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

Present:

The Hon'ble **Justice Prasenjit Biswas**

**FMA 2746 of 2016**

**Sahanara Khatun @ Sahanara Bewa & Ors.**
**-Versus-**
**The SBI General Insurance Co. Ltd. & Ors.**

Delivered on : **24.12.2024**

**Prasenjit Biswas, J:-**

**1.** This appeal is directed against the judgment and award dated 9th February, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District and Sessions Judge, 5th Court, Malda in connection MAC Case No. 267 of 2014.

**2.** By passing the impugned judgment and award learned Tribunal awarded Rs. 4,37,000/-along with interest in favour of the claimants/appellants. The victim Mansur Alam faced an unnatural death on 11.02.2014. On the fateful date at about 6:15 hours when the victim was going towards Karandighi by his vehicle bearing registration no. WB 60H/5074 as an owner-cum-driver at that time Truck bearing no. WB-03C/9628 was coming from opposite direction in a very high speed and was driven in rash and negligent manner. At that time another vehicle bearing no. WB-60J/6993 (Bolero) was also coming from the same direction. The vehicle bearing no. WB-60J/6993 dashed the Truck bearing no. WB-03C/9628 and as a resultant effect the Truck lost its control and dashed the vehicle bearing no. WB-60H/5074 which was driven by the victim. The victim Mansur Alam died on the spot. It is stated by the claimants that the accident occurred due to rash and negligent driving of the drivers of the offending Truck and offending Bolero vehicle. Over the said death of the victim the claimants being the heirs/legal representatives of the deceased filed a case claiming Rs. 5,00,000/- as compensation from the respondents/Insurance Companies. Over the said incident a case being no. 62/2014 dated 11.02.2014 was started by the Police Station at Malda against the drivers of the offending vehicles bearing no. WB-03C/9628 (Truck) and WB-60J/6993 (Bolero).

**3.** Although notice was served upon the owners of the offending vehicles but they did not venture to appear and contest the case and as such the case was proceeded ex-parte against them.

**4.** Insurance Companies/respondents contested the case by filing written statement.

**5.** Being aggrieved and dissatisfied with the impugned judgment and award the appellants/claimants have preferred this instant appeal.

**6.** Learned Advocate for the appellants/claimants said that the learned Tribunal erred in law in not granting future prospect at the time of assessment of compensation. It is further said by the learned Advocate that monthly income of the deceased was more than Rs. 3,000/- as he was the owner-cum-driver of the vehicle but the Tribunal wrongly assessed the income of the deceased as Rs. 3,000/- per month when oral evidence was adduced by the claimants about the earning of the deceased. It is further assailed by the learned Advocate that the Tribunal did not allow Rs. 1,00,000/-as loss of consortium to the widow of the deceased and Rs. 1,00,000/- each to the minors. As per submission of the learned Advocate the funeral expense was wrongly assessed as Rs. 2,500/- at the time of computation of the compensational award and the funeral expenses may be assessed at Rs. 25,000/-. So, it is submitted by the learned Advocate that the impugned award may be enhanced so that a just compensation along with interest from the date of filing of the claim till actual payment to be satisfied by the insurer of the vehicle.

**7.** Mr. Rajesh Singh learned Advocate for the both the Insurance Companies i.e. SBI General Insurance Co. Ltd. and Cholamandalam MS General Insurance Co. Ltd. submitted that the computation as made by the learned Tribunal may be modified in view of decision rendered by the Hon'ble Apex Court in case of **National Insurance Company Limited vs. Pranay Sethi and Others**.

**8.** It is said by the learned Counsel of the appellants/claimants that future prospect @ 40% of the annual income of the deceased may be granted in favour of the claimants and the general damage to the tune of Rs. 84,000/- may also be given to the claimants. It is further stated by the learned Advocate for the claimants that the learned Tribunal assessed only Rs. 5,000/- under the heading funeral charges and loss of estate which is contrary to the dictum as made by the Apex Court in case of Pranay Sethi.

