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

Date of decision: 20.12.2023

+ **MAC.APP. 893/2017 & CM APPL. 36688/2017**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr.Pankaj Seth, Adv.

versus

JUNIS KHAN & ORS Respondents
Through: Mr.Shrey Chathly, Adv. for R-1-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APP No. 61526/2023

1. This is an application seeking condonation of delay of 2291 days in filing of the cross-objections. The applicants, respondent nos.1 and 2 in the appeal, state that they only subsequently realised that in order to be entitled to the grant of enhancement of compensation in terms of the judgments of the Supreme Court, they would have to file their own cross-objection/cross appeal.
2. The learned counsel for the applicants submits that the applicants should not be made to suffer a prejudice only because they relied upon the legal advice received, which was believed to be correct.
3. On the other hand, the learned counsel for the appellant submits that the applicants have been unable to give a valid and sufficient cause





for seeking condonation of delay. He submits that the cause shown by the applicants cannot be treated as a sufficient cause for the delay.

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

5. In the course of hearing of the present appeal, while the respondent nos.1 and 2 tried to make submissions seeking enhancement of the compensation granted in their favour by the learned Tribunal, an objection was raised by the learned counsel for the appellant stating that the applicants cannot be allowed to seek enhancement of the compensation in the absence of the cross-objections or cross-appeal. It appears that it is only then that the applicants realised that they would have to file separate cross-objection/cross appeal to seek enhancement of compensation. They appear to have clearly relied upon the advice received by them that there would be no need to file a separate appeal, cross-appeal, or cross-objections to seek enhancement of the compensation, as various judgments have held that such power would exist in a Court of appeal under Order XLI Rule 33 of the Code of Civil Procedure (in short, 'CPC'). The applicants cannot be made to suffer for relying on the legal advice received, which also is supported by various judgments.

6. It is to be remembered that the object of the Motor Vehicles Act, 1988 is to provide 'just' compensation to the victims of the road accident. It is a beneficial piece of legislation and therefore, a more liberal approach in favour of the victims of the road accident needs to be adopted.

7. Accordingly, the delay in filing of the cross objections is





condoned. The application is allowed.

CM APPL. 61525/2023

8. With the consent of the learned counsels for the parties, the cross objections have been heard finally along with the main appeal.

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9. This appeal has been filed by the appellant challenging the Award dated 08.08.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (North-District), Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACP no.506974 of 2016, titled *Sh.Junis Khan & Anr. v. Sh. Raja Ram & Ors.*

Challenge to the procedure adopted by the Ld. Tribunal

10. The appellant challenges the above Award stating that the learned Tribunal has erred in scuttling the inquiry to be conducted on a petition under Sections 166/140 of the Motor Vehicles Act, 1988 (in short, 'Act') based only on a legal offer made by the appellant.

11. Placing reliance on the judgment of this Court in *Bajaj Allianz General Insurance Co. Ltd. v. Smt. Reshnu Nisha & Ors.*, 2012 SCC OnLine Del 6274, the learned counsel for the appellant submits that where the legal offer given by the Insurance Company is rejected by the claimants, it is obligatory on the part of the learned Tribunal to hold an inquiry into the claim petition filed by the claimants under Section 166 of the Act, and to determine the same in accordance with law, by directing the parties to lead their respective evidence on the issue *inter alia* of the accident having taken place due to the rash and negligent driving of the offending vehicle. He submits that the learned Tribunal cannot scuttle





such inquiry based only on the legal offer made by the Insurance Company, which offer is made without prejudice to the rights and contentions of the Insurance Company.

