



2024:DHC:7728



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 30th September, 2024**+ **MAC.APP. 242/2024, CM APPL. 26702/2024 (stay)****ROYAL SUNDARAM GENERAL INSURANCE CO. LTD**

.....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

ZEENAT KHAN AND OTHERS

.....Respondent

Through: Mr. S.N. Parashar, Mr. Palvinder Singh, Mr. S.W. Nomani and Mr. Satvinder Singh, Advocates for R-1 and R-2.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (Oral)****NEENA BANSAL KRISHNA, J.**

The tragic loss of an infant in vehicular accidents is an unspeakable sorrow that transcends beyond the boundaries of monetary valuation, as no amount of compensation can restore the innocence lost or the joy extinguished in a heartbeat.

1. The Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to 'M.V Act, 1988'*) has been filed on behalf of the appellant/ Insurance Company against the Judgment and Award dated 29.02.2024 whereby the compensation in the sum of Rs.13,80,500/- has been awarded to the respondents, on account of demise of their 3½ year old



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daughter in the road accident.

2. Briefly stated, the child, Aiza Fatma, aged about three of years suffered from a fatal injury in a road accident on 25.10.2020. Petition under Section 166(1) of the Motor Vehicle Act was filed by the parents for seeking compensation. An FIR No. 0142 dated 26.10.2020 under Section 279, 338, 304A of the Indian Penal Code (*hereinafter referred to as 'CPC, 1860'*) was registered at Police Station Patlikuhall, District Kullu, Himachal Pradesh in which eventually the Charge-Sheet was filed before the Court.

3. As per the record, the offending vehicle was owned and was being driven by Mr. Palvinder Singh/respondent No. 3. The vehicle was duly insured with the appellant.

4. *Vide* the Impugned Award dated 29.02.2024, the learned Presiding Officer concluded that the death was a consequence of the injury suffered in an accident caused due to rash and negligent driving of the respondent No. 3 and calculated of the compensation by assessing the notional income of the deceased child on the basis of minimum wages at Rs.8,250/- per month i.e. Rs.99,000/- p.a. Further, 40% of her notional annual income i.e. Rs.36,900/- p.a. was added towards the future prospects and 50% of the amount so calculated was deducted towards the personal expenses of the deceased. The amount was thus calculated as Rs.69,300/- p.a. and the multiplier of 18 was applied to calculate the loss of dependency. Hence, the total ***Loss of dependency was calculated as Rs.12,47,400/-***. Additionally, non-pecuniary losses in the sum of Rs.1,33,100/- comprising of loss of consortium, loss of estate and expenses towards funeral charges in the sum of Rs.48,400/-, Rs. 18,151/- and Rs. 18,151/- respectively, were added. *Hence, a total compensation of Rs.13,80,500/- along with interest @9% p.a., was awarded*



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to the respondent Nos. 1 and 2, the parents of the child.

5. The Appellant has challenged the award of compensation on essentially three grounds; *firstly*, that Ld. Tribunal ought to have assessed the loss of dependency on the basis of notional income of Rs.30,000/- including future prospects and has erred in presuming the income of the deceased child as per minimum wages of unskilled worker in Himachal Pradesh as Rs.8,250/- per month and adding future prospects @ 40% p.a. *Secondly*, a multiplier of 15, instead of 18, should have been applied in case of death of children up to the age of 15 years; and *lastly*, the rate of interest of 9% p.a. is much more than the prevailing rate of interest on bank deposits and the same should not have been more than 7.5% per annum.

6. Thus, it is prayed that the Impugned Judgment and Award dated 29.02.2024 be modified in accordance with above specified parameters.

7. **Submissions heard and record as well as judgment perused.**

8. The Appellant has sought modification of Award on three grounds which are considered as below.

Calculation of Yearly Loss of Dependency:

9. While traditionally in the case of death of a child upto 15 years, it was the notional income of Rs.15,000/- in terms of second Schedule, was being adopted with all its variations depending upon the cost inflation index; however, the second Schedule stands deleted w.e.f. 01.09.2019. The trend thereafter, has been to calculate the dependency of the child on the basis of minimum wages.

