

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A.T. (MV) 212 of 2023

Jyotsna Gope & Ors.

-Vs-

The New India Assurance Co. Ltd. & Ors.

For the Appellants/Claimants : Mr. Amit Ranjan Roy

For the Respondents/
Insurance Company : Mr. Parimal Kumar Pahari

Heard on : 14.06.2024

Judgment on : 02.07.2024

Ananya Bandyopadhyay, J.:-

1. Four legal heirs of deceased Santosh Gope filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, 2nd Court, Asansol being MAC Case No.40/2016, claiming an award of Rs.5 lakhs along with interest whereby the aforesaid deceased expired due to a road traffic accident on 11.01.2013.
2. The offending vehicle, a truck bearing Registration No. WB-37C-6511 hit the aforesaid deceased approaching in a rash and negligent manner near Majia High School in front of Sanchit Gope's tea stall on NH-60.
3. Consequently, the victim was declared to have expired at Bankura Medical College and Hospital.

4. Subsequently, based on a written complaint, Mejia P.S. Case No. 20/2014 dated 14.03.2014 under Sections 279/304A of the Indian Penal Code was instituted against the driver of the offending truck as aforesaid.
5. The owner of the offending vehicle did not appear before the Court to contest the MAC case No.40/2016 in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, 2nd Court, Asansol.
6. The respondent, the New Indian Assurance Company Ltd. contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.7,73,800/- as compensation to be paid equally to each of the four claimants along with an interest at a rate of 6 per cent per annum from the date of filing of the application till the realization of the compensation amount to be paid by the respondent – the New India Assurance Company Ltd.
8. It was submitted by the Learned Advocate for the appellant that the Learned Tribunal erred in considering the future prospect at the rate of 10% instead of 40%. Moreover, the multiplier of 17 was applied instead of 18. Furthermore, the Tribunal as aforesaid ought to have added 10% with the monthly income of the deceased after an interval of 3 years respectively.
9. The Learned Advocate for the respondent – Insurance Company refuted the claim of the appellant and submitted that the Learned Tribunal was justified in computing the awarded compensation.
10. The claim application before the Learned Tribunal was filed by the wife and 3 minor children being represented by the wife of the deceased.

11. PW-2, the Inspector of Income Tax Office, Asansol, Ward- 2(1), was authorized to adduce evidence on behalf of the Income Tax Office vide a document marked Exhibit-13. Income Tax Return for the year 2012-13 and 2013-14 filed by the deceased were marked as Exhibit-14 series. The document marked as Exhibit-14 series depicted the income of the deceased to be Rs.2,04,620/- for the year 2013-14.
12. The accident occurred on 20.02.2014. The Income Tax Return was filed by the deceased Santosh Gope prior to his accidental death. The document produced before the Court was computer-generated to have been in existence prior to the death of the deceased which obliterated the possibility of any kind of suspicion of being fabricated. The Income Tax Department possessed the document and produced the same independently and the authenticity of the said document was sacrosanct.
13. The Learned Tribunal should not have disregarded the Income Tax Return for the year 2013-14 for computing the annual income of the victim. The Income Tax Return document itself conspicuously stated the source of the assessee's income. Any variation or discrepancy to that effect should have been challenged before an appropriate authority in case of manipulation or fraudulent information to be dealt with by the Income Tax Department and not by the MAC Tribunal to judge or to ascertain the veracity of the said document or the nature of his profession or source of his income.
14. The Hon'ble Supreme Court in ***Kalpanaraj v. T.N. State Transport Corpn.***¹ held the following:-

¹(2015) 2 SCC 764

“8. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid down by this Court in National Insurance Co. Ltd. v. Indira Srivastava [National Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763 : (2008) 1 SCC (Civ) 744 : (2008) 1 SCC (Cri) 550] . The relevant paragraphs of the case read as under: (SCC pp. 768-70, paras 14-15)

9. In the light of the principle of law laid down by this Court in the Indira Srivastava case [National Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763 : (2008) 1 SCC (Civ) 744 : (2008) 1 SCC (Cri) 550] mentioned supra, we are of the opinion that the High Court erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased out of the annual income earned from his occupation mentioned in the income tax return submitted for the relevant Financial Year 1994-1995.”