12. On the other hand, the learned counsel for the respondent nos.1 and 2 submits that on the rejection of the legal offer, the parties, that is, the claimant and the appellant herein, made a statement before the learned Tribunal, as is recorded in the order dated 11.05.2017, that they do not wish to lead any further evidence in support of their stand before the learned Tribunal. Based thereon, the learned Tribunal proceeded with the adjudication of the claim petition. He submits that in the Impugned Award, the learned Tribunal, based on the registration of the FIR and the Charge Sheet against the driver of the Offending Vehicle, has concluded that the accident in question had occurred due to the Offending Vehicle being driven in a rash and negligent manner by the driver thereof, that is, the respondent no.3 herein. He submits that the respondent nos.3 and 4 had remained *ex parte* before the learned Tribunal. He submits that therefore, no fault can be found in the procedure adopted by the learned Tribunal, and the judgment of this Court in **Smt. Reshnu Nisha & Ors.** (supra) would have no application.

13. He submits that the Supreme Court in **Mangla Ram v. Oriental Insurance Co. Ltd. & Anr.**, (2018) 5 SCC 656, has held that, while dealing with the claim petition under Section 166 of the Act, the learned Tribunal is not bound by the pleadings of the parties and its function is to determine the amount of fair compensation. The learned Tribunal is to take a holistic view of the matter and is not bound by the strict proof of the accident being caused by a particular vehicle in a particular manner.





He submits that in the absence of any challenge to the involvement of the Offending Vehicle in the accident in question and of it being driven in a rash and negligent manner resulting in the accident, the learned Tribunal has rightly awarded compensation in favour of the claimants.

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

15. In the present case, the appellant had made a legal offer, without prejudice to its rights and contentions, for an amicable settlement of the claim of the respondent nos.1 and 2. The same was rejected by the said respondents. The learned Tribunal, vide its order dated 11.05.2017, recorded as under:

“ Ld. Counsel for Lrs of deceased submits that Lrs of deceased do not want to lead evidence regarding income and future prospects of the deceased and has requested for passing the award on the basis of DAR. Ld. Counsel for insurance company states at Bar that insurance co has no statutory defence in this case and has already given its legal offer dt. 02.03.17. Ld counsel for Lrs of deceased submits that the legal offer of Rs.8,44,841/- is not acceptable to the Lrs of deceased since the said offer given by insurance company under pecuniary as well as non-pecuniary heads are not as per the latest law. Statement of counsel for Lrs of deceased has been recorded separately. Ld counsel for insurance co. submits that he also does not wish to lead any evidence.”

16. The respondent nos.3 and 4 have remained *ex parte* before the learned Tribunal. In view of the fact that both the contesting parties, that is, the respondent nos.1 and 2/claimants and the Insurance Company/the appellant herein, had stated that they do not wish to lead any evidence,





the learned Tribunal, on the basis of the material before it in the form of the DAR, the FIR, and the Charge Sheet, proceeded to hold that the accident in question had taken place with the Offending Vehicle being driven in a rash and negligent manner.

17. The procedure adopted by the learned Tribunal cannot be faulted. Section 169(1) of the Act provides that in holding any inquiry under Section 168 of the Act, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. The question of evidence would have arisen only if the appellant herein, or the driver, or the owner of the Offending Vehicle, who were the respondents in the claim petition, had contested the manner of the accident or the involvement of the Offending Vehicle in the accident. In absence of any challenge to the involvement of the offending vehicle or the manner of the accident, the learned Tribunal is not expected to carry out an academic exercise of requiring the claimant to regardless, prove the involvement of the offending vehicle and the manner of the accident.

18. In *Smt. Reshnu Nisha & Ors.* (supra), the learned Tribunal, on rejection by the claimants therein of the legal offer made by the Insurance Company, had directed the claimants therein to adduce evidence with regard to the income of the deceased. It is not apparent from the order if the Insurance Company or the driver/owner of the Offending Vehicle therein, had contested the involvement of the Offending Vehicle or the manner in which the accident was claimed to have taken place and/or that the Offending Vehicle was not being driven in a rash and negligent manner thereby causing the accident.

