



2024:DHC:9255



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 26th November, 2024

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MAC.APP. 701/2019, CM APPL. 2603/2020

PUSHPA & ORS

.....Appellant

Through: Mr. Navneet Goyal, Advocate.
Mr. Pankaj Seth, Advocate.

versus

LAKHVINDER SINGH & ORS. (SBI GENERAL INSURANCE
CO. LTD.)

.....Respondent

Through: Mr. Sameer Nandwani and Ms. Heeba
Ansari, Advocates for R-3.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. An Appeal under *Section 173 of the Motor Vehicle Act, 1988* has been filed by the *Claimants/Appellants for enhancement of the Compensation* granted by the learned Tribunal in the sum of Rs. 11,93,000/- @ 9% p.a. *vide* Impugned Awards dated 27.02.2019 and 18.04.2019.
2. ***Briefly stated***, on 12.03.2015 at about 7.20 PM, on Najafgarh Nangloi Road, Near Kali Mandir, Nihal Vihar, Delhi the motorcycle of the deceased /Ram Aasre was hit from behind by the Speeding Truck - Offending Vehicle Registration No.HR-38M-6824, which was being driven rashly by the Respondent No. 1/ Lakhvinder Singh. Due to the *fatal injuries sustained*, he expired on the spot and was declared *bought dead* by Sanjay Gandhi

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Memorial Hospital.

3. The Offending vehicle was owned by *Respondent No. 2/ Sh. Satvinder Singh* and was insured with *Respondent No. 3/SBI General Insurance Company and Co. Ltd.*

4. The enhancement of the compensation has been sought by the Claimants / Appellants– wife, two sons and father of the deceased on the following *grounds*:

(i) that the Ld. Tribunal has wrongly assessed the *Income of the deceased* which has been taken as per *Minimum Wages for an Unskilled Worker*, even though he was an electrical Contractor; and his Income Tax Returns have been overlooked;

(ii) *The Impugned Award dated 27.02.2019* was amended and the compensation was re-calculated by granting *future prospects @25% vide Amended Final Award dated 18.04.2019*. However, the Future Prospects should have been 30% as the deceased was having regular income;

(iii) the deceased had 4 dependants i.e. his four legal heirs - the wife, two sons and the father, however, deduction has been made of 1/3rd instead of 1/4th *towards personal expenses*, only on the ground that the elder son was major; and

(iv) The compensation granted under *Non-Pecuniary Heads* is also on the lesser side.

5. ***Learned counsel on behalf of the Insurance Company*** has submitted that the ITR has been rightly rejected since it was filed in April, 2015 i.e. after the demise of Shri Ram Aasre on 12.03.2015. Furthermore, all the calculations have been done in accordance with law.



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6. It is further argued that even the second son was major and the deduction should have been more since both the sons were majors and not dependent upon the deceased.

7. **Submissions heard and record perused.**

Loss of Dependency: -

Assessment of the Income:-

8. To appreciate the contention of the Claimants, it would be apposite to refer to the Testimony of the **PW3/Sh. Anil Kumar**, the son of the deceased, who had deposed *vide* his *Affidavit of Evidence Ex. PW3/A*, that his father/deceased was working as an Electrician and used to take various Contracts of Electrification in Buildings and Societies under construction. He further deposed that the deceased was earning about 75,000/- per month.

9. In support thereof, **PW1/Rakesh**, Tax Assistant/Income Tax Office placed on record *Income Tax Returns-Ex.PW1/1* of the deceased filed on 25.04.2015 for FY 2013-14 i.e. AY 2014-15 and a perusal of the ITR shows that the net income of deceased Rs. 2,17,815/-. ITRs establish that the income of the deceased was Rs. 2.39 lakhs per annum from which only Rs.1919/- was liable to be deducted towards the Income Tax.

10. The ITRs find further corroboration from the testimony of **PW2/Shri Vijender Singh**, Accountant of M/s GD Builders and M/s Aar Gee Contracts Pvt and **PW4/Shri Inder Singh Adhikari**, Supervisor M/s Satkartar Electronics. Ltd. who further deposed that the deceased was working as Electricity Contractor with GD Builders, Aar Gee Contracts Pvt. Ltd, and M/s Satkartar Electronics respectively and placed on record the Form 16A to prove that TDS was deducted from the payments made to the deceased. He was paid a total amount of Rs. 4,33,863/- for financial year L4.2013-



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31.3.2014, and was also paid total sum of Rs.4,67,961/- for financial year 1.4.2014-31.3.2015.

11. It has been held in the recent judgment of *Anjali vs Lokendra Rathod* 2022 LiveLaw (SC) 1012, that Income Tax Return is a statutory document on which reliance can be placed, where available, for computation of annual income of deceased.