15. In **Anjali v. Lokendra Rathod**², the Hon’ble Supreme Court held the following:-

“9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009-2010) of the deceased, which reflects the deceased's annual income to be Rs. 1,18,261/-, approx. Rs. 9,855/- per month. This Court in Malarvizhi (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where

available, for computation of annual income. In *Malarvizhi (Supra)*, this Court has laid as under:

“10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased.”

10. Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs. 1,18,261/-, approx. Rs. 9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.”

16. The following was held in ***K. Ramya v. National Insurance Co. Ltd.***³ by the Hon'ble Supreme Court:-

*“14. In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in *Amrit Bhanu Shali v. National Insurance Co. Ltd.*¹⁰ and *Kalpanaraj v. Tamil Nadu State Transport Corpn.*¹¹ wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor it is the stand taken by the Insurance Company that the said reports inflated the income.”*

17. The annual income of the victim in view of the aforesaid decision is to be considered to be Rs.2,04,158/- after deducting the amount of Rs.462/- paid towards income tax (10% of Rs.4,620/-) as for the year 2012-13, income tax exemption was granted to the income amount of Rs.2,00,000/-. The claim application mentioned the age of the deceased to be 26 on the date of the accident and, therefore, in view of the judgment cited in **Sarla Verma Vs. Delhi Transport Corporation and Anr. 2009 (6) SCC 121**, the multiplier has been rightly considered by the Trial Court to be 17.
18. In view of the decision cited in **National Insurance Co. Ltd. Vs. Pranay Sethi**, reported in **(2017) 16 SCC 680** in an application under Section 166 of the M.V. Act if the deceased was self-employed and below the age of 40 years, the future prospect was to be determined at the rate of 40 per cent of the annual income contrary to 10 per cent as observed by the Learned Tribunal.
19. In **Pranay Sethi (supra)**, the Hon'ble Supreme Court observed the following:
- “52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards 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 [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , 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.”

20. In **United India Insurance Company Limited Vs. Satinder Kaur Alias Satwinder Kaur and Others**, reported in **(2021) 11 SCC 780**, the following has been observed by the Hon’ble Supreme Court:-

“28. In *Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]* , the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, 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,

which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held 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 Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads:

(a) Loss of estate — Rs 15,000 to be awarded.

(b) Loss of consortium.

29. *Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.*

30. *In Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*

31. *Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.*

32. *Modern jurisdictions world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.*

33. *The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] .*

34. *At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , has recognised only three conventional heads*

under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. *The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.”*

21. In view of the aforesaid decision, the claimants are entitled to an enhanced rate of 20% with regard to loss of estate, loss of spousal and parental consortium and funeral expenses for the period of 2017-2020 and 2020-2023.

22. The compensation is computed as follows:-

Annual Income	Rs.2,04,620/-	
Income Tax Deduction	Rs.462/-	
Annual Income	Rs.2,04,158/-	
Future Prospect	Rs.81,663/-	(40% of Annual Income)
Annual Income + Future Prospect	Rs.2,85,821/-	
Deduction towards Personal Expenses	Rs.71,455/-	(1/4 th of Total Income)
Total Annual Income	Rs.2,14,366/-	
Multiplier	Rs.36,44,222/-	Multiplier as Rs.2,14,366/- X 17
Loss of Estate	Rs.18,000/-	
Loss of Spousal Consortium	Rs.48,000/-	

Funeral Expenses	Rs.18,000/-	
Loss of Parental Consortium	Rs.1,44,000/-	(Rs.48,000/- for each three children)
Total	Rs.38,72,222/-	

23. The Insurance Company has deposited the compensation awarded by the Learned Tribunal along with the interest at the rate of 6% per annum at the Office of the Registrar General, High Court, Calcutta.
24. Respondent – Insurance Company is to deposit the residual amount along with an interest of 6% per annum from the date of filing of the claim application at the Office of the Registrar General, High Court at Calcutta within 8 (eight) weeks hereinafter whereby the Registrar General, High Court at Calcutta is to issue account payee cheques in 4 (four) equal amounts to 4 (four) of the claimants. The cheques to be issued in the name of the 3 (three) minor children being appellant no.2, 3 and 4 are to be deposited in a nationalized bank in a Fixed Deposit Scheme till the minors attained their age of majority.
25. The instant F.M.A.T. is accordingly disposed of along with connected applications if any.
26. Interim orders, if any, are vacated.
27. Parties to act upon the server copy of this judgment.
28. The urgent certified copy of this order be provided complying terms and conditions.

(Ananya Bandyopadhyay, J.)