IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2017 OF 2011

Deepali Prashant Nandi,
Age 55 years, mother of deceased,
occupation: Housewife,
Residing at Gokul Building No.7,
Flat No. 106, 2nd Floor, RTO Lane,
Andheri West, Mumbai-52. …Appellant

V/s.

1. Bharati Rathod,
Residing at Flat No. 501,
Anand Building Kores Tower,
Near Kores Limited, Thane
(Owner of Innova No. MH-04-DE-963)

2. Cholamandalam MS General Insurance
Company Limited, Through it's Divisional
Manager, having their office at Unit No. 1,
6th Floor, 167, Ghatkopar Link Road,
Solitair Corporate Park, Chakala,
Andheri (E),Mumbai-99.
(Policy No. MCT 00009109109109-000-00.) …Respondents

Ms. Rina Kundu, for Appellant.
Mr. Nitin P. Deshpande with Ms. Kanchan Phatak, for Respondent No. 1.
Mr. Rajesh Kanojia with Ms. Riddhi Chavan i/b Res Juris for Respondent No.2.

CORAM :ABHAY AHUJA, J.
RESERVED ON : 17th AUGUST, 2023
PRONOUNCED ON:10th JANUARY, 2024

<u>JUDGMENT</u>:-

1. This first appeal has been filed by the original Claimant seeking enhancement of compensation.

2. The Appellant is the mother of deceased Padma Prashant Nandi, who was travelling with her relatives and other passengers in Innova car no. MH-04-DE-963 towards Shirdi and when the vehicle reached near Dumberwadi bridge, Kalyan, Ahmednagar Highway, while giving side to a Maruti car coming from the opposite direction, the driver of the said Innova car lost control and the Innova car turned turtle, due to which all the passengers were seriously injured including Padma Prashant Nandi. She was admitted in rural hospital, Narayangaon, Tal. Junner, District Pune and due to her serious head injury she died there. This fact is not in dispute.

3. Thereafter, the Appellant who is the mother of deceased had filed a claim application under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Thane, making a claim of compensation against the owner of the Innova car as well as the insurance company.

4. The Tribunal awarded compensation to the Appellant on the basis that the notional income of the deceased Padma be presumed at Rs. 3,000/- per month and having died unmarried/spinster, half amount be deducted towards her personal and living expenses, if she would be alive.

Accordingly, the yearly income was considered to be Rs. 36,000/- and after deduction of 50%, it came to Rs. 18,000/- per year, since the age group of the deceased was 30-35, the multiplier of 17 was applied and accordingly, the amount of future dependency of the Applicant was calculated at Rs. 3,06,000/-. Additionally, Rs. 2000/- towards funeral expenses were given, thereby bringing the total amount of compensation to Rs. 3,08,000/-. What the Tribunal did not consider as claimed by the Appellant is that the deceased Padma was earning Rs. 25,000/- per month, as the same was claimed on the basis of an acknowledgment of income tax return for the AY 2007-2008, where the gross total income was shown as 2,84,767/-, as it had been argued on behalf of the Respondent No. 2-insurance company that there was no iota of documentary proof to suggest that income was earned out of beauty parlour business by deceased Padma and bare acknowledgment issued by the income tax department for the AY 2007-2008 would not be sufficient proof as the Applicant had not produced true copy of income tax return nor the record of trading account, profit and loss account and balance sheet in respect of the beauty parlour business and that the Applicant did not examine the concerned CA or income tax officer to prove the fact of having filed income tax return. The Tribunal relied upon the decision of the Calcutta

Tribunal in the case of ***Sudhir Bhutia Vs. National Insurance Company Ltd.***[1]

5. I have heard the learned Counsel and considered the rival contentions.

6. Ms. Kundu, learned Counsel for the Appellant, would submit and as recorded in order dated 14th July, 2023, of this Court that the only issue that arises in this Appeal is with respect to non consideration of income tax acknowledgment for the year 2007-2008, even though the said document was not discarded by the Tribunal, but the Tribunal failed to consider the contents of the same, although the same is a public/statutory document. Learned Counsel has relied upon the decision of the Ho'ble Supreme Court in the case of ***Smt. Anjali & Ors. Vs. Lokendra Rathod and Ors.***[2] in support of her contention.

7. Ms. Kundu also submits that the Tribunal has erred in not awarding any compensation towards loss of the love and affection to the mother of the deceased as well as future prospects. Ms. Kundu, would submit that

1 (2005 (1) EAC 66 (Cal.))
2 Civil Appeal No. 9014 of 2022 of dated 6th December, 2022 of Supreme Court

since the deceased was below the age of 40 years and self-employed, the future prospects should be 40% of the income. That the Tribunal also ought to have awarded compensation towards loss to the estate of her daughter and enhancement towards funeral expenses instead of Rs. 2,000/-. Learned Counsel relies upon the decisions of the Hon'ble Supreme Court in the cases of ***National Insurance Company Limited V/s. Pranay Sethi and Ors.***[3] and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors.***[4] Learned Counsel has tendered across the bar, draft of the computation of compensation after considering the income tax return acknowledgment stating the total income from beauty parlour business for AY 2007-2008 to be Rs. 2,58,791/- and after deducting income tax calculating the income as Rs. 2,34,171/-, taking 40% future prospects which comes to a total income of Rs. 3,27,839/-, computing dependency on the said basis with a multiplier of 17, filial consortium to mother as Rs. 44,000/-, loss of estate as Rs. 16,500/-, funeral expenses as Rs. 16,500/-, thereby seeking an enhanced compensation of Rs. 25,55,631/- to the Appellant.

