



2024:DHC:8225



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 07th October, 2024***

+ **MAC.APP. 538/2018 & CM APPL. 23911/2018**

NATIONAL INSURANCE CO. LTDAppellant

Through: Mr. Arihant Jain & Mr. Mayank Ranjan
Yadav, Advocates.

versus

HARISH KUMAR & ORSRespondent

Through: Mr. Himanshu Jawa, Advocate.

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+ **MAC.APP. 93/2020 & CM APPLs. 6974/2020, CM APPL. 6974/2020**

HARISH KUMAR MITTAL & ANRAppellants

Through: Mr. Himanshu Jawa, Advocate.

versus

NATIONAL INSURANCE CO LTD & ORSRespondents

Through: Mr. Arihant Jain & Mr. Mayank Ranjan
Yadav, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

Judicial consistency in Application of settled compensation formulae for Motor Vehicle accident cases is not merely a matter of procedural uniformity but a cornerstone of justice itself. Fragmented approach to compensation erodes the very foundation of legal certainty, which the aggrieved are entitled to expect.

1. The present Appeals under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as "MV Act, 1988"*) have been filed on behalf challenging the impugned Award dated 27.02.2018 *vide* which the



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compensation of Rs. 33,01,360/- along with interest @ 9 % p.a. has been granted to the Claimants.

2. ***Facts in brief*** are that deceased Smt. Sonia aged 25 years, was travelling in a Santro Car on 15.11.2013 which was hit by the *Trolla*, resulting in her death on the spot.

3. The learned Tribunal considering that the deceased Smt. Sonia was a housewife, took her income as Rs. 10,686/- per month, the minimum wages of a graduate. The future prospects of 40% was added to the income and the multiplier of 18 was taken. *The total loss of dependency was taken as Rs. 32,31,360/-*. Further amounts of Rs. 15,000/- for funeral expenses; Rs. 15,000/- for loss of estate and Rs. 40,000/- compensation for loss of consortium were granted. The total compensation granted was Rs. 33,01,360/- along with interest @ 9% per annum.

4. ***The main grounds of challenge*** of the Award dated 27.02.2018 by ***the Insurance Company*** is that 1/3rd deductions towards the personal expenses of deceased, Smt. Sonia has not been made in accordance with the principles laid down by the Constitution Bench of the Apex Court in *National Insurance Co. Ltd. vs. Pranay Sethi*, (2017) 13 SCALE 12. Also, the interest granted @ 9% per annum is high as the prevailing rate of interest in the Nationalised Bank is around 7.5% per annum.

5. It is, therefore, submitted that the Award dated 27.02.2018 may accordingly be modified.

6. The ***respondents-claimants*** has also filed a *cross Appeal MAC.APP. 93/2020*, wherein they are seeking enhancement of the Compensation amount on the grounds that the deceased was a graduate and was having a Diploma Certificate and had ocean of opportunities ahead of her and her



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future prospectus should have been enhanced not by 40% but by 50%. Furthermore, the expenses towards Love and Affection given to the minor daughter and to the husband of the deceased needs to be enhanced. Furthermore, the interest should not have been less than 18% per annum on the total amount of compensation; and the Learned tribunal has erred in not granting any amount for compensation of loss of love and affection.

7. *Learned counsel for the Insurance Company has argued that the husband of deceased Smt. Sonia has already got re-married and, therefore, the statutory deductions should be 50% and not 1/3rd.*

8. **Submissions heard and record perused.**

9. For the sake of clarity, the challenges raised by the parties can be summarized as under:-

S. No.	Heads	Awarded By Ld. Tribunal	Challenge of the Insurance Company	Challenge by the Claimant
1.	Income	Rs. 10,686/- p.m.	-	-
2.	<i>Add-Future Prospects</i>	<i>40%</i>	-	<i>50%</i>
3.	<i>Less-Personal expenses</i>	<i>Nil.</i>	<i>1/3rd</i>	-
4.	Monthly Loss of Dependency	Rs. 14,960/-	Liable to be reduced	Liable to be enhanced
5.	Multiplier	18	-	-
6.	Total Loss of Dependency (12x18x14,960)	Rs. 32,31,456/-	Liable to be reduced	Liable to be enhanced
7.	Medical Expenses	-	-	-
8.	<i>Compensation for Loss of Love and Affection</i>	<i>Nil.</i>	-	<i>Liable to be granted</i>
9.	<i>Compensation for Loss of Consortium</i>	<i>Rs. 40,000/-</i>	-	<i>Should be granted to both dependants</i>
10.	Compensation for	Rs. 15,000/-	-	-

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	loss of estate			
11.	Compensation towards funeral expenses	Rs. 15,000/-	-	-
12.	Total Compensation	Rs. 33,01,360/-	Liabe to be reduced	Liabe to be enhanced
13.	Interest Awarded	9% p.a.	7.5% p.a.	18% p.a.

Loss of Dependency:

10. The *first ground* on which the Insurance Company has challenged the Award is that while computing the ***Loss of Dependency***, $1/3^{\text{rd}}$ amount has not been ***deducted towards the personal expenses*** as has been held in the case of National Insurance Co. Ltd. vs. Pranay Sethi 2017 (13) SCALE 12. Therefore, there is an error in computing the dependency.