**9.** Having heard learned Advocates for the respective parties following points have been fallen for consideration:

1. Whether learned Trial Court was erred in not granting future prospect.
2. Whether the learned Tribunal committed wrong in granting general damage to the tune of Rs. 5,000/- only to the claimants.
3. Whether the learned Tribunal was erred in law in adopting the monthly income of the deceased at Rs. 3,000/- only.

**10. Point No.1: Towards Future Prospects.**

The learned Tribunal has not granted any amount towards future prospects. The law is now well settled by the Constitution Bench judgment in case of **National Insurance Company Limited vs. Pranay Sethi and Others**[1]that future prospects should be added with the income depending upon the age of the deceased. On the aspect of future prospects, the Supreme Court in Pranay Sethi (supra) has held as under:-

> *"56. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on*

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[1] **(2017) 16 Supreme Court Cases 680**

*record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.*

*57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job,* *yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.*

*58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts."*

***11.*** The Apex Court in order to provide just compensation having uniformity of approach approved for standardization in which it is ambit includes addition of future prospect so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Motor Vehicles Act. The principle laid down by the Apex Court in Pranay Sethi (supra) is to assess just compensation on the foundation of fairness, reasonableness and equitability. So, the discussion on the point in Pranay Sethi was on the stand point arrived at just compensation in terms of Section 168 of the Motor Vehicles Act, 1988.

**12.** It is profitable to quote the observation of the Hon'ble Apex Court in case of **R. Valli & Ors. vs. Tamil Nadu State Transport Corporation Ltd.**[2] at paragraphs 6 and 7

> *"6. The judgment in **Sarla Verma** was affirmed **in Reshma Kumari & Ors. v. Madan Mohan & Anr.**[3] . Both the judgments were affirmed by the Constitution Bench of this Court reported as **National Insurance Company Limited v. Pranay Sethi & Ors.**[4] . This Court in **Pranay Sethi** held as under: "44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less the tax paid. The multiplier has already been fixed in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which has been*

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[2] **Civil Appeal No. 1269 of 2022**

[3] **(2013) 9 SCC 65**

[4] **(2017) 16 SCC 680**

*approved in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] with which we concur.*

*xx xx xx*

*59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

*59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

*xx xx xx*

*59.7. The age of the deceased should be the basis for applying the multiplier."*

*7. In* ***Pranay Sethi****, this Court held that the age of the deceased is the basis for applying suitable multiplier and that the compensation is to be determined keeping in view the future prospects. The future prospects were held to 15% in respect of a deceased between the age of 50 to 60 years."*

**13.** From the aforesaid judgement it is evident that compensation is determined on standardized formula stipulated by the Supreme Court so that there is consistency and objectivity in the compensation awarded. Future Prospects is only an ingredient for determination of "just compensation". The

Hon'ble Supreme Court in the case of **Pranay Sethi and Others (supra)** bestowed their anxious consideration and observed in paragraph 57 thereof that there is really no rationale not to apply the principle with respect to fixing future prospects to the self-employed or a person who is on a fixed salary. The Hon'ble Supreme Court has gone on to observe that to follow the doctrine of actual income at time of death and not to add any amount with regard to future prospects to the income for the purposes of determination of multiplicand would be unjust. Section 171 of the Act empowers the Tribunal to award interest on the compensation amount. There is no reason to differentiate only a hypothetical ingredient of the formula that is used for purposes of computing the "just compensation" from award of interest on the whole of the compensation amount.

**14.** So, in view of the observation of the Hon'ble Apex Court the claimants are entitled to future prospect and non granted towards future prospect to the claimants by the learned Tribunal is erroneous. As the deceased was aged only 31 years and was claimed to be self-employed, an addition of 40% of his income should have been added towards future prospects. It is ordered accordingly.

