



2024:DHC:10220



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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. 646/2024, CM APPL. 72165/2024 (stay)

SBI GENERAL INSURANCE COMPANY LIMITED

46, 3rd Floor, Pussa Road, Karol Bagh

Opposite Metro Pillar No.129,

New Delhi -110005.

.....Appellant

Through: Mr. Sameer Nandwani, Advocate.

versus

1. SMT ABIDA ALAM

W /o Sh. Ummid Alam,

R/ o. H.No.332,

Pocket -05, Sector A -6,

Narela, Delhi.

.....Respondent No.1.

2. Sh. Ummid Alam

S / o Sh. Ikramuddin,

R/ o. H.No.332,

Pocket -05, Sector A -6,

Narela, Delhi.

.....Respondent No.2.

3. Sh. Noor Hasan

S / o. Sh. Ali Sher

R/ o. 68, Mandapa Dankaur,

Gautam Budha Nagar,

U.P.

.....Respondent No.3.

4. Sh. Asif Ali,

S / o. Sh. Lukman Khan,

R/o Andhel,

Bulandshahr,

Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 25.02.2025
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UP.

.....Respondent No.4.

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 72166/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

MAC.APP. 646/2024

3. An Appeal under *Section 173 of the Motor Vehicle Act, 1988* ('M.V. Act', *hereinafter*) has been filed on behalf of the *Appellant-Insurance Company* against the Award dated 23.10.2024, wherein the compensation in the sum of Rs.20,85,000/- along with the interest @ 7.5% p.a. has been granted, on account of demise of a five year child, Arhan in a road accident on 25.12.2020.
4. ***Briefly stated***, on 25.12.2020 at about 1:00 p.m., Master Arhan, aged 5 years suffered fatal injuries in a road accident on Peripheral-Highway, near Ratol underpass, Uttar Pradesh, wherein one Canter Eicher bearing No. UP13T9163 (*the offending vehicle*) being driven by the Respondent No. 1- Noor Hasan, in a rash and negligent manner, hit the deceased.
5. The *FIR No. 490/2020* under *Sections 279/304A of the Indian Penal Code, 1860* was registered at Police Station Khekra, Bhagpat, Uttar Pradesh.
6. The Claim Petition was filed under Section 166/140 of the Motor Vehicle Act, 1988, by the Parents to claim compensation, which has been



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allowed and compensation in the sum of Rs.20,85,000/- along with the interest @ 7.5% p.a. has been granted, *vide* the impugned Award.

7. *The Award has been challenged by the Insurance Company on the following grounds:*

- i. that the compensation has been calculated on the basis of Minimum Wages with 40% towards Future Prospects, instead of Notional Income as Rs.15,000/- per month; and
- ii. that the penal interest has been imposed in case of non-deposit of the Award amount within one month, which is contrary to the Act and the Judgements of the Apex Court.

8. **Submissions heard and Record Perused.**

Loss of Dependency:-

Calculation of Loss of Income:-

9. *The first ground of challenge* taken by the Insurance Company is that the compensation has been calculated on the basis of Minimum Wages when in fact, it should have been calculated on the basis of Notional Income of the child as Rs.15,000/- per month.

10. The Minimum Wages of an Unskilled Person were taken as Rs. 15,492/- per month as on the date of accident and hence, Rs. 19,51,992/- (Rs. 15,492/- X 1/2 X 140/100 X 12 X 15) was awarded as the total loss of dependency.

11. *The first and foremost issue at for consideration is regarding the calculation of Loss of Income of a deceased child.*



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12. In the landmark judgment of R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1, the Apex Court, while considering the Claims arising on account of demise of 29 children in a road accident in November 1997, succinctly 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 as 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 find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived*. Since the Second Schedule was introduced in the year 1994 and the year of accident in that case was 1997, the Court deemed it appropriate to refer to the notional income mentioned in the Second Schedule to determine the pecuniary loss of the claimants/dependants.

13. Thus, 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 to Section 163-A of the Motor Vehicle Act, 1988*, was being adopted which was from time to time corrected by taking into consideration the cost inflation index.



1. In Kishan Gopal vs. Lala, (2014) 1 SCC 244, the son of the Claimants, aged ten years, had died in an accident that occurred on 19.07.1992. The Apex Court assessed the notional income of the deceased 10-year-old, took Rs. 30,000/- p.a. instead of Rs.15,000/- p.a. (as specified in the Second Schedule to MV Act 1988 for a non-earning member), by observing that the Rupee value has come down drastically since 1994 and the amount mentioned in the Second Schedule would be inadequate. Thus, the Apex Court determined the notional income as Rs. 30,000/- p.a., by taking into consideration the **Cost Inflation Index**.

