

\$~

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

%

***Reserved on: 06.03.2023
Pronounced on: 11.04.2023***

+ **MAC.APP. 648/2014 and C.M. No. 11656/2014**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani, Advocate.

versus

BIMLESH & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
respondent Nos. 1 to 7.

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 Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 29.04.2014 passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Saket Courts, Delhi in Suit No. 221/2013 ("*impugned award*").
2. Facts borne out of the records are that on 13.06.2013 at around 12.30 pm, deceased Prem Singh driving his motorcycle no. DL 3S CN 2327, carrying claimant Bimlesh as pillion rider was going from Delhi towards his native village, when reached near bridge of Noorpur, PS Tapple, Distt. Aligarh, UP, on the nature's call of the claimant Bimlesh, deceased stopped the motorcycle on the side of the road, at the same time offending truck bearing no. UP 78 BT 9012 driven by Respondent No. 8 in rash and

MAC.APP. 648/2014

Page 1 of 15

negligent manner came at a fast speed and hit the deceased and his motorcycle. As a result, he sustained multiple grievous injuries and was removed to Kailash hospital, Noida by ambulance of Yamuna Expressway and at the hospital he was declared brought dead. Thereafter, his postmortem was conducted at the Government hospital. Being severally affected physically, mentally and financially by the accident, the respondents/claimants have filed a claim petition before the learned Claims Tribunal seeking a compensation of Rs. 30 lacs.

3. By way of impugned Award dated 29.04.2014, the learned Claims Tribunal awarded a compensation of Rs. 20,07,199/- with interest @ 9% 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. The learned Claims Tribunal granted the compensation under the following heads:-

Head	Amount
Loss of Dependency	Rs. 17,72,199/-
Love and Affection	Rs. 1,00,000/-
Funeral Expenses	Rs. 25,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of Estate	Rs. 10,000/-
Total	Rs. 20,07,199/-

SUBMISSION OF THE APPELLANT

4. Mr. Sameer Nandwani, learned counsel for the Appellant/Insurance Company contended that the Impugned order is perverse and has been passed without appreciating the principles of law, documents and the evidence on record. Learned counsel further contended that no documentary proof was brought on record by the respondent to show his employment as such applying minimum wages for calculation of compensation and also granting 50% increase towards future is perverse and arbitrary. He further contended that the ratio laid down in *National Insurance Co. Ltd Vs Pranay Sethi & Ors* reported as **2017 AIR (SC) 5157** cannot be applied retrospectively.

SUBMISSION OF THE RESPONDENTS

5. Mr. S. N. Parashar, learned counsel appearing on behalf of Respondents/Claimants contended that the negligence of the driver of the offending vehicle has been proved on record by production of records pertaining to the criminal case registered against the driver as also the testimony of PW-1/Bimlesh w/o of the deceased who was an eye witness to the alleged incident. Learned counsel further contended that in terms of judgment of Supreme Court in the case of *National Insurance Co. Ltd Vs Pranay Sethi & Ors* reported as **2017 AIR (SC) 5157** an addition of 40% of the established income of the respondents/claimants has to be granted under the head 'Future Prospects' instead of 50% as the respondents/claimants was of the age of 28 years at the time of the alleged incident. Learned counsel further contended that as per the testimony of PW-1/Bimlesh, respondent No. 1 herein, the deceased was working as Driver and was earning a sum of Rs. 14,000/- per month, however, the

learned Claims Tribunal erred in granting minimum wages of unskilled labour instead of skilled labour. Learned counsel further contended that the deceased was survived of seven dependents and as such the deduction of self expenses should be calculated as 1/5 instead of 1/4 as calculated by learned Claims Tribunal. Learned counsel while placing reliance on the case of *Pranay Sethi (supra)* contended that compensation under the head ‘*Loss of Consortium*’ ‘*Loss of Estate*’ and ‘*Loss of Funeral Expenses*’ as well as on other heads needs to be modified/enhanced. Learned counsel fairly concedes that in terms of dicta of *Pranay Sethi (Supra)*, compensation under the head ‘*Love and Affection*’ has to be deducted.