3 SLP (Civil) No. 25590 of 2014
4 Civil Appeal No. 9581 of 2018

8. On the other hand, Mr. Kanojia, learned Counsel for Respondent No. 2- Insurance Company relies upon the decision of the Tribunal. Learned Counsel reiterates that on the aspect of the consideration of the acknowledgment issued by the income tax department for the AY 2007-2008, that the Tribunal was right in not considering the same as copy of the income tax return was not produced nor was the CA or the income tax officer examined to prove the fact of having filed the income tax return. Mr. Kanojia, has relied upon the decision of the Hon'ble Supreme Court in the case of ***Malarvizhi and others Vs. United India Insurance Co. Ltd and Anr.***[5] to submit that an income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased, but an acknowledgment of the income tax return cannot be given that status. Referring to the decision of this Court in the case of ***National Insurance Co. Ltd. Vs. Mrs. Chaitali Sameer Parekh and others***[6] dated 5th May, 2016 of this Court, learned Counsel submits that in the said case also with respect to an income tax return, the income tax inspector was called as a witness to prove the return as it was held in that case that the income tax return alone may not be decisive, although in a given case, it is a material circumstance to be reckoned. Mr. Kanojia, would submit

5 Civil Appeal Nos. 9196-97 of 2019 @ SLP C(C) 9630-31 of 2019
6 FA 999 of 2012 @ Cross Objection (ST) No. 30505 of 2012 dated 5th May, 2016

that in the present case, no witnesses have been examined to prove the acknowledgment issued by the income tax department and therefore Tribunal had rightly rejected the submission with respect to the claim that the deceased Padma was earning a profit of Rs. 25,000/- per month and that the Tribunal has rightly presumed that the notional income of deceased Padma as Rs. 3,000/- per month and accordingly, calculated the claim of compensation awarded to the Appellant.

9. Mr. Deshpande, learned Counsel appears for the Respondent No. 1-owner of the offending vehicle and submits that the vehicle was validly insured with the Respondent No.2 and the insurance policy was effective during the period of the accident and adopts the arguments of Mr. Kanojia.

10. It is not in dispute that the income tax acknowledgment for the AY 2007-2008 has been exhibited as Exhibit 29. The Tribunal, has on the basis that it is a bare acknowledgment issued by the income tax department but no income tax return has been produced and also that no CA or officer of the income tax department has been examined to prove the fact of having filed the return relying on the submission that veracity

of contents in a document cannot be taken into consideration unless the author deposes or offers himself for cross-examination, rejected the said document. I am afraid, the Tribunal has erred in doing so. Firstly, the said document, a copy whereof, has been annexed to the Appeal and which is not disputed, is an acknowledgment bearing a number viz. 1582805407 containing an acknowledgment stamp dated 29th October, 2007 by the office of the income tax officer, 15(2)(2), Mumbai. As noted above, the Hon'ble Supreme Court in the case of *Malarvizhi and others Vs. United India Insurance Co. Ltd and Anr. (supra)* has clearly observed that an income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. Following this decision, the Hon'ble Supreme Court in the case of *Smt. Anjali & Ors. Vs. Lokendra Rathod and Ors. (supra)* has also taken exception that the Tribunal and the High Court committed grave error while estimating the deceased income by disregarding the income tax return of the deceased, even though the same is a statutory document on which reliance can be placed where available. The acknowledgment of the income tax return for the AY 2007-2008 is in the name of the deceased. It states a gross total income of Rs. 2,84,767/- and a total income of Rs. 2,58,791/-, the net tax payable as Rs. 24,620/-. Neither the existence nor the contents of the said document are being denied. What is firstly sought to be canvassed is that the same is not an income tax return but only an acknowledgment and therefore, the same cannot be considered. That in my view, is not a correct as the said document is neither being disputed nor denied in its existence or in its contents. Like an income tax return the said document is also a statutory document and can be relied upon to determine the annual income of deceased. The other argument is that to prove a document, the author has to depose and offer himself for cross-examination. Once it has been held by the Hon'ble Supreme Court that reliance can be placed on a statutory document, in my view it would not necessary for the author to depose, unless there is any contrary evidence, which suggests otherwise, which is not the case here. From a perusal of the affidavit of evidence of the Applicant and her cross-examination by the insurance company, it clearly emerges that the acknowledgment by the income tax department has been marked in evidence as Exhibit 29 and that the same is not false. Further, considering that it is a statutory document, in the facts of this case, no deposition of the Chartered Accountant would also be necessary. In my view, therefore, the ratio in the case of *Sudhir Bhutia Vs. National Insurance Company Ltd.(supra)*, would not be relevant in the facts of this case.