11. In the case of Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, it has been held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is between 2 and 3; one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is between 4 and 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six. The same has been affirmed by the Constitution Bench of the Apex Court in Pranay Sethi (Supra).

12. Thus, considering the deceased falls within the bracket of 2-3 dependant family members, ***$1/3^{\text{rd}}$ should have been deducted as personal and living expenses.*** Even though, the husband has remarried, there is a daughter who was barely two years old at the time of accident, hence it would not be fair to deduct 50% towards personal expenses from the wages



as is claimed by the Insurance Company.

13. *Therefore, there is an anomaly in calculating loss of Dependency as 1/3rd amount was liable to be deducted. The amount liable to be deducted towards personal expenses comes to Rs. 4,986.8/- i.e. 14,960 - 1/3rd of 14,960.*

14. The Claimants, on the other hand have *asserted* is that considering the young age of the deceased and that she was a graduate, the ***Future Prospects should have been enhanced by 50% and not 40%*** as has been granted by the Ld. Tribunal.

15. In the case of Pranay Sethi (Supra) it was held that:-

*“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.*

*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. ...”*

16. The deceased was 25 years old and self-employed in the sense that she was a housewife. *Thus, the future prospects as **40% have been rightly calculated by the learned Tribunal** in the light of the judgment of Pranay Sethi (Supra) and this court is not inclined to modify the same.*

17. To sum up, the loss of dependency needs to be re-calculated after deduction of 1/3rd towards personal expenses.

18. The ***Loss of dependency*** is thus, re- calculated as :-

i) Rs. 10,686 + 40% (towards future prospects) of Rs. 10,686 = Rs. 14960;



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ii) Rs. 14960 - Rs. 4986 (i.e. $1/3^{\text{rd}}$ deductions towards personal expenses) = Rs. 9974;

iii) Rs. $9974 \times 12 \times 18$ = Rs. 21,54,384/-.

19. Hence, a sum of **Rs. 21,54,384/-** is revised as compensation towards **Loss of Dependency**.

The Rate of Interest:

20. The other ground of grievance of the Insurance Company is that the interest has been granted @ 9% instead of prevailing 7.5% per annum while the Claimant has sought enhancement of the same to 18% p.a.

21. Pertinently, the accident is of November, 2023. In the case of Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601, 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.

22. In light of the same and considering that the claims of the claimant and the Insurance company have not been justified in any way as apart from making a bald claim on the prevailing rate of interest, the parties have not filed on record any document to show the rate of interest that was prevailing between the year 2013 to 2018, ***this court finds no reason to interfere with the rate of interest awarded, @9% p.a., by the learned Tribunal.***

Loss of Consortium and Loss of Love and Affection:

23. The claimant has also pleaded that compensation for loss of consortium be granted to both, the husband and the minor daughter i.e. Rs. 40,000/- each.

24. In Pranay Sethi (Supra), 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.*”

25. In the present case, evidently the husband would be entitled to get spousal consortium for loss of companionship, affection, love and other benefits, while the minor daughter would be entitled to parental consortium to compensate for loss care, protection, affection, guidance etc.

26. The contention of the claimants, that the Ld. Tribunal has erred in not granting any amount for loss of love and affection to the spouse and child of the deceased is not tenable because, loss of love and affection is encompassed in loss of consortium.

27. Similar observations were made in the case of United India Insurance Co. Ltd. v. Satinder Kaur, 2020 SCC OnLine SC 410, observed that the judgment of Pranay Sethi (Supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. Thus, the Apex Court after taking note of the fact that several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection, directed the Tribunals and High Courts to award compensation only for loss of consortium, which is a legitimate conventional head.

28. *In light of the above, since the loss of consortium is being granted, the plea of the claimants for compensation separately under the head of Loss of Affection, is not tenable.*



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29. *Hence, the Award is modified to Rs. 40,000/- each towards loss of consortium.*

Conclusion:

30. 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 Ld. Tribunal	Modified by this Court
1.	Income	Rs. 10,686/- p.m.	Rs. 10,686/- p.m.
2.	Add-Future Prospects	40%	40%
3.	Less-Personal expenses	Nil.	1/3rd (i.e. 4986.8)
4.	Monthly Loss of Dependency	Rs. 14,960/-	Rs. 9974
5.	Multiplier	18	18
6.	Total Loss of Dependency (12x18x Monthly loss)	Rs. 32, 31,456/-	Rs. 21,54,384/-
7.	Medical Expenses	-	-
8.	Compensation for Loss of Love and Affection	-	-
9.	Compensation for Loss of Consortium	Rs. 40,000/-	Rs. 80,000/-
10.	Compensation for loss of estate	Rs. 15,000/-	Rs. 15,000/-
11.	Compensation towards funeral expenses	Rs. 15,000/-	Rs. 15,000/-
12.	Total Compensation	Rs. 33,01,360/-	Rs. 22,64,384/-
13.	Interest Awarded	9% p.a.	9% p.a.

31. The Award is hereby modified and the Compensation amount is re-calculated as **Rs. 22,64,384/- along with interest 9% p.a. with all other terms of the Award being the same.**

32. The Appeals are therefore, accordingly disposed of along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 7, 2024

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