10. In the landmark judgment of R.K. Malik & Anr. v. Kiran Pal & Anr., (2009) 14 SCC 1, the Apex Court, while considering the claims arising on



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account of death of children, observed that in motor accident cases, the goal is to return the dependents or claimants to the pre-accident state. Compensation is awarded to repair the damage caused by the accident, ensuring that the victim or their dependents are put in the same position they would have been in if the accident had not occurred. This compensation includes future financial losses, such as lost income or dependency. However, no amount of compensation can fully replace a lost limb or alleviate the pain and suffering caused by the loss of life. The loss of a child, life, or limb cannot be entirely compensated or mitigated. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime but this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

11. In Kajal v. Jagdish Chand & Ors., (2020) 4 SCC 413, while computing Loss of earning for calculating compensation to be granted to a girl child aged around 12 years who suffered permanent disability, the Supreme Court observed that the Courts have erred in taking notional income of Rs 15,000 p.a. as the girl was a young child of 12 years and held that this was not a proper way of assessing the future loss of income because studying the child could have worked and would have earned much more than Rs 15,000 p.a. Hence, the Supreme Court applied the Minimum Wages payable to a skilled workman and opined that the same would be reflective of the minimum amount which she would have earned on becoming major.

12. In the case of Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd. & Anr., (2022) 7 SCC 738, while considering the grant of



compensation to the parents on demise of their five year old child, it was observed that the assessment of the notional income of the child as Rs.15,000/- p.a., was not justified. The notional income should be calculated on the basis of minimum wages payable to a skilled worker.

13. Similar observations were made in Minor Roopa v. The Divisional Manager, New India Assurance Company Ltd., Civil Appeal No.5069 of 2022 decided on 03.08.2022 and the Apex Court assessed the compensation based on minimum wages notified by the State of Karnataka.

14. Recently, in Oriental Insurance v. Reena Raghav, 2023 SCC OnLine Del 6695, wherein the deceased was a 5 year old girl-child, studying in DPS Public school, the Coordinate Bench of this Court upheld the Impugned Award of compensation and assessed the income of the deceased by adopting minimum wages of a skilled labour as notified in the State of Uttar Pradesh.

15. Thus, it is now settled that when it comes to a child, since their actual or potential income cannot be precisely determined, the minimum wages applicable on the date of the accident provides a reasonable basis for estimating the child's income.

16. In light of the aforementioned rulings by the Supreme Court and this Court, the most reasonable approach to assess loss of dependency, even for a minor, would be to refer to the minimum wages established by the State Government in the location where the minor lived at the time of the accident.

17. As the notional income is being determined on basis of the minimum wages, future prospects would also be calculated on the basis of this income at the rate of 40% by applying the principle laid in National Insurance



Company Limited v. Pranay Sethi And Others, (2017) 16 SCC 680.

18. Therefore, the Tribunal has rightly calculated the notional income of the child @Rs.8,250/- p.a., which was the minimum wages for unskilled worker in Himachal Pradesh. The Annual income has thus been rightly calculated as Rs.99,000/- p.a. 40% of this Income, amounting to Rs.39,600/- has been further added to this amount towards future prospects in terms of Pranay Sethi (Supra). The notional income thus, calculated as Rs.1,38,600/- is in accordance with the observations made by the Apex Court, as discussed above.

19. In light of the judgment of the Supreme Court in Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation &Anr., (2009) 6 SCC 121, and United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors., (2021) 11 SCC 780, Out of the above amount so assessed, 50% had to be deducted on account of personal and living expenses as has been done in the present case.

20. ***Thus, the loss of yearly dependency has been rightly calculated as Rs.69,300/- (i.e 50% of Rs.1,38,600/-), and the same warrants no interference.***

Ascertaining the Multiplier:

21. The Counsel for the Appellants has pleaded that a multiplier of 15, instead of 18, should have been applied in case of death of children up to the age of 15 years.

22. For calculating pecuniary loss or dependency, the courts consistently use the "multiplier method" This method is based on the principle that a claimant should receive a lump sum that generates enough interest to



provide the same level of support the deceased would have given to their dependents if they had lived. The yearly loss of dependency is equated to the interest that could be earned on the invested capital sum, which becomes the compensation for the pecuniary loss. The uniform application of the multiplier method ensures consistency and fairness, preventing varying compensation amounts in similar cases.

