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

Date of decision: 2nd August, 2023

+ **MAC.APP. 266/2018 & CM APPL. 9341/2018**

TATA AIG GENERAL INSURANCE Appellant
Through: Ms.Meenakshi Midha, Mr.Garv
Singh, Advs.
versus

BARKATULLAH & ORS Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. In spite of service of notice, none has been appearing for the respondent no. 1 to 6/Claimants. They are proceeded *ex-parte*.
2. The appellant challenges the Award dated 08.12.2017 passed by the learned Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in DAR No.455/2017, which allows the claim of the respondent nos.1 to 6 herein and awards a sum of Rs.10,20,000/- in their favour.
3. The first challenge of the appellant to the Impugned Award is that in terms of the judgment of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation & Anr.**, (2009) 6 SCC 121, as the deceased was a child about 13 years, 50% of his notional income should have been deducted from his personal expenses.



4. I find merit in the submission made by the learned counsel for the appellant.

5. The learned counsel for the appellant has rightly submitted that in the present case, as the deceased was only a child, the father and brothers and sisters of the deceased cannot be considered to be financially dependent on him. Therefore, only the mother can be treated as a dependent and, in terms of the judgment of the Supreme Court in **Sarla Verma** (supra), 50% is to be deducted from the notional income of the deceased towards his personal and living expenses.

6. In **Sarla Verma** (supra), the Supreme Court, for the purpose of determination of the dependency, in case of the deceased being a bachelor, has observed as under:

“31. 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.

32. 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."

7. In the Impugned Award, however, the learned Tribunal has deducted 1/3rd of the income towards personal expenses of the deceased. The same being contrary to the judgment of **Sarla Verma** (supra) cannot be sustained. The Impugned Award to that extent shall stand modified.

8. The learned counsel for the appellant further submits that in terms of the judgment of Supreme Court in **National Insurance Company v. Pranay Sethi & Ors.**, (2017) 16SCC 680, only an amount of Rs.15,000/- towards loss of estate; Rs.40,000/- towards loss of consortium; and Rs.15,000/- towards funeral expenses, could have been granted in favour of the claimants. She fairly submits that in terms of the judgment of the Supreme Court in **Anjali & Ors. v. Lokendra Rathod & Ors.**, AIR 2023 SC 44, and **Rahul Ganpatrao Sable v. Laxman Maruti Jadhav (Dead) Through Lrs. & Ors.**, 2023 SCC OnLine SC 780, the amount of Rs.40,000/- towards the loss of consortium is to be awarded for each of the claimants.

9. I find merit in the submission of the learned counsel for the appellant.

10. In **Pranay Sethi** (supra), the Supreme Court, for the compensation on non-pecuniary heads, has held as under:



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

xxx

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

11. In **Anjali** (supra) and in **Rahul Ganpatrao Sable** (supra), it was held that the rate of Rs.40,000/- stipulated in **Pranay Sethi** (supra), in terms of the later judgment of the Supreme Court in **United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur & Ors.**, (2021) 11 SCC 780, is to be multiplied for each of the claimants.

12. In view of above, the Award granting compensation of Rs.5,10,000/- as composite non-pecuniary damages to the respondent nos.1 to 6 is modified. The respondent nos.1 to 6/claimants shall be entitled to the loss of estate and funeral expenses at Rs.15,000/- each on these heads jointly. They shall be further entitled to Rs.40,000/- each towards the loss of consortium, totalling to Rs.2,40,000/-.

13. Though none has been appearing for the respondent nos.1 to 6/claimants, it was put to the learned counsel for the appellant if the Award requires further modification inasmuch as it does not grant future prospects to the claimants as stipulated in **Pranay Sethi** (supra). The learned counsel for the appellant does not fairly dispute the above.

14. In view of same, 40% of the income shall be added towards future prospects for determining the loss of income on the death of the

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15. In view of above, total awarded amount shall stand modified as under:

Particulars	Amount
Income	Rs.51,000/- per annum
Future Prospects	40% = Rs.71,400/- per annum (Rs.51,000/-+40% of Rs.51,000/- i.e. Rs.20,400/-)
Deduction towards personal expenses	$\frac{1}{2}$ = Rs.35,700/- per annum
Age	13
Multiplier	15
Loss of Dependency	Rs.5,35,500/- (Rs.35,700/- x 15)
Non pecuniary heads	Rs.2,70,000/-
Total compensation	Rs.8,05,500/-

16. The above amount shall carry interest at the rate of 9% per annum from the date of the filing of the claim petition till realization.

17. The learned counsel for the appellant submits that, in terms of the order dated 12.03.2018 of this Court, the entire awarded amount was deposited with the learned Tribunal.

18. In view of above, as the compensation amount has been reduced, the excess amount deposited by the appellant alongwith interest accrued thereon shall be released in favour of the appellant by the learned Tribunal. The remaining amount shall be released in favour of the respondent nos.1 to 6/claimants in terms of the

Impugned Award.



19. The statutory amount deposited by the appellant shall also be released in favour of the appellant alongwith interest accrued thereon.
20. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 2, 2023/Arya/ss

Click here to check corrigendum, if any

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