC.APP. 543/2013**

SADHNA & ORS

..... Appellants

Through: Mr. Pratap Singh, Advocate

versus

VIJAY & ORS

..... Respondents

Through: Mr. Pankaj Gupta for
Ms.Suman Bagga, Advocates
for R-3.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellants under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) against the Award dated 16.01.2013 passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, (West), Delhi (“**impugned Award**”).
2. By way of impugned Award dated 16.01.2013 the learned Claims Tribunal awarded a compensation of Rs. 46,60,124/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to pay the entire awarded amount within a

period of one month. Learned Claims Tribunal granted the compensation under the following heads:-

Head	Amount
Loss of Dependency (Rs.3,19,718.25 p X 14)	Rs. 44,76,055/-
Loss of love and affection	Rs. 25,000/-
Funeral Charges	Rs. 10,000/-
Loss of Estate	Rs. 10,000/-
Loss of Consortium	Rs. 10,000/-
Medical Expenses	Rs. 1,14,069/-
Special diet and conveyance	Rs. 15,000/-
Total	Rs.46,60,114/-

SUBMISSION OF THE APPELLANTS

- Mr. Pratap Singh, learned counsel for the appellants while seeking enhancement of the compensation contended that the learned Claims Tribunal erred in calculating the monthly income of the deceased/victim. He further contended that the learned Claims Tribunal has erroneously deducted the conveyance allowance from the total annual income of the deceased/victim for the purpose of determining the compensation under the head '*Loss of Dependency*'. Learned counsel further sought enhancement in the rate of interest awarded by the learned Claims Tribunal from 7.5% to 9%.

MAC.APP. 543/2013

Page 2 of 11

Learned counsel while placing reliance on *National Insurance Co. Ltd v. Pranay Sethi* reported as (2017) 16 SCC 680 contended that compensation under the head ‘Loss of Consortium’, ‘Loss of Estate’ and ‘Loss of Funeral Expenses’ needs to be modified/enhanced.

SUBMISSION OF THE RESPONDENT

4. Mr. Pankaj Gupta, learned counsel for Respondent no. 3 contended that the date of accident was 11.10.2010 and the date of birth of the deceased/victim was 14.01.1965. As such on the date of the alleged incident, the deceased/victim was more than 45 years of age and taking into the account the age of the deceased on the date of incident, the learned Claims Tribunal has wrongly applied the multiplier as 14 instead of 13. Learned counsel further contended that the learned Claims Tribunal has correctly assessed the income of the deceased/victim and no modification in the monthly income assessed by the learned Claims Tribunal is called for by this Court. Learned counsel fairly concedes for grant of compensation under the head ‘Loss of Consortium’, ‘Loss of Estate’ and ‘Loss of Funeral Expenses’ in terms of *Pranay Sethi (supra)*.

COURT’S REASONING

5. Brief facts of the case as noted by learned Claims Tribunal are as under:-

“...on 11.10.10 while the deceased was crossing the road at in front of Maharaja Agrasen Hospital, in the meantime the offending vehicle bearing No. DL-1PB 5356 which was driven by its driver Respondent no.1 in rash and

negligent manner hit the deceased. Resultantly, the deceased fell down and died.....”

6. The limited contentions raised by learned counsel for the appellants for enhancement of the compensation amount are that (i) the learned Claims Tribunal erred in not calculating the conveyance allowance in the total income of the deceased/victim for the purpose of computation of the compensation under the loss of dependency and (ii) for grant of compensation under the head ‘*Loss of Consortium*’, ‘*Loss of Estate*’ and ‘*Loss of Funeral Expenses*’ in terms of ***Pranay Sethi (supra)***.
7. In this context, it will be pertinent to apply the principle laid down by the Apex Court in the matter of ***Shyamwati Sharma v. Karam Singh*** reported as (2010) 12 SCC 378 and ***Manasvi Jain v. DTC Ltd.*** reported as (2014) 13 SCC 22, wherein it was categorically held that except contribution towards income tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take-home salary. The relevant portion of ***Shyamwati Sharma (supra)*** is reproduced hereunder:

“9. In this case as the annual income has been worked out as Rs.2,48,292/-, appropriate deduction has to be made towards income-tax. The rate of income tax is a varying figure, with reference to taxable income after permissible deductions and the year of assessment. The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions

towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.”

