



2023:DHC:7677



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17.10.2023

(10)+ MAC.APP. 999/2017
(11)+ MAC.APP. 1002/2017

LAXMI & ORS
MANJU & ORS

..... Appellants
..... Appellants

Through: Mr.Anshuman Bal, Adv.

versus

TATA AIG GEN INS CO LTD &ORS

..... Respondents

Through: Ms.Vandana Kahlon, Mr.Rudra
Kahlon, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 41255/2017, 41256/2017 in MAC.APP. 999/2017
CM APPL. 41543/2017, 41544/2017 in MAC.APP. 1002/2017

1. For the reasons stated in these applications, the delay in filing and re-filing the appeals are condoned.

2. The applications are disposed of.

CM APPL. 43832/2019 in MAC.APP. 1002/2017

3. For the reasons stated in the application, the costs imposed vide order dated 03.09.2019 shall stand waived.

4. The application is disposed of.

MAC.APP. 999/2017 & MAC.APP. 1002/2017

5. These appeals have been filed challenging the Award(s) dated 12.04.2017 [hereinafter referred to as the 'Impugned



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Award(s)] passed by the learned Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 14939/15, titled ***Laxami & Ors v. Sharma Trading Company & Ors.***; and MACT No.14940/2015, titled ***Manju & Ors v. Sharma Trading Company & Ors.***

6. As both the appeals arise out of the Claim Petition(s) filed claiming compensation for the death(s) that occurred as a result of the same accident and raise almost identical issues, they are being disposed of by this common judgment.

7. Briefly stated, the facts leading to the present appeals are that on 23.09.2012 at about 8 AM, the deceased- Mr.Vijender along with the deceased- Mr. Ashok Kumar were travelling in a van from Jind to Delhi. When they reached near NH-10 Aasaudha Chowki in front of 1-JP Petrol Pump Rakba Village, Bahadurgarh, Haryana, a canter, bearing No. HR-46C-6975, came from the opposite direction on the wrong side of the road and hit the Van of the deceased(s). As a result of which, both the deceased suffered fatal injuries. The Claim Petitions were filed claiming compensation for their death that had occurred as a result of the motor vehicular accident.

Future Prospects

8. The appellants are aggrieved of the learned Tribunal in not taking into account future prospects of increase of the income of the deceased.

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9. It was established on record that the deceased-Mr.Vijender was aged about 30 years on the date of the accident. He was claimed to be working in a private service. Applying the ratio of the judgment in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, therefore, future prospects at the rate of 40% should have been taken into account for determining the loss of dependency.

10. Similarly, the deceased- Mr.Ashok Kumar was aged about 34 years on the date of the accident and was claimed to be working as a TSR driver. Applying the ratio in ***Pranay Sethi***, (supra), in his case as well future prospects at the rate of 40% should have been added towards the loss of dependency for the claimants.

11. It is ordered accordingly.

Loss of Consortium

12. The learned counsel for the appellants in both the appeals then contended that even the loss of consortium has been wrongly confined at Rs.1 lakh each in each of the Awards. He submits that in terms of the judgment in ***Pranay Sethi*** (supra), as explained in ***United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Others***, (2021) 11 SCC 780, each of the claimants are entitled to loss of consortium of Rs.40,000/- each.

13. I find merits in the said contention.

14. The loss of consortium can be a case of 'spousal

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consortium’, ‘*filial consortium*’ or ‘*parental consortium*’. In the present case, the claimants are the widow(s), children and the parents of the deceased. They all are entitled to loss of consortium in their own right, at Rs.40,000/- each.

15. Accordingly, the compensation towards the loss of consortium shall stand enhanced to Rs.2 lakhs.

Loss of Love & Affection; Funeral Expenses; and Loss of Estate

16. At this stage, I must note that the learned counsel for the Insurance Company submits that if the judgment of the Supreme Court in *Pranay Sethi* (supra) is to be applied, then the claimants are not entitled to claim any compensation towards ‘loss of love and affection’. He submits that the Impugned Award(s), insofar as it awards compensation towards the loss of love and affection in favour of the claimants, be set aside. He further submits that the compensation towards funeral expenses, and loss of estate also deserves to be reduced to Rs.15,000/- each.

17. I am afraid I cannot agree with the submission made by the learned counsel for the Insurance Company. Though it is true that in terms of the judgement of *Pranay Sethi* (supra), the claimants would be entitled to only a sum of Rs.15,000/- towards the funeral expenses and Rs.15,000/- towards the loss of estate, in absence of any cross-objection or cross-appeal by the Insurance Company, the compensation already awarded in





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favour of the claimants cannot be reduced.