19. In the present case, from the status of the pleadings and the





statement of the learned counsel for the appellant and the learned counsel for the respondent nos.1 and 2 before the learned Tribunal, it is apparent that they had themselves pleaded with the learned Tribunal to proceed with the adjudication of the claim petition without insisting on these parties to lead further oral evidence. Having taken this step, now the appellant cannot be allowed to challenge the Award on this aspect.

20. The challenge of the appellant in this regard is, therefore, rejected.

Loss of Dependency

21. The next challenge of the appellant to the Impugned Award is on the compensation awarded by the learned Tribunal to the claimants towards loss of dependency.

22. In the present case, the learned Tribunal has held that, in the absence of any documentary proof concerning the educational qualification of the deceased, her income has to be accessed as that of a non-matriculate under the Minimum Wages Act, 1948, and applied the minimum wages notified for a non-matriculate by the Government of NCT of Delhi.

23. It is not disputed that the deceased was a homemaker.

24. In *Kirti & Anr. v. Oriental Insurance Company Ltd.*, (2021) 2 SCC 166, in relation to the compensation awarded in case of a homemaker, Justice N.V. Ramana, in a supplementary opinion, observed as under:

“20. One category of non-earning victims that Courts are often called upon to calculate the compensation for are homemakers. The granting of compensation for homemakers on a pecuniary basis, as in the present case, has been considered by this Court earlier on numerous occasions. A





three-Judge Bench of this Court in Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197, while dealing with compensation for the victims of a fire during a function, granted compensation to housewives on the basis of the services rendered by them in the house, and their age. This Court, in that case, held as follows:

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs 12,000 per annum in cases of some and Rs 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs 3000 per month and Rs 36,000 per annum...”

(emphasis supplied)

21. *In Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218, this Court, while dealing with the grant of compensation for the death of a housewife due to a motor vehicle accident, held as follows:*

“26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband





and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

(emphasis supplied)

The above pronouncement has been followed by this Court in its recent judgment in Rajendra Singh v. National Insurance Co. Ltd., wherein the notional





income of a deceased housewife was calculated for the purposes of granting compensation in a motor accident case.

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25. The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle. However, despite all the above, the conception that housemakers do not “work” or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome.

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30. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural 7 United Nations Economic Commission for Europe, Guide on Valuing Unpaid Household Service Work, 2 (2017). It signals to society at large that the law and the Courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals.





31. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.

32. One method of computing the notional income of a homemaker is by using the formula provided in the Second Schedule to the Motor Vehicles Act, 1988, which has now been omitted by the Motor Vehicle (Amendment) Act, 2019. The Second Schedule provided that the income of a spouse could be calculated as one-third of the income of the earning surviving spouse. This was the method ultimately adopted by the Court in the Arun Kumar Agrawal (*supra*) case. However, rationale behind fixing the ratio as one-third is not very clear.

33. Apart from the above, scholarship around this issue could provide some guidance as to other methods to determine the notional income for a homemaker.⁸ Some of these methods were highlighted by a Division Bench of the Madras High Court in the case of Minor Deepika (*supra*) which held as follows:

“10. The Second Schedule to the Motor Vehicles Act gives a value to the compensation payable in respect of those who had no income prior to the accident and for a spouse, it says that one-third of the income of the earning surviving spouse should be the value. Exploration on the internet shows that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which evaluates her wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is, the partnership method which assumes that a marriage is an equal economic partnership





and in this method, the homemaker's salary is valued at half her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the Replacement Method. (emphasis supplied)”

41. *Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:*

41.1. *Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.*

41.2. *Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.*

41.3. *Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.*

41.4. *The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.*

41.5. *The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”*

25. The Supreme Court has emphasised that a homemaker also





contributes immensely to the household and, therefore, in case of death, the legal heirs would be entitled to a compensation which is 'just' even in case of the death of the homemaker. The Supreme Court also stated that there are various methods by which the compensation can be determined and there cannot be any hard and fast rule adopted in such cases.

26. In my view, therefore, adoption of the minimum wages notified by the Government of NCT of Delhi by the learned Tribunal to determine the loss of dependency cannot be faulted.