23. The calculation of Multiplier has been laid down in the case of Sarla Varma (Supra) as under :-

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

24. Evidently, the Judgment is silent on the multiplier to be used for the victims under 15 years of age. This incongruity in the matter of selection of multiplier in the case of persons belonging to the age group up to 15 years was noted in by the Apex the case of Divya vs. National Insurance Company Ltd., Civil Appeal No. 7605/2022.

25. The Apex Court made a reference to the observations of the Constitutional Bench in the case of Sarla Varma (Supra) which was followed in the case of Reshma Kumari & Ors. vs. Madan Mohan & Ors., (2013) 9 SCC 65, to observe that in cases where the deceased is upto 15 years, irrespective of Section 166 or 163(a) under which the claim for



compensation has been made, the ***multiplier of 15*** and the assessment as indicated in second Schedule subject to correction as pointed out in the Table given in the *Sarla Varma (Supra)*, should be followed.

26. The Apex Court further observed that it was high time to move to a standard method of selection of multiplier income for future prospects and deductions for personal and living expenses. The Table given in *Sarla Varma* was approved for the selection of multiplier in Claim Applications under Section 166 of the M.V. Act, in cases of death. The multiplier of 15 was recommended in the cases of death of a child upto 15 years.

27. Thus, in light of the above, it is observed that in the impugned Judgment, the multiplier has been taken as 18, which should actually have been 15.

28. No matter how much one would want to cure the loss by providing maximum financial compensation to the family members, but one must not lose sight that the Judicial propriety would lie in maintaining uniformity in the carefully derived formula for calculating the “just” compensation in such cases as any deviation or incorrect application of the methods of calculation, would only disturb the existing mechanism.

29. ***Thus, this plea of the appellant is allowed and the multiplier in the Impugned Award is modified to 15.***

30. The annual loss of dependency has been calculated as Rs.69,300/- and taking a multiplier as 15, the total loss of dependency comes to **Rs.10,39,500/-** (i.e. Rs.69,300/- x 15).

Non-pecuniary Losses

31. In, *Magma General Insurance Company Limited vs. Nanu Ram,*



(2018) R 18 SCC 113, the Supreme Court had held that the parents are entitled to filial consortium as compensation on accidental death of their child. In National Insurance Co. Ltd. vs. Pranay Sethi & Ors., (2017) 16 SCC 680 while dealing with the various heads under which the claimant is entitled to compensation in death cases, it was explained that one such head of loss is **consortium**. In legal parlance, consortium is a compendious term, which encompasses “*spousal consortium, parental consortium and filial consortium, the right to consortium would include company, care, help, comfort, guidance, society, solace and affection of the deceased, which is lost to the family.*”

32. 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 the parents, is to lose their child during their lifetime. The children are valued for their love and affection and their role in the family unit. Thus, the *consortium* is a special prism reflecting changing norms about the status and worth of the actual relationship. The value of the child’s consortium far accedes the economic value of the compensation awarded in the case of death of a child the amount awarded to the parents, which is a compensation for loss of love, affection, care and companionship of the child.

33. In the case of Pranay Sethi (supra), it was held that in the case of death, Rs.15,000/- is liable to be paid towards the loss of estate and funeral charges, while Rs.40,000/- was payable towards the loss of consortium and the same may be enhanced by 10% every three years.

34. The learned Presiding Officer has thus, rightly granted Rs.18,150/- towards the loss of estate, Rs.18,150/- towards funeral charges and Rs.48,400/- to each parent towards loss of consortium i.e. total of



Rs.1,33,100/- towards these non-pecuniary losses.

35. This has not been challenged on behalf of the Insurance Company.

36. The total compensation which thus, becomes payable is **Rs. 11,72,600/-** (*i.e.* Rs. Rs.1,33,100/- + Rs.10,39,500/-).

Calculation of Rate of Interest

37. The interest has been granted @9% in the present case, which has been challenged by the appellants stating that the interest should not have been more than 7.5% p.a.