12. It was argued on behalf of the Respondent that ITRs were rightly not considered by the Ld. Tribunal as it was filed after his demise. However, the law mandates that the ITR on behalf of an individual has to be filed annually; even if the individual dies in between, ITR still has to be filed for the income earned during that Financial year, until the date of his death. The calculation is made of the income of the deceased from the start of the year till the date of death, and thereby the tax payable on it in the same manner as if the deceased is alive.

13. In the present case, the deceased expired on 12.03.2015 and the ITR has been rightly filed in accordance with law in April 2015 for AY 2014-15. Thus, the Ld. Tribunal has erred in not considering the Income as reflected in the ITRs filed and ***thus, the monthly Income of the Deceased is re-calculated as, Rs.2,17,815 / 12 months = Rs. 18,152/- p.m.***

Addition of Future Prospects:-

14. It has been argued that since the deceased was in a permanent job, he was entitled to an additional of 30% towards the future prospects instead of 25% as granted by the Ld. Tribunal.

15. The Ld. Tribunal has rightly recorded in the Impugned Amended Award dated 18.04.2019 that admittedly the deceased was self-employed was 46 years old at the time.



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16. Thus, as per the judgment of *National Insurance Co. Ltd Vs. Pranay Sethi & Ors.* 2017 SCC online 1270, ***the Ld. Tribunal has rightly granted 25% towards future prospects and the same warrants no interference.***

Deduction towards personal and Living expenses :-

17. PW-3/Anil Kumar, the son of the deceased had deposed that the deceased had total 4 dependants i.e. Smt. Pushpa/his wife, Sh. Ram Dhan/his father and Sh. Anil Kumar and Sh. Sunil Kumar/his two sons. However, he has admitted in his cross examination dated 21.04.2017 that he is employed and earning Rs. 12,000/- to Rs. 15,000/- and his younger brother, Sunil Kumar was studying and not earning. Thus, even if second son was major, he was still studying and was dependent on the deceased, which has been rightly considered by the Ld. Tribunal.

18. Thus, the elder son was admittedly not dependant on his deceased father at the time of the accident and the ***Ld. Tribunal has rightly deducted 1/3rd towards personal and living expenses considering there were only 3 dependant on him . The same warrants no interference.***

19. Thus, the **Total Loss of Dependency** is re-calculated as under:-

i. Income p.m. + 25% (future prospects) = **Rs. 18,152/- p.m. + Rs. 4538**
= Rs. 22,690/-

ii. 1/3rd deduction = Rs. 22,690 – Rs. 7564 = **Rs. 15126/-;**

iii. Rs. 15126 x 12 x 13 = **Rs. 23,59,656/-.**

Non- Pecuniary Heads :-

20. The Ld. Tribunal has granted only Rs. 40,000/- towards the Loss of Consortium. However, considering there are 4 legal heirs surviving the deceased, (irrespective of age) each member is entitled to compensation for



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loss of consortium. *Thus, the Total Loss of Consortium is enhanced to Rs. 40,000/- X 4 = Rs. 1,60,000/-.*

21. No modification is required in the compensation granted for the Loss of funeral expenses in the sum of Rs. 15,000/- and Loss of estate as Rs. 15,000/-.

Relief:-

22. *The enhanced amount of Compensation is calculated as under: -*

S. No.	Heads	Awarded by the Claim Tribunal	Modified by this Court
1.	Income of deceased (per month) (A)	Rs.8,632/-	Rs. 18,152/-
2.	Add-Future Prospects - 25%(B)	Rs. 2,158/-	Rs. 4,538
3.	Less-Personal Expenses of deceased -1/4 (C)	Rs. 3,596.67	Rs. 7564
4.	Monthly loss of dependency [(A+B) – C = D]	Rs.7,193.33	Rs. 15,126
5.	Annual loss of dependency (D x 12)	Rs.86,320/-	Rs. 1,81,512/-
6.	Multiplier	13	13
7.	Total loss of dependency (D x 12 x E = F)	Rs.11,22,160/- rounded of to Rs. 11,23,000/-	Rs. 23,59,656/-
8.	Medical Expenses (G)	NIL	NIL
9.	Compensation for loss of love and affection (H)	NIL	NIL
10.	Compensation for loss of consortium (I)	Rs. 40,000/-	Rs. 1,60,000/-
11.	Compensation for loss of estate (J)	Rs. 15,000/-	Rs. 15,000/-
12.	Compensation towards funeral expenses (K)	Rs. 15,000/-	Rs. 15,000/-



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13.	TOTAL COMPENSATION (F+G+H+I+J+K=L)	Rs. 11,93,000/-	Rs. 25,49,656/- rounded of to Rs. 25,50,000/-
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23. In view of the above, the total amount of Compensation granted by the Ld. Tribunal is modified to **Rs. 25,50,000/-** along with interest @ 9 p.a. from the date of claim till the disbursement, as per the terms of the Amended Final Award 18.04.2019.

24. The Appeal stands disposed of accordingly, along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 26, 2024
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