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

Date of decision: 28.11.2023

(4)+ MAC.APP. 1010/2015

NATIONAL INSURANCE CO LTD Appellant

Through: Mr.Pradeep Gaur and Ms.Sweta
Sinha, Advs. (through VC)

versus

POONAM KAPOOR & ORS Respondents

Through: Mr.Manish Maini, Ms.Yashika
Miglani and Mr.Vibhor Jain,
Advs.

(5)+ MAC.APP. 54/2017

POONAM KAPOOR & ANR Appellants

Through: Mr.Manish Maini, Ms.Yashika
Miglani and Mr.Vibhor Jain,
Advs.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents

Through: Mr.Pradeep Gaur and Ms.Sweta
Sinha, Advs. for R-1 (through
VC)

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These cross appeals have been filed by the National Insurance Co. Ltd. (hereinafter referred to as 'Insurance Company, and the Claimants before the learned Motor Accidents Claims Tribunal, Karkardooma Courts, East District, Delhi (hereinafter referred to as 'Tribunal') in Suit No. 31/2023, challenging the Impugned



Award dated 08.10.2015 passed by the learned Tribunal in the said Claim Petition.

2. It was the case of the Claimants before the learned Tribunal that on 04.07.2012 at about 10.45 PM, the deceased Sh.Bhupender Kapoor (hereinafter referred to as 'deceased') along with his parents-in-law, his wife, and his child, were returning home to Ghaziabad in their Maruti Van, which was being driven by the deceased. The deceased stopped the Van opposite Heera Sweets near Vikas Marg and came out of the car while waiting for someone. Suddenly, a Water Tanker bearing registration no. DL-1GB-4594 (hereinafter referred to as 'Offending Vehicle'), which was being driven at a high speed and in a rash and negligent manner, came from behind and hit the said Maruti Van. Due to the forceful impact, the rear door of the Maruti Van broke and hit the deceased. The deceased sustained fatal injuries, and though he was rushed to the Max Balaji Hospital, he was unfortunately declared as 'brought dead' by the doctors.
3. Based on the evidence led by the parties before the learned Tribunal, the learned Tribunal has held that the deceased met his death due to the Offending Vehicle being driven in a rash and negligent manner and causing the accident. The learned Tribunal awarded the following compensation in favour of the Claimants:

SI. No.	On Account of	Amount (Rs.)
1.	Loss of dependency	Rs.21,51,908.00



2.	Loss of Love and affection	Rs. 1,00,000.00
3.	Loss of Consortium	Rs. 1,00,000.00
4.	Loss of Estate	Rs. 1,00,000.00
5.	Funeral Expenses	Rs. 25,000.00
	Total =	Rs.24,76,908.00

4. The primary challenge of the Insurance Company as also the Claimants is on the compensation awarded by the learned Tribunal in favour of the Claimants towards loss of dependency.

INCOME OF THE DECEASED:

Submissions of the learned counsel for the Insurance Company:

5. The learned counsel for the Insurance Company submits that from the testimony of the brother of the deceased, namely, Sh. Jitendra Kapoor (R3W1), it was evident that the business of the deceased was continuing and was, in fact, flourishing with the income increasing from Rs.3,43,718/- in the Assessment Year 2012-13 to Rs.6,71,361/- in the Assessment Year 2014-15. He submits that, therefore, there was no loss of income suffered by the Claimants due to the death of the deceased in the accident and consequently, they were not entitled to any compensation towards loss of dependency. He submits that R3W1, was not cross-examined by the Claimants and, therefore, his testimony stood accepted by the Claimants.



6. In the alternate, he submits that even if the Claimants are held entitled to compensation towards loss of dependency, the income of the deceased should have been taken only at the minimum wages notified and not on the actual income from the business of the deceased.
7. He further submits that in the Income Tax Returns filed of the deceased, the deceased was also shown as having earned income from other sources. The nature of these other sources, however, was not explained by the Claimants. He submits that the income from other sources is liable to be deducted from the income of the deceased, as they would continue to accrue to the claimants even post death of the deceased.
8. He further submits that the Income Tax payable by the deceased on the income has also not been deducted by the learned Tribunal.

Submissions of the learned counsel for the Claimants:

9. On the other hand, the learned counsel for the Claimants submits that merely because the business of the deceased is continued by one of his brothers, the same cannot be a ground for denying compensation towards loss of dependency in favour of the Claimants. He submits that, in fact, from the statement of R3W1 itself, it is evident that the income of the proprietorship firm of the deceased in the Assessment Year 2014-15 was Rs.6,71,361/-, which decreased in the subsequent year, that is, the Assessment



Year 2015-16 to Rs.2,85,164/-. He submits that, in fact, the business of the proprietorship firm thereafter was closed, as was deposed by the the wife of the deceased (PW1).

