



2024:DHC:9806



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 10th December, 2024

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MAC.APP. 279/2019**1. JAGDISH**

S/o Shri Dharam Singh

.....Appellant No. 1

2. SANTOSH (SIC.)

D/o Shri Jagdish

.....Appellant No. 2

3. SARVESH

D/o Shri Jagdish

.....Appellant No. 3

4. PAWAN

S/o Shri Jagdish

.....Appellant No. 4

5. GANESH

S/o Shri Jagdish

.....Appellant No. 5

(Minor through his father and next friend-Appellant No. 1)

All R/o House No. 38, Khandeha Anshik,**P.S. Tappal, Tehsil Khair,****District Aligarh, Uttar Pradesh**

Through: Mr. Kaushlesh Dubey, Advocate.

versus

1. OM PAL SINGH

R/o Village Imamabad Syana,

District Buland Shahar, Uttar Pradesh

.....Respondent No. 1

2. M/S IFFCO TOKIO GENERAL INSURANCE CO LTD

22/223, New Moti Nagar,

Near Karampura Bus Terminal,

New Moti Nagar, New Delhi

.....Respondent No. 2

Through: Ms. Deepika Gupta, Advocate for



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R-2/Insurance Company through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the **Appellants/Claimants** seeking enhancement compensation granted in the sum of Rs. 8,72,000/- along with interest @ 9% per annum *vide* the Award dated 01.12.2018, on account of demise of Smt. Savitri in a road accident which took place on 16.08.2014.

2. The Appellants/Claimants have sought ***enhancement of the compensation*** on the following grounds: -

(i) that the *Minimum Wages for unskilled worker* i.e., Rs. 6,363/- has been taken, however, deceased was a housewife and her income should have been taken as per Minimum Wages for skilled worker i.e., Rs. 336.84/- per day and Rs. 336.84 x 30 days = Rs. 10,105.2/-;

(ii) that the deceased was survived by her husband, three minor children and one major child. The *personal deduction expenses* has been made to the extent of 1/2 (50% half), when in fact, the same should have been 1/4th;

(iii) that the *loss of consortium* has been granted in the sum of Rs. 40,000/-, when in fact, there are five dependents and each dependent was entitled to loss of consortium in the sum of Rs. 40,000/-; and

(iv) that the accident is of 2014 and 10% increase must be made in the compensation granted on account of loss of estate, funeral



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charges and loss of consortium, in view of the decision in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.

3. *Learned counsel for the Respondent No. 2/Insurance Company* has argued that the Minimum Wages for unskilled workers have been rightly taken for calculating the compensation.

4. It is further argued that Petitioner No. 1, husband of the deceased and the major child cannot be considered as dependents of deceased. In any case, the children are considered to be the responsibility of the husband and the deduction towards personal expenses as 1/2 (50% half) has been rightly made.

5. It is, therefore, submitted that the compensation has been calculated fairly and does not warrant any interference.

6. **Submissions heard.**

7. ***Briefly stated***, on 16.08.2014 at around 06:15 am, deceased, Smt. Savitri was going on foot near Shri Ram Hotel Kishangarh, Rohtak, Haryana when a Canter bearing No, UP-13T-5718 (*offending vehicle*) driven by Respondent No.1/Om Pal Singh, suddenly came from the side of Balmba at a high speed in a rash and negligent manner, hit the deceased, resulting in fatal injuries.

8. FIR No. 263/14 under *Sections 279/304A of the Indian Penal Code, 1860*, was registered on 16.08.2024 at Police Station Meham, Rohtak, Haryana and subsequently, chargesheet was filed against Respondent No.1, the driver-cum-owner of the offending vehicle.

9. *The first ground* on which enhancement of compensation is sought is that the Minimum wages of a skilled worker should have been taken.

Minimum Wages:



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10. The first ground on which enhancement of compensation is sought is that the Minimum wages of a skilled worker should have been taken.

11. Indisputably, deceased Smt. Savitri, aged 37 years, was the housewife which is considered as the skilled worker. ***Therefore, her income is taken on the basis of Minimum Wages for skilled worker i.e., Rs. 336.84/- per day and Rs. 336.84 x 30 days = Rs. 10,105.2/- p.m.***

Deduction towards personal expenses:

12. The next aspect for consideration is what should be the deduction towards personal expenses. The deceased was survived by her husband, three minor children and one major daughter aged about 19 years.

13. The learned Tribunal for the purpose of ascertaining dependency upon the deceased, has taken only the husband as the dependant of the deceased wife as on the date of accident.

14. *PW-l/Jagdish (husband)* had deposed that his late wife was survived by five legal heirs including himself, two daughters and two sons. Only one daughter i.e., Petitioner No.2/Santosh (sic.) out of the four children was an adult at the time of the accident and the remaining were minor.

15. The Apex Court in National Insurance Co. Ltd. vs. Birender, (2020) 11 SCC 356 while examining the issue that whether the major, married and gainfully employed sons of the deceased would be entitled to “loss of dependency”, held that the legal representatives of the deceased have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only.

16. Furthermore, in the judgment passed by the Madras High Court in



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Branch Manager, ICICI Lombard General Ins. Co Ltd. vs. Kaliyamoorthy, 2016 SCC OnLine Mad 6345, it was observed that the quantum of compensation or loss of contribution is not determined on the basis of monetary loss alone. It is also determined on the basis of invaluable and gratuitous services rendered by the mother or the wife, as the case may be. Contribution by means of service or income, both can be taken into account to determine the quantum of compensation.

