IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

<u>Appellate Side</u>

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 553 of 2014

(FMAT 1709 of 2008)

Sri Chandra Kumar Lama

Vs.

The National Insurance Company Ltd. & Anr.

For the Appellant : Mr. Saidur Rahaman.

For the Respondent/ Insurance Company : Mr. Rajesh Singh.

Hearing concluded on : 24.06.2024

Judgment on : 05.07.2024

Shampa Dutt (Paul) , J.

1. The present appeal has been preferred by the claimant being aggrieved by the judgment and order dated 15.09.2008 passed by the Judge, Motor Accident Claims Tribunal (District Judge), Jalpaiguri in M.A.C. Case No.313 of 2007, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts:-**

> *"On 16.02.1996 at about 12.45 hours the petitioner's wife Sona Bhutia met with an accident by the offending vehicle at Bungray Qulay, near Suren Gulay Gairibus, under P.S Jaldacca, District-Darjeeling. Due to such accident she received hurt and died. Over such accident Jaldacca P.S. Case No.4/1996 dated 16.02.1996 under Sections 279/338/304A of IPC was started against the driver of the offending vehicle."*

3. The opposite party no.2, National Insurance Company Ltd. has contested the present case by filing a written statement, denying all the material allegations made by the petitioner in his application under Section 166 of the Motor Vehicle Act. It is the main contention of the O.P. No.2 that the driver was not at all responsible for the accident, as he was driving the offending vehicle at a very moderate speed with all care and caution as per M.V. Act at the material point of time. And that, deceased Sona Bhutia herself was liable for such accident.

4. The claimants examined two witnesses and relevant documents proved, were marked **Exhibit- 1 to 6.**

5. The opposite party/Insurance Company did not adduce any witness nor produced documents in support of their contention.

6. The learned Tribunal considering the evidence and materials on record, held:-

"<u>MAC Case No.313 of 2007</u>

<u>Dated: 15.09.2008</u>

Although no age proof certificate has been filed by the petitioner to prove the age of the deceased Sona Bhutia, but it is seen from Ext. 3 (copy of P.M. examination report) that Sona Bhutia died at the age of 30 years. So, I select 18 as multiplier for the purpose of compensation of the quantum of compensation payable to the claimant-petitioner in this case.

Income of the deceased Sona Bhutia, as claimed by the petitioner has not been proved by any evidence. Accordingly, I accept Rs.15,000/- per annum as the deceased's gross notional income treating her as a non-earning person. From this amount it has to be deducted the deceased's personal living expenses about which no evidence is forthcoming. In the absence of evidence, it has been held by the Hon'ble Supreme Court in its decision reported in 1994 A.C.J. at page 1 that it is not unusual to deduct 1/3rd of the gross income towards the personal living expenses and to treat the balance as the amount likely to have been spent by the deceased on the members of his family and his dependants. This loss of dependency should capitalize with the appropriate multiplier. One third of Rs.15,000/- per annum comes to Rs.5,000/- per annum and after deduction of this amount from Rs.15,000/- the balance amount of Rs.10,000/- per annum is to be treated as to the amount likely to have been spent by the deceased on the members of his family and dependants. This loss of dependency should capitalize with the multiplier 18 which appears to be appropriate to the age of the deceased Sona Bhutia. The compensation, therefore, comes to Rs.18,000/- (Rs.10,000/- x 18). Rs.2,000/- as funeral expenses, Rs.5,000/- as loss of consortium and Rs.2,500/- as loss of estate are to be added with the said amount of Rs.1,80,000/-. Thus, the total amount of compensation *would be Rs.1,89,500/- which is rounded off to Rs.1,90,000/- only.*

Considering the facts and circumstances of the present case, at this stage I am not awarding any interest in favour of the claimant petitioner. It will, however, not be unreasonable to allow interest in favour of the claimant-petitioner @ 9% per annum only to meet the undue delay in payment of compensation by the opposite parties to the claimant-petitioner costly.

Sd/-
Judge, M.A.C.T.(D.J.)
Jalpaiguri."

7. Being aggrieved, the claimants/appellant has preferred the present appeal on the ground that:-

That the learned Tribunal did not assess the income of the deceased correctly and as such the compensation granted was not 'just'.

8. On hearing the parties and considering the materials and evidence on record, the following is evident:-

i) The deceased Sona Bhutia, not being employed, her income was taken as **Rs.15,000/-** per annum as notional income by the tribunal.

ii) The Supreme Court in ***Kirti & Anr. Etc. Vs. Oriental Insurance Company Ltd., (In Civil Appeal Nos. 1920 of 2021), (2021) 2 SCC 166,*** **on 5th January, 2021,** held as follows:-

> *"**4.** The Tribunal took note of the charge sheet filed against the driver in the criminal case and also his failure to step into the witness box. Relying on the strong testimony of the independent witness, it was concluded that the car driver was indeed driving rashly and thus liability ought to be fastened on the*

respondent insurer. Regarding the quantum of compensation, the Tribunal began by determining the ages of Poonam and Vinod as being 26 and 29 years respectively. Consequently, an age multiplier of 17 was adopted. Although the deceased's father took a plea that Vinod was earning Rs 14,000 every month as a teacher at the Pratap Public School in Delhi, but he was unable to substantiate his claim with any documentary evidence. Thus, minimum wage in Delhi was adopted for computation of loss of dependency. An additional 25% income was accounted for future prospects of Poonam, and 1/3rd of Vinod's salary was deducted towards personal expenses. Rs 2.50 lakhs was given for each deceased as compensation for loss of love and affection, estate, and funeral charges. Thus, the Tribunal awarded a total sum of Rs 40.71 lakhs for both deceased to the claimants.