LEGAL ANALYSIS

6. This Court has heard the arguments advanced by learned counsel for both the parties and perused the documents on record relied upon by the parties.
7. The Appellant is challenging the impugned Award on a limited ground that (i) applying minimum wages for calculation of compensation and also granting 50% increase towards future prospects under the head ‘*Loss of Income*’ and ‘*Loss of Future Income*’ is perverse and arbitrary (ii) that the ratio laid down in *Pranay Sethi (supra)* cannot be applied retrospectively. In rebuttal, contentions of Respondents/Claimants are that (i) negligence of the offending vehicles has been proved by production of records pertaining to criminal case as also the testimony of PW-1/Bimlesh who was an eye witness (ii) Compensation under the head ‘*Future Prospects*’ shall be calculated by adding 40% of the established income instead of 50%. (iii) learned Claims Tribunal erred in granting minimum wages of unskilled labour instead of skilled labour (iv) that deduction of self expenses should be calculated as 1/5 instead of 1/4 as calculated by learned Claims

Tribunal. (v) that compensation under the head '*Loss of Consortium*' '*Loss of Estate*' and '*Loss of Funeral Expenses*' as well as on other heads needs to be modified/enhanced.

(i) **Applicability of ratio laid down by the Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors?**

8. The judgment rendered by the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as **2017 AIR (SC) 5157** has resolved the incongruities and irregularities in various decisions passed by the Courts and Motor Accident Claims Tribunals and has brought a uniformity in relation to grant of compensation to the victim/dependents affected in motor accidents across India.
9. A Full Bench of the Punjab and Haryana High Court in ***Commissioner of Income Tax v. Smt. Aruna Luthra*** reported as **(2001) 252 ITR 76** has opined that 'The declaration is-This was the law. This is the law. This is how the provision shall be construed'. Relevant portion of the same is as under:-

*"A Court decides a dispute between the parties. The cause can involve decision on facts. It can also involve a decision on a point of law. Both may have bearing on the ultimate result of the case. When a court interprets a provision, it decides as to what is the meaning and effect of the words used by the Legislature. It is a declaration regarding the statute. **In other words, the judgment declares as to what the Legislature had said at the time of the promulgation of the law. The declaration is-This was the law. This is the law. This is how the provision shall be construed.***

Julius Stone in Social Dimensions of Law and Justice (First Indian Reprint 1999) (Chapter XIV), while dealing with the subject of Judge and Administrator in Legal Ordering, observes as under:

"If, then, a main impulse underlying the stare decisis doctrine is that justice should respect reasonable reliance of affected parties based on the law as it seemed when they acted, this impulse still has force when reliance is frustrated by an overruling. Despite this, it has long been assumed that a newly emergent rule is to be applied not only to future facts, and to the necessarily past facts of the very case in which it emerges, but to all cases thereafter litigated, even if these involved conduct, which occurred before the establishment of the new rule. This has proceeded ostensibly on the conceptual basis, clearly formulated since Blackstone, that the new holding does not create, but merely declares, law. So that any prior putative law under which the parties acted is to be regarded as simply not law. "

(emphasis supplied)

10. It is explicit that the Constitution Bench Judgment in the case of ***Pranay Sethi (supra)*** is a declaration of law which nowhere holds that it would be applied only prospectively. The Hon'ble Supreme Court could have directed the implementation of the judgment in the case of ***Pranay Sethi (supra)*** prospectively, however, there was no such direction contained in the said judgment. Consequently, the claimants are entitled to the benefit arising out of the judgment in the case of ***Pranay Sethi (supra)***.

- (ii) ***Whether learned Tribunal erred in granting minimum wages of unskilled labour instead of skilled labour?***
- (iii) ***Whether documentary proof was brought on record by the respondent to show his employment and whether the trial court has rightly applied minimum wages for calculation of compensation for granting 50% increase towards future prospects?***

11. In this context, this Court has examined the evidence produced by the parties before the learned Claims Tribunal and also perused the documents
MAC.APP. 648/2014

Page 6 of 15

placed on record. PW-1, wife of the deceased (claimant) appeared before the learned Claims Tribunal and by way of her affidavit produced her evidence whereby she deposed that:-

“...That at the time of accident my husband aged about 28 years and was doing his own work as Driver and was earning about Rs. 14,000/- per month. We all the legal heirs were fully depended upon the income of my deceased husband.”

