



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

% Reserved on : 20th December, 2023
Pronounced on : 22nd December, 2023

+ **MAC.APP. 469/2014**

SMT SEEMA DEVI & ORS

..... Appellant

Through: Mr. Kumar Dushyant Singh, Mr.
Bhuvneshwar Singh, Ms. Pooja Singh
and Ms. Subasri Jaganathan, Advs.

versus

HDFC ERGO GENERAL INSURANCE CO LTD & ANR

..... Respondent

Through: Mr. Pankaj Gupta, Adv. for Mr.
Suman Bagga, Adv.

+ **MAC.APP. 615/2014, CM APPL. 11037/2014 & CM APPL. 11039/2014.**

HDFC ERGO GENERAL INSURANCE CO. LTD

..... Appellant

Through: Mr. Pankaj Gupta, Adv. for Mr.
Suman Bagga, Adv.

versus

SMT. SEEMA DEVI & ORS

..... Respondent

Through: Mr. Kumar Dushyant Singh, Mr.
Bhuvneshwar Singh, Ms. Pooja Singh
and Ms. Subasri Jaganathan, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The present appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) assailing award dated 10th January, 2014 (“**impugned award**”) passed by the Presiding Officer, Motor Accidents Claim Tribunal, Saket, New Delhi (“**MACT**”).



2. HDFC Ergo General Insurance Co. Ltd. (“**the Insurance Company**”) seeks modification of the impugned award on grounds that the monthly income of the deceased has been wrongly assessed, computation of dependents of the deceased is erroneous, and excess interest has been awarded. While the legal heirs of the deceased, Smt. Seema Devi (wife of the deceased/PW1), Master Abhay (son of the deceased), Shri Rameshwar Singh and Smt. Rama Devi (parents of the deceased) seek enhancement of the awarded amount.

Factual Background

3. On 17th April, 2012 at about 7:00 P.M., Rupender Singh (“**the deceased**”), aged 29 years at the time, was travelling to his village Isara Purvi, Uttar Pradesh on a motorcycle bearing number DL-9SM-1369. At this time, when he reached Edward Building, Noida Highway, District Gautam Budh Nagar, a truck bearing number UP-14-7060, driven at high speed, struck the deceased’s motorcycle. As per the *post mortem* report, the cause of death was shock and haemorrhage due to *ante mortem* injuries.

4. The MACT awarded a sum of Rs. 47,75,000/- to the claimants with interest at the rate of 9% per annum. Rs. 40,00,000/- was to be deposited in the name of the deceased person’s wife in a phased manner, i.e., a deposit of Rs. 4,00,000/- to be made every two years. The minor son of the deceased was awarded Rs. 5,00,000/- to be kept in an FDR until he attains majority. A sum of Rs. 2,50,000/- each was awarded to the parents of the deceased. Rs. 50,000/- has been awarded by the MACT *vide* an interim order dated 18th February, 2013. The computation of this amount is as under:



S. No.	PARTICULARS	AMOUNT (IN RS.)
1.	Loss of Dependency [(2,40,000 + 50%) – ¼ of 3,60,000] x 17	45,90,000/-
2.	Loss of love and affection	1,00,000/-
3.	Loss of consortium	1,00,000/-
4.	Funeral Expenses	25,000/-
5.	Loss of Estate	10,000/-
	TOTAL	48,25,000/-

Submissions of the Insurance Company

5. Counsel for the Insurance Company made the following submissions:
- 5.1. *Firstly*, the income of the deceased ought to have been assessed at Rs. 11,592/- per month. In support of the same, he adverted to the income tax returns of the deceased (“**ITR**”) filed by the claimants. He stated that for the Assessment Year (“**AY**”) of 2011-12, i.e., Financial Year (“**FY**”) 2010-11, his income was shown at Rs. 1,39,104/- per annum. Reliance in this regard was placed on a decision of the Hon’ble Supreme Court in *Smt. Anjali & Ors. v. Lokendra Rathod & Ors.*, 2022 SCC OnLine SC 1683 wherein it was held that ITR shall be used to assess income of the deceased.
- 5.2. *Secondly*, since the deceased was in private employment, he ought to have been awarded future prospects at 40% rather than 50% as awarded by the MACT. For this, reliance was placed on the landmark decision in *National Insurance Co. v. Pranay Sethi & Ors.*, 2018 SCC OnLine 1270.



5.3. *Thirdly*, as per the guidelines issued in *Sarla Verma v. Delhi Transport Corporation*, 2009 SCC OnLine SC 797, the father of the deceased must not be considered a dependent. Therefore, the deduction towards personal and living expenses ought to have been 1/3rd rather than 1/4th. As per her own testimony, PW1 and the deceased lived separately from the deceased's parents, who resided in their native village with the deceased's brother. Furthermore, reliance was placed on *Reshma Kumari v. Madan Mohan*, (2009) 13 SCC 422 and *Pranay Sethi (supra)* in this respect.