10. He further submits that even otherwise, merely because a business may continue through someone else, would not disentitle the Claimants from receiving 'just' compensation. In support, he places reliance on the judgment of the Supreme Court in ***K. Ramya & Ors. v. National Insurance Co. Ltd. & Anr.***, 2022 SCC OnLine SC 1338.
11. He further submits that as far as the income from other sources is concerned, the same also cannot be deducted while determining the income of the deceased and, consequently, the loss of dependency. He submits that even for earning income from other sources, the deceased would have put in certain managerial skills, the same need to be assessed and the Claimants are to be adequately compensated for the same. Placing reliance on the judgment of the Supreme Court in ***K. Ramya*** (Supra), he submits that these can be taken at the rate of at least 10 to 15%.
12. He submits that, in fact, the learned Tribunal has erred in taking the average of the income reflected in the Income Tax Returns of the deceased for the Assessment Years 2010-11, 2011-12, and 2012-13. He submits that the income reflected in the Income Tax Returns for these assessment years, in fact, showed a steady increase in the income of the deceased, and it is the income reflected in the Assessment Year 2012-13, which is the closest to



the date of the accident, which occurred on 04.07.2012, that should have been taken into account for determining the loss of dependency. In support, he places reliance on the judgment of this Court in *Smt. Rajbala & Ors. v. Sh. Krishan Kumar Sharma & Ors.*, Neutral Citation No. 2023:DHC:4726.

13. He submits that the learned Tribunal has also erred in not granting future prospects in favour of the Claimants. Placing reliance on the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, he submits that keeping in view the age of the deceased, future prospects at the rate of 10% should have been granted.

Analysis and Findings:

14. I have considered the submissions made by the learned counsels for the parties.
15. R3W1, in his statement, has stated that the deceased was engaged in the business of a cloth merchant and was trading in the name and style of M/s. Kashmiri Lal & Bros., in the capacity of a proprietor thereof. The property in which the said business was being conducted, though belongs jointly to the four brothers and they were all doing business from the same premises, however, such business was being conducted under different names and styles, and were proprietorship concerns of each of them separately. He further stated that the firm of the deceased is still



working and he is looking after the same for the present. He stated that the Income Tax Returns for the said firm were filed by the wife of the deceased, that is, PW-1, and he produced the same for the Assessment Years 2014-15 and 2015-16.

16. Though, from the above statement, it may be true that the proprietorship of the deceased has continued in the same name post death of the deceased in the accident, however, it cannot be said that there is no loss of income to the Claimants due to the death of the deceased. The business is now being run, if at all, due to the efforts and energy put in by a third person, namely, the brother of the deceased, R3W1.
17. In **K. Ramya** (Supra), the Supreme Court has *inter alia* observed that the approach of the High Court therein of determining the loss of income of the deceased on notional basis as per his educational qualification, was erroneous. The mere fact that the deceased's share of ownership and business ventures was transferred to the deceased's minor children or to the dependants after his death, is not sufficient justification to conclude that the benefits of these businesses continue to accrue on the dependants. The Supreme Court further held that the amount earned from the bank interests and remaining investments must also be included as the income of the deceased.
18. In the present case, the Claimants were able to prove that the deceased was carrying out a proprietorship business in the name and style of M/s. Kashmiri Lal & Bros. at the time of his death.



Merely because his brother took over the business and continued the same post his death and also contributed to the family of the deceased by sharing the profits therefrom, in my opinion, would not disentitle the Claimants from claiming compensation which is 'just'. Accordingly, I find no infirmity in the learned Tribunal assessing the loss of dependency based on the income of the firm.

19. As far as the deduction from income from other sources is concerned, apart from putting a suggestion to the witness from the Income Tax Department, that is, PW-2, and to the PW-1, who could not tell the source of such income, the Insurance Company has led no evidence on the same. As noted hereinabove, the Supreme Court in *K. Ramya* (Supra) has held that even the amount earned from bank interests and remaining investments should be included in the income of the deceased. For income earned from House Property and Agricultural Land, the Supreme Court in *K. Ramya* (Supra) has held that as a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15% of the total rental income, and even this can be increased in light of specific circumstances.
20. In the present case, the income from other sources was Rs.69,936/- for the Assessment Year 2010-11, Rs.64,923/- for the Assessment Year 2011-12, and Rs.40,206/- for the Assessment Year 2012-13.
21. The learned counsel for the Insurance Company submits that it was for the Claimants to have truly deposed about the source of



this income, and in absence thereof, an adverse influence needs to be drawn against the Claimants, and at best 10 to 15% of this income alone should be attributed to the income of the deceased.