12. During cross-examination, the claimant deposed as under:-

*“I am 8th class passed. I am a house wife. It is wrong to suggest that I am a working lady. Deceased was having a licence. It is wrong to suggest that no accident was happened due to a truck. The number of the truck is UP-7S-BT-9012. **It is wrong to suggest that my husband deceased Prem Singh was not earning Rs. 14,000/- per month but today I did not bring regarding his income proof.** Police recorded my statement at Kailash hospital, situated at Noida duly signed. Police never took me on the spot where the accident was happened. It is also wrong to suggest that my mother in law/petitioner no. 6 and my father in law/petitioner no. 7 are working. It is also wrong to suggest that I have lodged the false FIR against Rl. It is wrong to suggest that I am deposing falsely.”*

नित्यमेव जयते (emphasis supplied)

13. The Hon’ble Apex Court in the case of **Pranay Sethi (Supra)** with regard to grant of compensation under the head ‘Future Prospects’ has held as under:-

*“....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., **an addition of 40% of the established income of the deceased***

towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.”

(emphasis supplied)

14. At this stage, it is relevant to mention that the Motor Vehicles Act, 1988 (herein after referred to as '**the Act**') is a beneficial legislation, the Hon'ble Supreme Court time and again has reiterated that the Act stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for the court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance. The Courts should pragmatically compute the loss sustained which has to be in the realm of realistic approximation.
15. In order to ascertain, the applicability of minimum wages, the Supreme Court in the case of **Hem Raj v. Oriental Insurance Co. Ltd.** reported as (2018) 15 SCC 654 has held that:-

*“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.”*

(emphasis supplied)

16. Admittedly, the deceased was 28 years of age at the time of alleged incident. Perusal of the testimony of PW-1/claimant shows that the deceased was working as a driver and was earning Rs. 14,000/- per month. There was no evidence led by the Insurance Company or the driver of the offending vehicle to negate the testimony of the PW-1. Though documentary proof was not produced by the claimant before the learned Tribunal for substantiating her statement in relation to income and occupation of her husband (the deceased) but its worth noting that in the written submission filed by learned counsel for the appellant it has been mentioned that *‘That the present appeal has arisen out of an accident dated 13.06.2013 which resulted in death of Sh. Prem Singh @ Prem Kumar. He was 28 years of age at the time of accident. He was working as a driver and was getting salary of Rs. 14,000.00 per month’*. It is a trite law that in absence of any evidence, documentary or otherwise, to establish the earnings of the injured, the Courts have to determine the income of the injured on the basis of the minimum wages notified under the *Minimum Wages Act*. Learned Claims Tribunal while calculating the compensation under the head ‘Loss of Dependency’ has assessed the income of the deceased by taking into account the minimum wages of an ‘unskilled labour’. This Court is of the view that the learned Claims Tribunal erred in granting minimum wages of ‘unskilled labour’. As per

MAC.APP. 648/2014

Page 9 of 15

the provisions of the Motor Vehicles Act, occupation of the driver falls under the category of 'skilled labour'.

17. In the present case, the learned Claims Tribunal on the basis of un-rebutted evidence led by the claimant has granted the minimum of unskilled labour to the respondent/claimant for assessing the compensation under the head '*Loss of Income*'. Having discussed the evidence recorded by the learned Claims Tribunal as also the settled principle of law, this Court is of the view that the deceased was a '*skilled labour*' and as per the minimum wages prevalent at the relevant time the salary of the deceased is assessed as Rs. 9,386/- per month.

18. Further, since the deceased was of the age of 28 years at the time of alleged incident, this Court is of the view that in terms of settled provision of law an addition of 40% of the established income of the deceased has to be granted under the head '*Future Prospects*' instead of 50% as awarded by the learned Claims Tribunal.

(iv) **Whether compensation under the 'Non pecuniary' heads needs to be modified?**

19. This argument raised by the learned counsel for the respondents is purely legal and based on the law settled by the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)***. In terms of ***Pranay Sethi (Supra)***, an addition of 40% of the established income of the deceased has to be granted under the head '*Future Prospects*' as the deceased was of the age of 28 years at the time of the alleged incident. The Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** case with regard to grant of compensation under the head '*Future Prospects*' has held as under:-

“....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.”