38. In the present case, the unfortunate accident happened on 25.10.2020 and the Award was passed in 2024. The facts of Reena Raghav (Supra), are almost *pari materia* to the present case, wherein the deceased was a 5 year old girl-child who fell victim to a road accident in 2019 and the interest was granted @9% p.a. while passing the Award of Compensation in the Year 2023.

39. The aspect of interest was challenged by the Appellant/Insurance Company on the grounds that the interest awarded is exorbitant as per the prevailing rates of interest and that the same be reduced to @7.5% p.a.

40. While relying upon the judgment of the apex Court in Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, the Coordinate Bench of this Court in Reena Raghav (Supra) refused to interfere with the rate of interest awarded @9% p.a. by the learned Tribunal in the Impugned Award and also observed that the Appellant/Insurance Company had only orally made a submission claiming the prevalent rate of interest to be 7.5%



p.a that too, on the basis of Google search while no document had been placed to support the plea of interest being too high.

41. In light of the above judgments and considering that in the present appeal as well, apart from making a bald claim on the prevailing rate of interest, the Appellant has not filed on record any document to show the rate of interest that was prevailing between the year 2020 to 2024.

42. *Thus, there is no reason to interfere with the rate of interest awarded, @9% p.a., by the learned Tribunal.*

Conclusion

43. In view of the above observations, the modified final amount of compensation, is encapsulated in the tabular chart as under:-

S.No.	Heads	Awarded by the Claims Tribunal	Final Amount Payable
1.	Yearly loss of dependency	Rs.69300/-	Rs.69300/-
2.	Multiplier.	18	15
3.	Total loss of dependency	Rs. 12,47,400/-	Rs.10,39,500/-
4.	Medical Expenses	Nil	Nil
5.	<i>Deduction, if any</i>	Nil	Nil
6.	Total loss of dependency after deduction, if any	Nil	Nil
7.	Compensation for loss of consortium to both parents	Rs. 96,800/-	Rs. 96,800/-
8.	Compensation for loss of estate	Rs. 18,150/-	Rs. 18,150/-
9.	Compensation towards funeral expenses	Rs. 18,150/-	Rs. 18,150/-
10.	TOTAL COMPENSATION	Rs. 13,80,500/-	Rs. 11,72,600/-
11.	RATE OF INTEREST AWARDED:	@9% p.a.	@9% p.a.



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	from date of filing of petition till actual realization of principal amount awarded.		
12.	Award amount kept in FDRs	Rs. 11,00,000/-	Rs. 10,00,000/-
13.	Award amount released	Rs. 2,80,500/-	Rs. 1,72,600/-
14.	Mode of disbursement of the award amount to the claimant(s). (Clause 29)	(I) Share of Petitioner No.1/mother: Out of the compensation amount, Rs. 5,00,000/- be kept in the form of monthly FDRs of Rs.5000/- P.M. Remaining principal amount of Rs.1,75,800/- be released to petitioner no.1/mother in her bank account near her place of residence. (II) Share of Petitioner No.2/father: Out of the compensation amount, Rs. 6,00,000/- be kept in the form of monthly FDRs of Rs.5000/- P.M. Remaining principal amount of Rs.1,04,700/- be released to petitioner no.2/father in his bank account near his place of residence.	Share of Mother: Rs. 5,00,000/- be kept in the form of monthly FDRs of Rs.5000/- P.M. Remaining principal amount of Rs.86,300/- i.e 50% of Rs.1,72,600 be released in mother's bank account near her place of residence. Share of father: Rs. 5,00,000/- be kept in the form of monthly FDRs of Rs.5000/- P.M. Remaining principal amount of Rs.86,300/- i.e 50% of Rs.1,72,600 be released in father's bank account near his place of residence.

44. To conclude, this Court in it's Order dated 15.05.2024 directed that
“In the meanwhile, the entire amount of compensation with accrued interest



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*be deposited with the learned Tribunal within four weeks from today. On such deposit, **50% of the amount of compensation be released to the respondents/claimants with accrued interest without prejudice.***”

45. In view of the above, the Appeal is accordingly disposed of with the aforesaid modification. The Copy of the Award be forwarded to the Ld. Tribunal, for compliance. The Application for release of the modified compensation by either party be henceforth, filed before the Ld. Tribunal.

46. The pending application also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 30, 2024/RS

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 05.10.2024
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