17. This judgment was relied upon by the Kerala High Court in United India Insurance Co. Ltd vs. Shalumol in MACA No. 1768 of 2021, wherein the Court expanded the scope of “Loss of Dependency” to include the married daughters and the parents of the deceased. It was observed:-

“50. It would be preposterous to accept the contention of the learned counsel for the Appellant that a 25 year old daughter would be no longer dependent on her 49 year old mother because she was given in marriage. The bond between a mother and a daughter is eternal. I reminisce the quotation of Cardinal Mermillod “No matter how old she may be, sometimes a girl just needs her mom.

*51. Even if dependency is a relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the ‘ark of the covenant’. **Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money.**”*

18. While referring to all the above decisions, a Co-ordinate Bench of this court in Ram Charan vs. New India Assurance Co. Ltd., 2022 SCC OnLine Del 5146, held that the five children of the deceased i.e. one major son and four married daughters were dependant on their deceased mother. It was observed: -



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*“13. This Court is in respectful agreement with the view expressed by the Kerala High Court and Karnataka High Court in this regard. Nevertheless, it cannot be denied that the loss of other forms of support endured by the Appellants is immeasurable. By virtue of the Motor Vehicles Act, 1988, being a welfare legislation, there is no cogent reason to deny the Appellants from obtaining compensation for their loss of dependence, regardless of the nature or form of the dependence. **There cannot be any discrimination between married sons and married daughters and hence both of them are entitled for the compensation under the head ‘Loss of Dependency’.** Based on the above findings, this court is of the view that the Appellants are entitled to receive compensation under the head of ‘Loss of Dependency’.”*

19. Applying the above principles in the present case, it cannot be overlooked that the minor children as well as the major daughter continued to be the dependent on their deceased mother as a mother’s role extends far beyond mere financial considerations, involving invaluable services like managing household affairs, offering emotional stability, providing psychological comfort, etc. Hence, the married daughter is also entitled for compensation under the “*Loss of Dependency*”.

20. Thus, the learned Tribunal wrongly calculated the loss of dependency by excluding all the four children of the deceased as dependents.

21. As per the case of Sarla Verma vs. DTC, (2009) 6 SCC 121, the deduction towards personal and living expenses of the deceased would be taken as one-fourth (1/4th) where the number of dependent family members is 4 to 6.

22. The deduction towards personal expenses is now taken as 1/4th. Therefore, **the Loss of Income** is recalculated as under: -



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Rs. 10,105.2/- x $1/4^{\text{th}}$ = Rs. 2,526.3/-.

Rs. 10,105.2 - Rs. 2,526.3/- = Rs. 7,578.9/-.

Rs. 7,578.9/- x 12 = **Rs. 90,946.8/- p.a.**

Loss of consortium, Loss of Estate and Funeral Charges:

23. The second aspect is that the loss of consortium has been granted as Rs. 40,000/-.

24. Considering that there are five legal heirs of deceased Smt. Savitri, each legal heir is entitled to Rs. 40,000/-.

25. Also in view of Judgment in *Pranay Sethi* (supra), 10% increase must be made in the compensation granted on account of *Loss of Estate, Funeral Charges and Loss of Consortium*.

26. The loss of consortium, funeral expenses and loss of estate are revised as under: -

Loss of Consortium: -

Rs. 40,000/- x 5 = Rs. 2,00,000/- + Rs. 12,000/- (revision of 10% of 9 years) = Rs. 2,12,000/-.

Loss of Estate: -

Rs. 15,000/- + Rs. 4,500/- (revision of 10% of 9 years) = Rs. 19,500/-.

Funeral Expenses: -

Rs. 15,000/- + Rs. 4,500/- (revision of 10% of 9 years) = Rs. 19,500/-.

Conclusion:

27. Accordingly, in view of above, the compensation is recalculated and enhanced which is as under: -

S. No.	Heads	Awarded by Tribunal (Rs.)	Enhanced by this Court
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1.	Income of deceased (A)	6,363/-	10,105.2/-
2.	Add-Future Prospects (B)	2,545.20/- @ 40%	4,042.08/- @ 40%
3.	Less- Personal Expenses of deceased (C)	8,908.20/-	14,147.28/-p.m. (1/4 th)
4.	Monthly Loss of Dependency (A+B) – C = D	4,454.10/-	10,610.46/-
5.	Annual Loss of Dependency (D x 12)	53,449.20/-p.a.	1,27,325.52/- p.a.
6.	Multiplier (E)	15	15 (Same)
7.	Total Loss of Dependency (D x 12 x E = F)	8,01,738 (rounded off to Rs. 8,01,800/-)	19,09,882.8/- (rounded off to Rs. 19,09,900/-)
8.	Medical Expenses (G)	NIL	Nil
9.	Loss of Love and Affection (H)	NIL	Nil
10.	Loss of Consortium (I)	40,000/-	2,12,000/- (to each five Claimants)
11.	Loss of Estate (J)	15,000/-	19,500/-
12.	Funeral Expenses (K)	15,000/-	19,500/-
13.	Total Compensation (F+G+H+I+J+K = L)	Rs. 8,71,800/- (rounded off to Rs. 8,72,000/-)	Rs. 21,60,900/- (rounded off to Rs. 21,61,000/-)



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28. The *enhanced compensation amount in the sum of Rs. 21,61,000/- along with interest @ 9% per annum*, be deposited by the Appellant/Insurance Company within four weeks, which shall be disbursed in terms of the Award dated 01.12.2018.

29. Accordingly, the Appeal is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024
S.Sharma