8. Further, on the question of deduction towards conveyance allowance, it would be pertinent to quote the observations of this Court in the recent case of ***Ram Charan & Ors. v. The New India Assurance Co. Ltd., MAC.APP. 433/2013***, decided on 18.10.2022. The relevant portion of the said judgment is being reproduced as hereunder:-

*“16. Allowances are special benefits accorded to employees, the benefits of which are reaped either by employees alone or by their families as well. **Including all incentives, bonuses or allowances to the income would be of inconsistent logic as the legal heirs would reap the benefits of certain allowances regardless of whether they enjoyed the same status prior to the demise of the deceased or not. Thus, evaluating the nature of the allowance/incentive must be the clincher in determining if such allowance/incentive must be considered a part of the actual income of the deceased.***

17. The court in the case of Meenakshi Mishra (Supra) nowhere implies a blanket inclusion of all allowances or benefits. In fact, the allowances that were included as a part of the salary in the case are ones that the family of the deceased were also enjoying when he was alive.

xxxx

*19. Reckoning Jashuben (Supra), the holding in Meenakshi Mishra (Supra) can thus be distinguished from the facts of the present case. Since the benefits granted to the deceased were Travel and Washing Allowances which solely satisfied the purpose of ameliorating the hassles faced by employees during their employment, the Appellants cannot gain from such allowances that the deceased had enjoyed during his employment. **In fact, a perusal of the salary slip of the deceased, Smt. Kalawati Devi, shows that the salary of the deceased is inclusive of Dearness Allowance and House Rent Allowance, which has not been deducted by the learned Claims Tribunal. From this, it is evident that the learned Claims Tribunal***

has only deducted the allowances that were solely for the personal benefit of the deceased. This court thus concurs with the findings of the learned Claims Tribunal on the exclusion of Travel and Washing allowance from the income of the deceased.”

(emphasis supplied)

9. In view of the above observations, this Court is of the considered opinion that conveyance allowance, which was for the exclusive benefit of the deceased, was rightly excluded from the purview of the multiplicand by the learned Claims Tribunal and as such the argument of learned counsel for the petitioner for inclusion of conveyance allowance in the total income of the deceased/victim holds no ground.
10. The other arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon’ble Apex Court by way of various judicial pronouncements.
11. In the case of ***Joginder Singh and Ors. Vs. ICICI Lombard General Insurance Company*** reported in ***2012 SCC Online Mad 3922***, the Hon’ble Supreme Court while dealing with issue of multiplier in an accident case, has held that:-

“The issue with respect to whether the Multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer res integra. This issue has been recently settled by a three Judge bench of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud and Ors. (2019) 5 SCC 554* wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased. The Court held that:

10. A reading of the judgment in *Sube Singh (supra)* shows that where a three Judge Bench has categorically taken the view

*that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari and Ors. v. Madan Mohan and Anr. : (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. **The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions 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.** It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.*

11. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.”

(emphasis supplied)

12. Further, in terms of dicta laid down in case of ***Sarla Verma & Ors. Vs DTC & Anr.*** reported in ***(2009) 6 SCC 121*** which is upheld in the judgment of ***Pranay Sethi (Supra)*** whereby it was held that for the purposes of selection of multiplier, the age of the deceased has to be taken into account. The Hon’ble Supreme Court in the case of ***Sarla Verma (Supra)*** while determining the multiplier in an accident case has held that:-

*“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of **18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to***

40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

(emphasis supplied)

