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

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Reserved on: 17.05.2023
Pronounced on: 11.07.2023

+ **MAC. APP. 674/2015, CM No. 6778/2019, 36391/2019 & 29186/2021**

**HDFC AGRO GENERAL INSURANCE
CO. LTD.**

.....Appellant

Through: Mr. A.K. Soni, Advocate

versus

**MAM KAUR & ORS. (RELIANCE GENERAL INSURANCE
CO. LTD.)**

...Respondents

Through: Mr. S. N. Parashar, Advocate

**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 03.06.2015 passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, North East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 324/2012.
2. Facts borne out of the records are that on 10/09/2011 at about 02:45 AM deceased and his friend Sushil were coming from Durga Puri

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Chowk after taking the dinner and when they both reached near Gokul Puri Flyover, Ganda nala near Gas Godown, at the same time driver of the offending vehicle came from back side, allegedly in a rash and negligent manner, and hit the deceased with great force due to which deceased sustained multiple injuries. Deceased was immediately taken to GTB Hospital where he died during the treatment. The FIR No. 315/11 under Sections 279/337/304-A of the Indian Penal Code, 1860 was also registered at P.S. Gokul Puri in this respect. Being severally affected physically, mentally and financially by the accident, the respondents have filed a claim petition before the Tribunal seeking compensation.

3. By way of impugned Award dated 03.06.2015 the Tribunal awarded a compensation of Rs. 8,56,282/- with an 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 Tribunal granted the compensation under the following heads:-

Head	Amount
Loss of Dependency	Rs. 7,01,282/-
Love and Affection	Rs. 1,00,000/-
Funeral Expenses	Rs. 25,000/-
Loss of Estate	Rs. 10,000/-
Cost of Litigation	Rs. 20,000/-
Total	Rs. 8,56,282/-



SUBMISSIONS OF THE APPELLANT

4. Mr. A.K. Soni, learned counsel for the Appellant/Insurance Company, limited his arguments on quantum of compensation and contended that in terms of dicta of Hon'ble Supreme Court in the case of *National Insurance Co. Ltd v. Pranay Sethi & Ors.* reported as **(2017) 16 SCC 680**, an addition of 25% of the established income of the deceased instead of 30% has to be granted under the head '*Future Prospects*'. Learned counsel while placing reliance on the case of *Pranay Sethi (supra)* contends that compensation under the head '*Love and Affection*' needs to be deducted. Learned counsel fairly concedes that in terms of dicta of *Pranay Sethi (Supra)*, compensation under the heads '*Loss of Consortium*', '*Loss of Estate*' and '*Funeral Expenses*' needs to be modified.

SUBMISSIONS OF THE RESPONDENT

5. Mr. S.N. Parashar, learned counsel appearing on behalf of Respondents/Claimants fairly conceded that in terms of dicta of *Pranay Sethi (Supra)*, compensation under the head '*Love and Affection*' needs to be deducted. He also accepted that an addition of 25% of the established income of the Respondent/Claimant is to be calculated for assessing compensation under the head '*Future Prospects*'. Learned counsel further agreed that in terms of the dicta of *Pranay Sethi (Supra)*, compensation under the heads '*Loss of Consortium*', '*Loss of Estate*' and '*Funeral Expenses*' needs to be modified.



LEGAL ANALYSIS

6. The arguments raised by the 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)***. Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** with regard to compensation under the heads 'Future Prospects' and 'Non-Pecuniary' has held as under:-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb Rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb Rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

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59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of



standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. 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)

7. From the perusal of the aforesaid Judgment, it is emphatically clear that for the conventional heads, namely, ‘Loss of Estate’, Loss of Consortium’ and ‘Funeral Expenses’, the 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. Further, since the deceased was of the age of 41-42 years at the time of alleged



incident, an addition of 25% of the established income should be granted under the head '*Future Prospects*'.

8. In view of the above discussion, the impugned Award dated 03.06.2015 is modified to the following extent:

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

1. Rs. 6,422/- + 25% (Rs. 1605.50/-) = Rs. 8,027.50/-

2. Rs. 8,027.50/- less ½ deduction (Rs. 4,013.75/-) = Rs. 4,013.75/-

3. Rs. 4,013.75/- x 12 x 14 = **Rs. 6,74,310/-**

(b) '*Loss of Consortium*' is computed as Rs. 44,000 x 1 = **Rs. 44,000/-**.

(c) '*Loss of Estate*' is quantified as **Rs. 16,500/-**.

(d) '*Funeral Expenses*' is quantified as **Rs. 16,500/-**.

(e) Compensation under the head '*Love and Affection.*' = Nil.

(f) '*Cost of Litigation*' remains at Rs. 20,000/-.

(g) Total compensation to be paid to claimants is **Rs. 6,74,310/- + Rs. 44,000 + Rs. 16,500/- + Rs. 16,500/- + Rs. 20,000/- = Rs. 7,71,310/-**.

9. Accordingly, the compensation granted by the Tribunal is reduced from **Rs. 8,56,282/-** to **Rs. 7,71,310/-**.

10. It is borne from the records that the entire awarded amount has been deposited in this Court by the Appellant out of which 50% of the awarded amount has already been released to deceased respondent



No.1. Registry is directed to release the differential amount (difference between the deposited amount and the amount awarded by this Court) with accrued interest thereon to the Appellant. The balance amount along with accrued interest thereon shall be released to the legal heirs of the deceased Respondent in equal proportion. Accordingly, Registry is directed to release 1/4th of the balance amount along with interest accrued thereon to **(1)** Respondent No. 1(a), **(2)** Respondent No.1(b)(i), 1(b)(ii), **(3)** Respondent no. 1(c), and **(4)** Respondent No. 1(d). Statutory amount, if deposited, be released to the Appellant/ Insurance Company.

11. There would be no change in the rate of interest awarded by the learned Tribunal.
12. With the above directions, appeal stands disposed of along with all the pending applications. No order as to costs.

GAURANG KANTH, J.

JULY 11, 2023