5.4. *Fourthly*, with regard to non-pecuniary damages, he contends that the claimants were not entitled to compensation for 'Loss of Love and Affection' as was held by the Hon'ble Supreme Court in *United Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur & Ors.*, (2021) 11 SCC 780.

5.5. *Lastly*, the rate of interest awarded ought not have been more than 7.5% per annum.

Submissions on behalf of the Claimants

6. Whereas, counsel for the claimants submitted as under:

6.1. *Firstly*, the income of the deceased ought to have been assessed at Rs. 32,000/- per month, rather than at Rs. 20,000/- per month. In this regard, reliance was placed upon the testimony of Narinder Kumar ("PW3"), the proprietor of M/s Cosmic Enterprises ("the Enterprise") who deposed that the deceased was being paid Rs. 25,000/- by way of cheque and Rs. 7,000/- in cash and other expenses for his work as a transporter. Additionally, as per agreement dated 8th



August, 2004, (PW-3/D1) and DVAT-16 Assessment Form (PW3/D2), products of Hindustan Unilever Limited (“HUL”) were being supplied to PW3 by the deceased. Reliance was also placed on attendance register of the Enterprise (PW3/1) to show that the deceased was visiting the Enterprise for delivering goods as per the agreement. The ITR was produced for AY 2011-12 (FY 2010-2011), while the deceased had just begun earning additional income amounting to a total of Rs. 32,000/- per month, and he died on 17th April, 2012.

6.2. Secondly, the MACT rightly considered the deceased’s father as a dependent. In this regard, he relied upon *Indrawati v. Ranbir Singh*, 2021 SCC OnLine Del 114 wherein this Court held that a father would be dependent upon his children in old age, even if not dependent at that moment.

6.3. Lastly, the decision in *Pranay Sethi* (supra) was passed in 2017 after the Award dated 10.01.2014, therefore, it would not apply retrospectively. Further, the said decision has not been adverted to by the Insurance Company in its pleadings.

Analysis

7. Having heard the respective contentions of the parties and having perused the material placed on record, the assessment of the Court is as under:

Income

7.1. As per the testimony of PW3, the deceased was associated with his firm i.e. Cosmic Enterprises and used to supply HUL Products to them. In this regard, an attendance Register (Mark PW3/1) had been



produced. PW3 produced the DVAT Assessment of the transactions through certificate dated 14.07.2012 (PW-1/4), which certified a monthly amount of Rs. 32,000/- was paid to the deceased. In his cross examination, PW3 stated that the agreement with HUL has been placed on record and the deceased was appointed for loading and unloading the goods from their godown to the market in November 2011. He stated that no file regarding employment of transports, suppliers or laborers was maintained by his firm. He stated that Rs. 25,000/- per month was given to the deceased by way of cheque and Rs. 7,000/- in cash. However, he did not produce the account details of his firm.

7.2. The Hon'ble Supreme Court in ***Smt. Anjali & Ors. v. Lokendra Rathod & Ors.*** (*supra*) had held that:

“8. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009-2010) of the deceased, which reflects the deceased's annual income to be Rs. 1,18,261/-, approx. Rs. 9,855/- per month. This Court in Malarvizhi(Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:



“10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased.” ”

- 7.3. In the matter of **Smt. Anjali & Ors.** (*supra*), the deceased's ITR was disregarded by the MACT on the ground that neither any ITR prior to 2009-10 nor any other document with regard to the deceased's income was filed before the MACT. The Hon'ble Supreme Court then increased the computation of monthly income of the deceased, relying upon his ITR stating that it is a statutory document that holds value.
- 7.4. In the present case, however, ITR of the deceased is not disregarded. Rather, the ITR is one of several documents that may be relied upon to establish the income of the deceased at the time of his passing. The ITR of the deceased was for the FY 2010-11 (AY 2011-12) which would have ended on 31st March, 2011. The deceased was thereafter working with the Enterprise of PW3 from November, 2011.
- 7.5. In the opinion of this Court, the MACT rightly assessed the income of the deceased at Rs. 20,000/- per month, after due consideration of the documents on record and taking an approximate average (median point) between Rs. 11,592/- as reflected through the ITR (of the previous FY) and Rs. 32,000/-, as per the testimony of PW3. Short of any other data, the MACT rightly assessed the deceased's income at



Rs. 20,000/- per month. Accordingly, the annual income of the deceased stands at Rs. 2,40,000/-.

Addition towards future prospects

7.6. Concerning retrospective application of judicial decisions, the Hon'ble Supreme Court in ***Manoj Parihar v. State of J&K***, (2022) 14 SCC 72 held as under:

“**26.** What was done in *Bimlesh Tanwar* [*Bimlesh Tanwar v. State of Haryana*, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] was actually a declaration of law. Therefore, the same will have retrospective effect. In *P.V. George v. State of Kerala* [*P.V. George v. State of Kerala*, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , this Court held that “the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically.””