13. Multiplier to be used as per dicta of *Sarla Verma (Supra)* is as under:-

Column	Upto 15 yrs	15 to 20 yrs	21 to 25 yrs	26 to 30 yrs	31 to 35 yrs	36 to 40 yrs	41 to 45 yrs	46 to 50 yrs	51 to 55 yrs	56 to 60 yrs	61 to 65 yrs	Above 65 yrs
(4)	15	18	18	17	16	15	14	13	11	9	7	5

14. Admittedly, the date of birth of the deceased was 14.01.1965. The accident took place on 11.10.2010. The age of the deceased at the time of the accident comes to 45 years 8 months and 28 days. In terms of multiplier approved in the case of *Sarla Verma (Supra)*, case as shown in the table above, which is upheld in the judgment of *Pranay Sethi (Supra)*, the learned Claims Tribunal has rightly used the multiplier as 14 as the deceased has not completed 46 years of age. Accordingly, the contention raised by the learned counsel for the respondent/Insurance company in relation to applying the multiplier of 13 holds no ground.
15. Further in the case of *Pranay Sethi (Supra)*, the Hon'ble Supreme Court for the conventional heads, namely, 'Loss of Estate', 'Loss of Consortium' and 'Funeral Expenses' has fixed the amount of compensation at Rs. 15,000/-, Rs. 40,000/- and

Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years.

16. With regard to deduction to be made towards '*Personal and Living Expenses*', the Hon'ble Supreme Court in *Pranay Sethi (Supra)* upholds the deduction ascertained in the case of *Sarla Verma (Supra)*. As per the Judgment passed by the Hon'ble Supreme Court in the case of *Sarla Verma (Supra)* deductions are to be calculated as under:-

"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions.

Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle.

In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal

and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

17. It is borne out from the records that the deceased/victim was survived by 4 legal heirs and accordingly, in terms of the aforesaid judgments, the learned Claims Tribunal has rightly made deduction of one fourth (1/4) towards personal and living expenses of the deceased/victim.
18. In view of the above discussion, the impugned Award dated 16.01.2013 is modified as under:-
- (a) 'Loss of dependency' = **Rs. 44,76,055/-** (unchanged).
 - (b) 'Loss of Consortium' is computed as Rs. 44,000 X 4 = **Rs. 1,76,000/-**.
 - (c) 'Loss of Estate' is quantified as **Rs. 16,500/-** to be paid to the claimants.
 - (d) 'Funeral Expenses' is quantified as **Rs. 16,500/-** to be paid to the claimants.
 - (e) Compensation under the head 'Love and Affection.' = Nil.
 - (f) Compensation under the head 'Medical Expenses' = **Rs. 1,14,069/-** (unchanged).
 - (g) Compensation under the head 'Special diet and Conveyance' = **Rs. 15,000/-** (unchanged)..

(h) Total compensation to be paid to claimants is; **Rs. 44,76,055/- + Rs. 1,76,000 + Rs. 16,500/- + Rs. 16,500/- + Rs. 1,14,069/- + Rs. 15,000/- + = Rs. 48,14,124/-.**

19. Accordingly, the compensation granted by the learned Tribunal is enhanced from **Rs. 46,60,114/- to Rs. 48,14,124/-.**
20. The Respondent/Insurance Company is directed to deposit the entire compensation amount with up-to-date interest with the Registrar General of this Court within a period of 4 weeks. If any amount is deposited with the learned Claims Tribunal/High Court of Delhi, the same shall be reduced from the total amount mentioned above and the differential amount with interest @ 7.5% from the date of filing of the present appeal be deposited by the Respondent/Insurance Company with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire amount as mentioned above, the same shall be released to the appellants/claimants within a period of two weeks in terms of the impugned award. Statutory amount, if deposited, be released to the appellants.
21. There would be no change in the rate of interest awarded by the learned Claims Tribunal.
22. Appeal stands disposed of. No order as to costs.

GAURANG KANTH, J.

FEBRUARY 07, 2023