18. The Supreme Court in *Ranjana Prakash v. Divisional Manager and Anr.*, (2011) 14 SCC 639 has held that in absence of any cross-objection or cross-appeal, the compensation that has been awarded to the claimants cannot be reduced by the Court.

Income of the Deceased-Mr. Ashok Kumar

19. The next challenge of the appellants in MAC. APPL.1002/2017 is on the learned Tribunal adopting the minimum wages of an unskilled worker for determining the income of the deceased.

20. The learned counsel for the appellants in MAC. APPL. 1002/2017 submits that the deceased- Ms.Ashok Kumar was working as a driver of a TSR. He submits that the claimant has produced before the learned Tribunal as evidence, his badge as a TSR driver as also his driving licence. He submits that therefore, the minimum wages for a 'Skilled' worker should have been adopted by the learned Tribunal for determining the loss of dependency.

21. On the other hand, the learned counsel for the Insurance Company submits that apart from producing the badge and the driving licence of the deceased, no other evidence has been led by the claimants to prove that the deceased was indeed working as a driver of the TSR. In fact, there was no proof of income led by the claimants, compelling the learned Tribunal to determine

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the same on the basis of the minimum wages notified for a 'skilled' worker.

22. I have considered the submissions made by the learned counsels for the parties.

23. In **Chandra v. Mukesh Kumar Yadav**, (2022) 1 SCC 198, the Supreme Court has held as under:

"9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such license and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month."

(Emphasis Supplied)

24. In the present case, the claimants had duly proved before





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the learned Tribunal the TSR badge as also the driving licence of the deceased. It is to be remembered that the claimants are not to prove their claim before the learned Tribunal beyond reasonable doubt, as is applicable to a criminal case; the same has to discharge only on the preponderance of probability. In the present case, with the production of the badge of the deceased and his driving licence, in my opinion, the claimants had been able to discharge the onus of prove placed on them.

25. Though in view of the judgment in *Chandra* (Supra), the Claimants can claim even a higher amount as income of the deceased, they are at least entitled to the minimum wages notified by the Government of NCT of Delhi for a skilled worker to be applied for determining the income of the deceased. The minimum wages notified by the State of Delhi for an 'Skilled' worker as on the time of accident is Rs.8528/-. The same is therefore, taken into account to determine the income of the deceased.

26. It is ordered accordingly.

Conclusion and Directions

27. In view of the above, the compensation payable to the claimants is re-determined as under:

In MAC.APP. 999/2017

S.No.	Particulars	Ld. Tribunal	High Court
1.	Loss of Dependency	7020x3/4x12x17 =Rs.10,74,060/-	7020x140/100x3/4x12x17 =Rs.15,03,684/-
2.	Love and Affection	Rs.1,00,000/-	Rs.1,00,000/-

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3.	Loss of Consortium	Rs.1,00,000/-	Rs.40,000x5 =Rs.2,00,000/-
4.	Loss of Estate	Rs.1,00,000/-	Rs.1,00,000/-
5.	Funeral Expenses	Rs.25,000/-	Rs.25,000/-
6.	Total Amounts	Rs.13,99,060/-	Rs.19,28,684/-
7.	<u>Enhanced Amount</u>	(Rs.19,28,684 - Rs.13,99,060) =Rs.5,29,624/-	

In MAC.APP. 1002/2017

S.No.	Particulars	Ld. Tribunal	High Court
1.	Loss of Dependency	Rs.7020x12x16x3/4 =Rs.10,10,880/-	Rs.8528x3/4x140/100x12x16 =Rs.17,19,244.80/-
2.	Love and Affection	Rs.1,00,000/-	Rs.1,00,000/-
3.	Loss of Consortium	Rs.1,00,000/-	Rs.40,000x5 =Rs.2,00,000/-
4.	Loss of Estate	Rs.1,00,000/-	Rs.1,00,000/-
5.	Funeral Expenses	Rs.25,000/-	Rs.25,000/-
6.	Total Amounts	Rs.13,35,880/-	Rs.21,44,244.80
7.	<u>Enhanced Amount</u>	(Rs.21,44,244.80 - Rs.13,35,880) =Rs.8,08,364.80	

28. The Insurance Company shall deposit the enhanced amount along with interest at the rate and for the period as prescribed in the Impugned Award(s) with the learned Tribunal within a period of eight weeks from today. The same shall be released in favour of the claimants in accordance with the schedule of disbursal as prescribed in the Impugned Award(s).

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29. As the Insurance Company, by the Impugned Award(s), has been granted a right to recover the compensation paid from the owner and the driver of the offending vehicle, such right shall enure also towards the enhanced compensation.

30. The appeals are disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 17, 2023/Arya/ss

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