11. In view of the above discussion, Mr. Kanojia's reliance on the decision of this Court in the case of *National Insurance Co. Ltd. Vs. Mrs. Chaitali Sameer Parekh and others (supra)* in my view is misplaced, firstly because the said decision itself clearly records that reliance on an income tax return alone, may not be decisive although in a given case it is a material circumstance to be reckoned, which means that ordinarily the said document can be considered, but in the facts of that case the same was held not to be decisive. Secondly, it has also been observed in the said case, that the income tax inspector, who was examined in the matter had stated that the income tax return for AY 2000-2001 was not traceable in the office and it was also found that no return of income was filed in the concerned income tax office as per the computer data for the said year. This is not such a case. The facts are clearly distinguishable notwithstanding the law that an income tax return or an acknowledgment issued by the income tax department being a statutory document be ordinarily considered or relied upon having been kept intact.

12. No other witness has been examined. If at all, the insurance company or the owner of the vehicle were desirous of disproving the case of the Appellant, it was incumbent on them to lead evidence in this regard

or seek to produce the witnesses, which has not been done and therefore, submissions of the insurance company ought not to have been considered by the Tribunal.

13. It has also not been disproved that Padma was doing business in the name and style of Padma and Pommy Beauty Parlour or that the income tax acknowledgment was not in her name. Therefore, I am in agreement in the submissions made on behalf of the Appellant. The income tax acknowledgment of 29th October, 2007 for the AY 2007-2008 can be relied upon for determining the annual income of the deceased.

14. Further, the Hon'ble Supreme Court in the case of *National Insurance Company Limited V/s. Pranay Sethi and Ors.(supra)* has clearly laid down the law with respect to future prospects in the case of self employed to be 40 %, that the conventional heads with respect to loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs 15,000/- respectively and that the said amounts should be enhanced at the rate of 10% in every three years. Paragraph 61 of the said decision is usefully quoted as under:-

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
> *(i) The two-Judge Bench in Santosh Devi should have been*

well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) 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.

(iv) <u>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.</u>

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) <u>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 aforesaid amounts should be enhanced at the rate of 10% in every three years.</u>"

(emphasis supplied)

15. In *Magma General (supra)* the Hon'ble Supreme Court has observed that filial consortium is the right of the parents to compensation in the case of an accidental date of a child as the same causes great shock and agony to the parents. It has also been observed that the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims and are entitled to be awarded loss of consortium under the head of Filial Consortium. Paragraph 8.7 of the said decision is usefully quoted as under:-

> *"8.7 A Constitution Bench of this Court in Pranay Sethi supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.*
>
> *In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium' and '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.*
>
> *Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."*
>
> *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".*
>
> *<u>Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An</u>*

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, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized 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 therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at 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 children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium."

(emphasis supplied)

16. In view of the above discussion, I am in agreement with the submissions made by Ms. Kundu.

17. Accordingly, the total income of the deceased based on the income tax acknowledgment for the AY 2007-2008 after deducting income tax of Rs. 24,620/- be taken as Rs. 2,34,171/-. Considering that the deceased was self employed conducting a beauty parlour business, the future prospects be taken as 40% of the said income. The dependency be computed on the basis of the age of the deceased at the time of her death on the basis of a multiplier of 17. The mother would be entitled to filial consortium for the loss of love, affection and companionship of her daughter of Rs. 40,000/- with an enhancement at the rate of 10% in every three years. The loss of estate and funeral expenses be computed at Rs. 15,000/- again with an enhancement at the rate of 10% in every three years.

18. Ergo, the compensation to be paid to the Appellant be computed as under:-

Sr No	Description	Amount in Rs.
1	Dependency = Rs. 3,24,839/- Total income per year X ½ of income=Rs. 1,63,919/-X 17 multiplier	27,86,631
2	Filial consortium to mother (Applicant)	44,000
5	Loss of estate	16,500
6	Funeral expenses	16,500
7	Total	28,63,631
8	Tribunal awarded	3,08,000
9	Enhanced compensation	25,55,631

19. The Appellant is, therefore, entitled to enhanced compensation of Rs. 25,55, 631/- less the amount already received by the Appellant with interest at the rate of 8% p.a. till payment or realization, which the Respondents to jointly and severally pay to the Appellant, by depositing the amounts in the Motor Accident Claims Tribunal, Thane, within a period of four weeks, from the date of uploading of this order and the Tribunal to make the payment to the Appellant within two weeks of a request made in this behalf.

20. The impugned judgment and award dated 7th July, 2011, be accordingly modified.

21. The Appeal stands allowed in the above terms. Parties to bear their own costs.

(ABHAY AJUJA, J)

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2024.01.16 17:16:33 +0530