(emphasis supplied)

20. Accordingly, in view of the settled position as discussed above, this Court is of the view that an addition of 40% of the established income of the deceased has to be granted under the head ‘*Future Prospects*’ instead of 50% as awarded by the learned Claims Tribunal.
21. 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 & Ors. Vs DTC &***

Ors. reported as (2009) 6 SCC 121. As per the Judgment passed by the Hon'ble Supreme Court in the case of *Sarla Verma (Supra)* deduction 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.”

(emphasis supplied)

22. It is borne from the records that the deceased was survived of seven dependents. Accordingly, in terms of *Pranay Sethi (supra)* case deduction towards personal and living expenses of the deceased shall be one fifth (1/5). Further in the case of *Pranay Sethi (Supra)*, the Hon’ble Supreme Court has held that for the conventional heads, namely, ‘*Loss of Estate*’, ‘*Loss of Consortium*’ and ‘*Funeral Expenses*’ amount of compensation is fixed as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years.

23. In view of the above discussion the impugned Award dated 29.04.2014 is modified to the following extent:

(a) ‘*Loss of dependency*’ is calculated as

1. Rs. 9,386/- + 40% (Rs. 3,754.40/-) = Rs. 13,140.40/-

2. Rs.13,140.40/- less 1/5 deduction (Rs. 2,628.08/-) =
Rs.10,512.32/-

3. Rs. 10,512.32/- X 12 X 17 = **Rs. 21,44,513.28/-**

(b) ‘*Loss of Consortium*’ is computed as Rs. 44,000 X 7 =
Rs.3,08,000/- to be paid to the claimants.

(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) Total compensation to be paid to claimants is;
**Rs.21,44,513.28/- + Rs. 3,08,000 + Rs. 16,500/- +
Rs.16,500/- = Rs. 24,85,513.28/-.**

24. Accordingly, the compensation granted by the learned Claims Tribunal is enhanced from **Rs. 20,07,199/-** to **Rs. 24,85,513.28/-**.

25. Before parting with the judgment, it is worth noting that the Hon'ble Supreme Court in the case of *Surekha and others Vs Santosh and others* reported as **2020 ACJ 2156** while granting enhancement of compensation to the claimants without filing cross objections has observed that:-

“2. This appeal takes exception to the judgment and order dated 4.1.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016 [Shriram General Ins. Co. Ltd. v. Surekha, 2020 ACJ 434 (Bombay)], whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs. 49,85,376, however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well settled that in the matter of insurance claim compensation in reference to the motor accidents, the court should not take hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants.

4. As a result, we modify the order passed by the High Court to the effect that compensation amount payable to the appellants is determined at Rs. 49,85,376, with interest thereon as awarded by the High Court”

(emphasis supplied)

26. Applying the aforesaid observations of the Hon'ble Supreme Court, this Court is of the opinion that the respondents/claimants can be granted enhanced compensation without preferring an appeal or a cross-objection in an appeal filed by the Insurance Company.

27. This Court vide order dated 24.07.2014, directed the Appellant to deposit the entire decretal amount with the Registrar General of this Court. This Court further directed the release of 60% of the deposited amount to the Claimants. In compliance of the directions of this Court, the Appellant deposited the entire decretal amount with the Registrar General of this Court, 60% of the said deposit was released to the Claimants and balance 40% is still lying deposited with this Court.
28. Accordingly, the Appellant/Insurance Company is directed to deposit the enhanced compensation with 9% interest from the date of filing of the present Appeal with the Registrar General of this Court within a period of 4 weeks. Upon such deposit, the Registry is directed to release the enhanced compensation in favour of the Claimants. The balance 40% amount which is already lying deposited with this Court shall also be released in favour of the claimants along with interest within a period of 2 weeks. Statutory amount, if deposited, be released to the appellant/Insurance Company.
29. There would be no change in the rate of interest awarded by the learned Claims Tribunal.
30. With the above directions, appeal stands disposed of. Pending application also stands disposed of. No order as to costs.

GAURANG KANTH, J.

APRIL 11, 2023