6. *The High Court concurred with these contentions and consequently reduced the notional income for both deceased* ***by adopting the lowest minimum wage applicable for unskilled workers in Haryana, instead of Delhi. Similarly, 1/3 rd of Poonam's income was deducted towards personal expenses and future prospects were denied to both deceased. However, given the totality of circumstances and Poonam's contribution to her household, 25% additional gratuitous income was added to her salary. The High Court thus brought down the total compensation payable to the claimants to Rs 22 lakhs.***

The Court further held:-

9. Analysis

I. Deduction for personal expenses

We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. ***Just like how the appellant claimants cannot rely***

upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the pendency of legal proceedings. *Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law.* ***[Director of Elementary Education v. Pramod Kumar Sahoo, (2019) 10 SCC 674, para 11 : (2020) 1 SCC (Civ) 38 : (2020) 1 SCC (L&S) 42]***

The Court further held:-

"11. *Second, although it is correct that the claimants have been unable to produce any document evidencing Vinod's income, nor have they established his employment as a teacher; but that does not justify adoption of the lowest tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence-on-record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving the existing standard of living of a deceased's family is a fundamental endeavour of motor accident compensation law.* ***[See R.K. Malik v. Kiran Pal, (2009) 14 SCC 1, para 9 : (2009) 5 SCC (Civ) 265 : (2010) 1 SCC (Cri) 1265] Thus, at the very least, the minimum wage of Rs 6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case.***

13. *Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid.* ***The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law [Sunita Tokas v. New India Insurance Co. Ltd., (2019) 20 SCC 688 : (2020) 4 SCC (Cri) 436]*** *and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in* ***Hem Raj v. Oriental Insurance Co. Ltd. [Hem***

Raj v. Oriental Insurance Co. Ltd., (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864] *, as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case: (Hem Raj case* ***[Hem Raj v. Oriental Insurance Co. Ltd., (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864] , SCC p. 656, para 7)***

"7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made."

(emphasis supplied)"

Finally the court granted revised compensation as follows:-

14. *Finally, given the lack of arguments on the other heads of funeral charges, loss of estate, love and affection; there arises no cause of alteration. We similarly see no infirmity with the High Court's adoption of 17 as the age-multiplier, award of 9% interest, calculation of Poonam's notional income or the division of total compensation in the ratio of 1:2:2 between the grandfather and the two girls. For ready reference, a comparative table of revised compensation after suitable increases would thus be as follows:-*

		Tribunal		High Court		Supreme Court	
	Head	Vinod	Poonam	Vinod	Poonam	Vinod	Poonam
A	Monthly income	8554	9438	5547.1	5547.1	6197.1	5547.1
B	Deduction towards personal expenses	33%	None	33%	33%	25%	25%
C	Age multiplier	17	17	17	17	17	17
D	Adjustment for future prospects	None	25%	None	None	40%	40%
E	Increase for special circumstances	None	None	None	25%	None	25%
F	Funeral charges & loss of estate	2,50,000	2,50,000	2,50,000	2,50,000	2,50,000	2,50,000
G	Total per deceased	14,13,344	26,56,690	10,04,406	11,93,007	15,77,419	17,35,236
	(rounded off)	14,14,000	26,57,000	10,05,000	11,95,000	15,80,000	17,40,000
	Total compensation	40,71,000		22,00,000		33,20,000	

In the said judgment, **Justice N. V. Ramana** concurring held:-

> ***"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 summarised 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."***

iii) Thus, in view of the Judgment in **(*Kirti & Anr. Etc. Vs. Oriental Insurance Company Ltd.,(Supra)*)** the notional income of the deceased housewife **in the present** as on 16.02.1996, be taken as the minimum wage of an unskilled worker. Income be fixed at **Rs. 3000/-** per month.

iv) The age of the victim was **30 years** and as such **multiplier of 18** was applied in 2008. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121).***

v) Having no permanent job, **future prospect** at **40%** of income be added as the deceased was aged **30 years**. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

vi) Deduction for funeral expenses will be **1/3rd** as number of Claimant is 1. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

vii) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

9. Thus, the 'just compensation' on revision is as follows:-

Monthly Income	*Rs. 3,000/-*
Annual Income (3,000 x 12)	*Rs. 36,000/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 12,000/-*
	Rs. 24,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 9,600/-***
	Rs. 33,600/-
***Multiplier x 18** (33, 600 x 18)*	***Rs. 6, 04, 800/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs.	***Rs. 84,000/-***

84,000)	
Total amount:-	***Rs. 6, 88, 800/-***

10. Admittedly, the Claimants have received the amount of compensation of **Rs. 1,90,000**/- together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 4, 98, 800/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

11. Taking into consideration, the amount already received by the Claimants/Appellants, the Respondent No. 1/ Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the total amount in favour of the claimant/(husband), upon satisfaction of his identity and payment of *ad-valorem* Court fees, if not already paid.

12. The appeal being FMA 553 of 2014 /FMAT 1709 of 2008 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

13. No order as to costs.

14. All connected applications, if any, stand disposed of.

15. Interim order, if any, stands vacated.

16. Copy of this Judgment be sent to the Learned Tribunal.

17. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)