27. However, at the same time, in the absence of any evidence of educational qualification of the deceased, the learned Tribunal should have adopted the minimum wages as notified for an unskilled worker.

28. The Impugned Award shall stand modified to this extent.

Future Prospects

29. The learned counsel for the respondent nos. 1 and 2 submits that in terms of the judgment of the Supreme Court in **Pranay Sethi** (supra), considering the age and nature of occupation of the deceased, future prospects should have been added at 40%.

30. The learned counsel for the appellant is not in a position to seriously dispute the same.

31. In the present case, the learned Tribunal has added 25% of the income to the deceased towards future prospects. It has come on record that the deceased was aged 20 years at the time of the accident.

32. In **Pranay Sethi & Ors.** (Supra), the Supreme Court held that in case of a deceased who was self-employed or has a fixed salary, an addition of 40% of the established income should be made where the deceased is below the age of 40 years.





33. Accordingly, the Impugned Award, in so far as it adds only 25% of the income towards future prospects, is also modified. The claimants are entitled to 40% towards future prospects on the income of the deceased. It is ordered accordingly.

Non-Pecuniary Heads

34. As far as the challenge of the appellant to the non-pecuniary heads of compensation is concerned, the learned Tribunal has awarded the following compensation in favour of the respondent nos. 1 and 2, on non-pecuniary heads:

<u>Heads</u>	<u>Amount</u>
2) <i>Loss of Love and affection</i>	<i>Rs. 1,50,000/-</i>
3) <i>Funeral expenses</i>	<i>Rs. 50,000/-</i>
4) <i>Loss of estate</i>	<i>Rs. 50,000/-</i>

35. In terms of the judgment of the Supreme Court in ***Pranay Sethi*** (supra), and the judgment of the Supreme Court in ***New India Assurance Co. Ltd. v. Somwati & Ors.***, (2020) 9 SCC 644, the respondent nos.1 and 2 were entitled to the following compensation on non-pecuniary heads:

<u>Heads</u>	<u>Amount</u>
a) <i>Funeral Expenses</i>	<i>Rs. 15,000/-</i>
b) <i>Loss of estate</i>	<i>Rs. 15,000/-</i>
c) <i>Loss of consortium</i>	<i>Rs. 40,000/- X 2 = Rs. 80,000/-</i>

36. The Impugned Award shall stand modified to the above extent.

Conclusion and Directions

37. In view of the above, the total compensation payable to the respondent nos.1 and 2 is re-determined as under:



<u>S.No.</u>	<u>Particulars</u>	<u>Amounts</u>
1.	Loss of Dependency	Rs.10582x140/100 x50/100x12x18 =Rs.15,99,998.40/-
2.	Loss of Consortium	Rs.80,000/-
3.	Loss of Estate	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-
	<u>Total Compensation payable</u>	<u>=Rs.17,09,998.40/-</u> <u>Rounded off to : Rs.</u> <u>17,10,000/-</u>

38. By an order dated 13.10.2017, this Court had stayed the execution of the Impugned Award.

39. Now that the challenge has been rejected and the compensation amount has, in fact, been increased, the appellant shall deposit the compensation amount as determined hereinabove, along with interest at the rate of 9% per annum from the date of the filing of the Claim Petition, which was 10.11.2016, till the date of deposit of the amount with the learned Tribunal.

40. The amount deposited shall be released in favour of the respondent nos.1 and 2 in terms of schedule of disbursement as prescribed in the Impugned Award, with all amount as becoming due and payable as on the date of the first release, being released to the respondent nos.1 and 2 in a lump-sum.

41. The statutory amount deposited by the appellant with the Registry of this Court be released to the appellant along with the interest accrued





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thereon.

42. The appeal and the cross objections are disposed of in the above terms.

43. There shall be no order as to costs.

NAVIN CHAWLA, J.

DECEMBER 20, 2023

RN/ss

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 22.12.2023

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