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

% ***Reserved on: 14.12.2022***
Pronounced on: 12.01.2023

\+ **MAC.APP. 955/2014 and C.M. No. 17523/2014**

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Tarkeshwar Nath, Mr.Lalit Mohan, Mr. Virat Saharan and Mr. Harshit Singh, Advocates.

versus

SMT.SAVITRI DEVI & ORS ..... Respondents

Through: Mr. Anurag Singh, Advocate for respondent Nos. 1 & 2.

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 02.07.2014 **("impugned award")** passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Dwarka Courts, New Delhi.

2. By way of the impugned Award dated 02.07.2014, learned Claims Tribunal awarded a compensation of Rs. 52,29,900/- with interest @ 7.5% per annum including the amount of interim award of Rs.50,000/- from the date of filing of the

claim petition till realization of the amount and directed the Insurance Company to deposit 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. 2,99,700/- X 17)	Rs.50,94,900/-
Loss of Love & Affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss of Estate	Rs.10,000/-
Total	**Rs.52,29,900/-**

SUBMISSION OF THE APPELLANT

3. Mr. Tarkeshwar Nath, learned counsel for the Appellant/Insurance Company contended that the learned Claims Tribunal has not appreciated that the respondents miserably failed to prove the salary of the deceased as Rs.37,000/- per month in as much as PW-2/Sh. Robinson despite opportunity having being given, could not produce any corroborating evidence to show that the salary of the deceased was Rs. 37,000/- per month at the time of the alleged incident. PW-2 made a general statement that application given by the deceased and attendance registers were misplaced, however, no corroborating and supporting document to this effect was filed

by the witness. Learned counsel further contended that in terms of dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as ***(2017) 16 SCC 680,*** compensation under the head '*Future Prospects*' is to be paid by adding 40% of the assessed income of the claimant instead of 50% as awarded by the learned Claims Tribunal. Learned counsel further contended that in terms of dicta of ***Pranay Sethi (Supra),*** compensation under the head '*Love and Affection*' has to be deducted.

SUBMISSION OF THE RESPONDENTS

4. Mr. Anurag Singh, learned counsel appearing on behalf of Respondents while placing reliance on the testimony of PW-2/Sh. Robinson, Accountant, M/s Fashion Experts Company contended that the deceased joined the company pursuant to the appointment letter (**Ex. PW-1/B***)*. Learned counsel also placed reliance on Statement of Accounts of the deceased **(Ex. PW-2/C)** to contend that the deceased was paid salary in accordance with the agreed salary of Rs. 37,000/- per month. He further contended that testimony of PW-2 alongwith Ex. PW-l/B makes emphatically clear that the deceased was working with M/s Fashion Experts as a 'Designer' on a salary of Rs. 37,000/- per month. 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*' needs to be modified/enhanced.

COURT'S REASONING

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

> *"3. On 29/12/2006, the deceased Sh. Hitesh Kumar Chopra met with an accident with a vehicle bearing no. DL-lP-6332 which was being driven by respondent no. 1, Sh. Udai Bhan who came at a very high speed driven in a rash & negligent manner, hit the motorcycle of the deceased bearing no. DL-7SAQ-1011. As a result of which he received fatal injuries."*

6. Learned counsel for the appellant vehemently argued that the learned Claims Tribunal has incorrectly calculated the income of the deceased as to be of Rs. 37,000/- per month. This Court has gone through all the documents and pleadings on record. PW-2/Sh. Robinson, Accountant, M/s Fashion Experts Company proved the income of the deceased and also proved the fact that he was employed with M/s Fashion Experts as a 'Designer' before his death. At this stage, it is relevant to peruse the testimony of PW-2/Sh. Robinson, Accountant, M/s Fashion Experts, relevant portion of which is recapitulated as under:-

> "*Sh, Hitesh Kumar Chopra was appointed in our company vide appointment letter dated 12,12.06 which is Ex. PW-1/B, Pursuant to this appointment letter he joined the services with our company. After 14 days of his joining he met with the accident. Our company had made the payment of the services rendered by him vide voucher, attested copy of which is Ex. PW-2/B. 1 have also brought the statement of account of our company mentioning the payment made to Hitesh Kumar which is Ex. PW- 2/C.*"

7. It is evident from the perusal of appointment letter dated 12.12.2006 **(Ex. PW-1/B)** that the deceased was appointed in

M/s Fashion Experts, a Government of India recognized export house for a monthly salary of Rs. 37,000/- per month. Further, the cash voucher **(Ex. PW-2/B)** depicts that an amount of Rs.19,923/- was paid to the brother of the deceased taking into accounts his monthly salary as Rs. 37,000/-. Ex. PW-1/B coupled with Ex. PW-2/B leaves no room of doubt that the deceased was appointed in M/s Fashion Experts for monthly salary of Rs. 37,000/-. As such the argument raised by counsel for the appellant with regard to error in calculation of the monthly income of the deceased holds no ground.

8. The rest of the arguments raised by learned counsel for the parties are 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 should be granted under the head '*Future Prospects'* as the deceased was of the age of 27 years at the time of the alleged incident. 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.***

> *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. SarlaVerma thinks it appropriate not to add any amount and the same has been approved in ReshmaKumari. 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.*"
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> *(emphasis supplied)*

9. 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 & Anr***. reported as ***(2009) 6 SCC 121,*** according to which 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.**"*

10. It is borne out from the records that the deceased was a bachelor and accordingly, in terms of the aforesaid judgments deduction towards personal and living expenses of the deceased, should be one half (1/2). 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.

11. In view of the above discussion the impugned Award dated 02.07.2014 is modified as under:-

(a) '*Loss of dependency*' is calculated as

1. Rs. 37,000/- X 12 =4,44,000/-
2. Rs. 4,44,000/- minus 10% TDS deduction (i.e. Rs. 4,44,000/- minus Rs. 44,400/-) = Rs. 3,99,600/-
3. Rs. 3,99,600/- + 40% (Rs. 1,59,840/-) = Rs. 5,59,440/-
4. Rs. 5,59,440/- less 1/2 deduction (Rs. 2,79,720/- =Rs. 2,79,720/-
5. Rs. 2,79,720X 17 = **Rs. 47,55,240/-**

(b) '*Loss of Consortium*' is computed as Rs. 44,000 X 2(mother and father) = **Rs. 88,000/-** 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.

Total compensation to be paid to Respondents/claimants is; **Rs.47,55,240/- + Rs. 88,000+ Rs. 16,500/- + Rs. 16,500/- = Rs. 48,76,240/-.**

12. Accordingly, the compensation granted by the learned Claims Tribunal is reduced from **Rs. 52,29,900/-** to **Rs. 48,76,240/-.**

13. Learned Claims Tribunal had attached the decretal amount from the account of the Appellant Insurance Company. This Court vide order dated 28.10.2014 directed the learned Claims Tribunal to release 50% of the awarded amount to the Claimant and balance 50% to be kept in an FDR. Learned Claims Tribunal is directed to deduct difference of the compensation amount, i.e. the difference between the original awarded amount and the enhanced amount, with proportionate interest from the balance 50% amount and release it to the Appellant. Balance amount shall be released to the Claimant in terms of the Award dated 02.07.2014. Statutory amount, if deposited, be released to the appellant/Insurance Company.
14. There would no change in the rate of interest awarded by the learned Claims Tribunal.
15. Appeals stands disposed of. Pending application also stands disposed of. No order as to costs.

GAURANG KANTH, J.

JANUARY 12, 2023

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