22. In my opinion, in the facts of the present case, the same cannot be accepted. Though from other sources, the income was of the deceased. This may continue to accrue to the Claimants post the death of the deceased, however, the same would be a result of the efforts of a person other than the deceased. The same, therefore, has been rightly added to the income of the deceased for purposes of calculating the loss of dependency.
23. As far as the plea of the Claimants that the learned Tribunal has erred in taking the average of the income reflected in the Income Tax Returns for the Assessment Years 2010-11, 2011-12, and 2012-13, instead of taking the income as reflected in the Assessment Year 2012-13, in *K. Ramya* (Supra) a similar approach was approved by the Supreme Court. I, therefore, do not find any infirmity in the same.
24. The learned Tribunal, however, has erred in not deducting the tax payable on the income of the deceased. In *Pranay Sethi* (Supra), the Supreme Court has clarified that the income is the income net minus tax. Accordingly, the average of the income tax paid by the deceased for the Assessment Years 2010-11, 2011-12, and 2012-13, that is, Rs.5180/-, Rs.7728/- and Rs.13,642/- respectively, equivalent to Rs.8850/-, needs to be deducted from



the annual income of the deceased that was assessed as Rs.2,93,442/- by the learned Tribunal.

25. For the purposes of determining the loss of dependency, the income of the deceased, therefore, is worked out as Rs. 2,84,592/- .
26. Similarly, the learned Tribunal has also erred in not granting the future prospects on income of the deceased to the Claimants. In ***Pranay Sethi*** (Supra), the Supreme Court has held that even in a case of a self-employed person in the bracket of 50 to 60 years, a 10% increase towards future prospects of income is to be granted. The Claimants shall be entitled to the same.

NON PECUNIARY HEADS OF COMPENSATION:

27. The learned counsel for the Insurance Company submits that the learned Tribunal has also erred in awarding excess amounts in favour of the Claimants under the non-pecuniary heads.
28. I find merit in the said submission.
29. In ***Pranay Sethi*** (Supra), the Supreme Court has held that apart from the loss of dependency, the Claimants would be entitled to claim of loss of consortium, loss of estate, and funeral expenses at the rate of Rs.40,000/-, Rs.15,000/- and Rs.15,000/-, respectively.
30. In ***United India Insurance Company Limited v. Satinder Kaur and Others***, (2021) 11 SCC 780, it has been held that the loss of



consortium is to be awarded to the parents, the spouse, and the children, in their individual capacity.

31. In the present case, there were two Claimants, that is, the wife and the child of the deceased. They would both be entitled to loss of consortium at the rate of Rs.40,000/- each; loss of estate of Rs.15,000/-; and funeral expenses of Rs.15,000/-. They would, however, not be entitled to any compensation towards loss of love and affection.
32. Accordingly, the Claimants are held entitled to compensation towards non-pecuniary heads, as loss of consortium of Rs.80,000/-, loss of estate of Rs.15,000/-, and funeral expenses of Rs.15,000/-.

RATE OF INTEREST:

33. The learned counsel for the Insurance Company further submits that the learned Tribunal has erred in awarding interest at the rate of 12% per annum in the favour of the Claimants. He submits that keeping in view the then prevailing rate of interest, the rate of interest awarded by the learned Tribunal is exorbitant. He submits that it should not be more than 9% per annum.
34. The learned counsel for the Claimants does not seriously dispute the above assertion.
35. Accordingly, the Impugned Award shall stand modified with the direction that the Insurance Company shall be liable to pay



interest at the rate of 9% per annum on the total compensation from the date of filing of the Claim Petition by the Claimants before the learned Tribunal till its realization.

DIRECTIONS:

36. In view of the above, the Impugned Award is modified, and the Claimants are held entitled to the following compensation:

S.No.	Particulars	Amount
1	Loss of dependency	Rs.22,95,708.80
2	Loss of consortium	Rs.80,000 (Rs.40,000 x 2)
3	Loss of estate	Rs.15,000
4	Funeral expenses	Rs.15,000
	Total	Rs. 24,05,708/-

37. The Insurance Company shall pay interest on the above amount at the rate of 9% per annum on the above amount from the date of filing of the Claim Petition, that is, 03.08.2012, till the date of its deposit pursuant to the Order dated 07.01.2016 of this Court. The Insurance Company as also the Claimants shall submit the calculation for the same with the learned Registrar General of this Court within a period of four weeks from today.



38. The learned Registrar General shall, with the assistance of the learned counsels for the Insurance Company and the Claimants, determine the exact amount that was required to be deposited by the Insurance Company pursuant to the Impugned Award, as modified by this Court. Excess amount, if any, deposited by the Insurance Company shall be released to the Insurance Company along with proportionate interest accrued thereon. In case of any shortfall, the Insurance Company shall deposit the same along with interest with the learned Registrar General of this Court, within a period of two weeks of such determination.
39. 50% of the awarded amount was directed to be released in favour of the Claimants by the Order dated 07.01.2016. The balance awarded amount (as modified by the present Judgment), shall be released in favour of the Claimants in accordance with the schedule of disbursal prescribed in the Impugned Award.
40. The statutory amount deposited by the Insurance Company be released to the Insurance Company along with interest accrued thereon.
41. The appeals stand disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 28, 2023/ns/RP

Click here to check corrigendum, if any