(emphasis added)

7.7. Additionally, the Hon'ble Supreme Court has time and again applied the decision of ***Pranay Sethi*** (*supra*) to incidents occurring prior to the decision. The accident and subsequent claim in ***Anjali and Others*** (*supra*) arose in 2010, and the Hon'ble Supreme Court applied ***Pranay Sethi*** (*supra*) retrospectively.

7.8. Therefore, while the income of the deceased was assessed to be subject to future prospects of 50%, since he was 29 years old and self-employed, as per ***Pranay Sethi*** (*supra*), and in the opinion of this Court, an addition of 40% must be applied instead.



7.9. The MACT had computed the income including an addition of 50% future prospects at Rs. 3,60,000/- which shall stand modified at Rs. 3,36,000/- (Rs. 2,40,000/- + 40%).

Deduction towards personal and living expenses

7.10. The counsel for the Insurance Company relied upon **Sarla Verma** (*supra*) and **Pranay Sethi** (*supra*) to contend that the deceased's father would not be considered a dependent. However, considering the fact that, at the time of the accident, the father was aged 70 years as per the claim application, it can only be reasonably inferred that he would be dependent upon his son. The fact that he did not live with the deceased and rather lived with the deceased's brother, as per the testimony of PW1 does not rid the deceased from responsibility towards his father. The father would have been dependent on him irrespective of this fact.

7.11. In **Indrawati** (*supra*), this Court rightly assessed that a father, even if not dependent at the time, would eventually be dependent upon their children in the future. Therein, this Court relied upon decisions of the Hon'ble Supreme Court and 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.

xxxxx xxxxx xxxx xxxx

20. In view of the law well settled by the Supreme Court in the aforesaid judgments, this Court holds that the parents of the deceased child are considered as dependents for computation of compensation. The principles laid down in Keith Rowe (supra) and Dinesh Adhlakv. Pritam Singh, ILR (2010) 5 Del 463, would not apply to the claim for compensation by the parents in respect of their child, as it is in the present case. The principles relating to the loss to the estate referred to in Keith Rowe (supra) and Dinesh Adhlak (supra) would also not apply in respect of the claim of a spouse for compensation in respect of death of his/her spouse, as well as children's claim for compensation in respect of death of their parents. In that view of the matter, the principles relating to the loss to the estate shall apply only to claimants other than parents, children and spouse.”

Non-pecuniary damages

7.12. The MACT awarded non-pecuniary compensation for loss of love and affection at Rs. 1,00,000/-, loss of consortium at Rs.



1,00,000/-, funeral expenses at Rs. 25,000/-, and loss of estate at Rs. 10,000/-.

7.13. The Hon'ble Supreme Court in the matter of **Satinder Kaur** (*supra*), held as under:

“35. The Tribunals and the 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.”

7.14. As already reasoned above, non-pecuniary damages would be assessed as per the guidelines in **Pranay Sethi** (*supra*). Therefore, the impugned award shall stand modified with respect to non-pecuniary damages with loss of estate being at Rs. 18,150/-, [Rs. 15,000 + 10% increase for every three years /- as per **Pranay Sethi** (*supra*)]; loss of consortium being at Rs. 48,400/-, [Rs. 40,000/- + 10% increase for every three years as per **Pranay Sethi** (*supra*)]; funeral expenses being Rs. 18,150/- [Rs. 15,000/- + 10% increase for every three years as per **Pranay Sethi** (*supra*)]. The claimants would not be entitled to compensation for loss of love and affection.

Interest

7.15. As regards interest, this Court is of the view that 9% as awarded is a reasonable rate as has been held by the Hon'ble Supreme Court in **Kaushnuma Begum v. New India Assurance Co. Ltd.**, (2001) 2 SCC 9 as under:

“24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that “in addition to the amount of



compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."

8. In light of the aforesaid discussion, compensation as awarded by MACT is modified as under:

S.No.	PARTICULARS	AMOUNT AS MODIFIED (IN RS.)
1.	Loss of Dependency [(2,40,000 + 40%) – ¼ of 3,36,000] x 17	42,84,000/-
2.	Loss of Estate	18,150/-
3.	Loss of Consortium	48,400/-
4.	Funeral Expenses	18,150/-
	TOTAL	43,68,700/-



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9. As per direction of this Court *vide* order dated 14th July, 2014, Rs. 30,00,000/- has been deposited by the Insurance Company before the MACT, which is to be released as per apportionment in the impugned award. Accordingly, the Insurance Company is directed to deposit the remaining/balance amount as modified by this Court with interest at 9% per annum within four weeks. The MACT is directed to release the awarded amount to the claimants as per apportionment in the impugned award.
10. Statutory deposit made by the Insurance Company in this Court for filing the appeal may be withdrawn by the concerned appellant along with interest accrued thereon. The Registry is directed to do so accordingly, subject to verification.
11. The appeals are hereby dismissed with the above said directions. Pending applications, if any, are rendered infructuous.
12. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 22, 2023/RK