**15.** **Point no. 2:- Towards General Damages -**

With regard to the above issue relating to entitlement of general damages it appears that the learned Tribunal granted Rs. 5,000/- under funeral charge and loss of estate. However, bearing in mind the proposition as laid down by the Hon'ble Apex Court in Pranay Sethi (supra) the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

**16. <u>Point no. 3:- Towards monthly income of the deceased</u>**

Learned Tribunal held that the income of the deceased as Rs. 3,000/- per month at per with an unskilled laborer who earned Rs. 100/- per day. PW 1 deposed in this case claiming that the victim as an owner-cum-driver of the vehicle used to earn more than Rs. 3,000/- per month and by such earning he used to maintain his family comprising of his wife and two minor children at the time of his death. Although the appellants could not produce any document regarding monthly income of the deceased but considering the fact that he was an owner cum driver of a vehicle and he could easily earn Rs.4,000/- per month. So, monthly income of the deceased is to be assessed at Rs. 4,000/- per month. In respect of monthly income of the deceased learned Advocate for the Respondents/Insurance Companies at the time of hearing of this appeal did not refute such claim by the appellants.

**17.** In view of above discussions, the calculation of compensation is made hereunder:

**<u>Calculation of Compensation</u>**

| | |
|---|---|
| Annual income Rs. 4,000/- × 12 | Rs. 48,000/- |
| Add: Future prospect @ 40% of the annual income | RS. 19,200/- |

| | |
|---|---|
| | Rs. 67200/- |
| Less: 1/4th towards personal and living expenses | Rs. 16,800/- |
| | Rs. 50400/- |
| Adopting multiplier 16 (Rs. 50,400/- × 16 | Rs. 8,06,400/- |
| Add: General damages<br>Loss of estate: Rs. 15,000/-<br>Loss of consortium: Rs. 40,000/-<br>Funeral Expenses: Rs. 15,000/- | Rs. 70,000/- |
| Total Compensation | Rs. 8,76,400/- |

**18.** So, the claimants are entitled to enhance compensation of Rs. 8,76,400/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

**19.** It is said by the respondents/Insurance Companies that the claimants/appellants have already received the awarded compensation amount to the tune of Rs. 4,37,000/- including interest accrued thereon. Accordingly, the claimants are entitled to 8,76,400/- minus Rs. 4,37,000/- = Rs. 4,39,400/- along with interest at the rate of 6% per annum upon the enhanced amount from the date of filing of the claim application till date.

**20.** Respondents/claimants are directed to deposit deficit Court fees on the compensation amount assessed, if not already paid.

**21.** Both the Insurance Companies i.e. SBI General Insurance Co. Ltd. and Cholamandalam MS General Insurance Co. Ltd. are directed to deposit the balance compensation amount along with accrued interest thereon before the office of the learned Registrar General, High Court at Calcutta within one month from this date.

**22.** The Respondent no. 1 SBI General Insurance Co. Ltd. is to pay 70% of the enhanced amount and respondent no. 2 Cholamandalam MS General Insurance Co. Ltd. is to pay 30% of the enhanced amount within the time as mentioned hereinabove.

**23.** The appellant no. 1 being mother and natural guardian of the minors/appellant nos. 2 and 3 shall receive the share of the said minors on their behalf and shall keep the shares of the minors in a Fixed Deposit Scheme in any Nationalized Bank or Post Office till attainment of majority of the said minors. Learned Registrar General, High Court, Calcutta is directed to release the compensation amount along with interest accrued thereon in favour of the appellants/claimants and Proforma Respondent No.6 as proportioned by the learned Tribunal in the impugned award after making payment of Rs.40,000/- in favour of the appellant no.1- widow of the deceased towards spousal consortium upon satisfaction of their identities.

**24.** With the above observations, the judgment and award passed by the learned Tribunal is hereby modified in this appeal to the above extent but without any order as to costs.

**25.** Consequently, other application, if any, also stands disposed of.

**26.** Let a copy of the judgment be forwarded to the learned Tribunal along with the Tribunal record immediately for information.

**27.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

**(Prasenjit Biswas, J.)**