14. Likewise, in the case of Chetan Malhotra vs. Lala Ram, MAC. APP. 554/2010, decided on 13.05.2016, the Coordinate Bench of this Court while deciding the Claim Petitions arising out of death of 15 children, observed that the notional income specified in the Second Schedule in November 1994, needs to be corrected as the amount specified therein, cannot hold good even after elapse of more than two decades because the value of money stands eroded on account of the effect of inflation. Thus, on the basis of **inflation correction method**, the method of Calculation was defined thus:

“71. Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :-

(i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, inter alia, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of



the loss to estate, the notional income of non-earning persons (₹15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation- corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997- 1998 shall be treated as the "base year" and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :- $15,000/- \times A \div 331$ [wherein the figure of „15,000/-“ represents the notional income specified in the second schedule requiring inflation-correction; „A“ represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of „331“ represents the CII for the „base year“]

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv). The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one- third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as “the multiplicand”).

(v). For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).

(vi). For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).

(vii). For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).

(viii). After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the composite non-pecuniary



damages taking care of not only the conventional heads but also towards future prospects as awarded in R.K. Malik v. Kiran Pal (2009) 14 SCC 1.

(ix). The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.”

15. The Apex Court, in Rajendra Singh vs. National Insurance Company Ltd., 2020 SCC OnLine SC 521 while considering dismissal of Appeals arising out of the Impugned Awards in regard to accident prior to 2019, decided the ***notional income of a 12-year-old child (deceased), as Rs. 36,000/- p.a.***, by observing that the structured formula provided in the Second Schedule was inadequate to assess the compensation; thus, the computation by the Learned Tribunal was fair and the Awards passed by the learned Tribunal did not warrant any interference.

16. Similarly, in Kurvan Ansari, (supra), the Apex Court assessed the notional income of a ***deceased 7-year-old victim as Rs. 25,000/- p.a.*** and observed that the income is an enhancement of the figure specified in the Second Schedule of the M.V. Act, considering the devaluation of the Rupee since the Schedule's introduction. Relying on this judgment, the Apex Court, in Meena Devi vs. Nunu Chand Mahto & Ors., decided on October 13, 2022, observed that for the ***12-year-old (deceased) victim, the appropriate notional income would be Rs. 30,000/-.***

17. Pertinently, here also the basis was the Notional Income which was adjusted in accordance with the Cost Inflation Index. **The general trend thus, was to take the base of notional income as per the Second Schedule which was time to time adjusted by taking into consideration the Cost**



Inflation Index.

18. However, it is apposite to note that in the above judgments, while Notional income as defined in Second Schedule was taken as a basis but the amount was being modified by ***applying Cost Inflation Index***, in the facts of each case.

19. ***The Second Schedule however, was deleted w.e.f. 01.09.2019. Thus, the question as to what would should the basis of assessing the notional income of a child i.e. a non-earning member below 15 years of age, who is a victim of a motor vehicle accident, became a subject of extensive judicial discourse.***

20. A definitive change of Principle of determination of the income of a deceased/disabled Child from *Notional income with its correction on the basis of Cost Inflation Index* to ***Minimum Wages*** was reflected in *Kajal v. Jagdish Chand & Ors.*, (2020) 4 SCC 413, wherein while computing the Loss of earning for calculating compensation to be granted to an ***injured 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 after studying, the child could have worked and would have earned much more than Rs.15,000 p.a. Hence, the Supreme Court ***assessed the notional income on the basis of 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.



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21. Subsequently, in Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd., (2022) 7 SCC 738, the Apex Court while considering the grant of compensation to the parents on account of ***injuries suffered by a five-year-old child***, relied upon Kajal (Supra) ***and observed that the notional income should be calculated on the basis of minimum wages payable to a skilled worker.***

22. 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.***

23. 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.***

24. The ***principle of Minimum Wages for skilled Worker*** has been adopted as the principle to calculate the Income of a deceased child by the Co-ordinate Bench of this Court in United India Insurance Company Ltd. v. Jamaluddin Khan & Ors., NC No. 2023:DHC:6242 and Om Prakash vs. Reliance Gen Ins Co. Ltd. and Ors., 2023 SCC OnLine Del 6526.

25. The Kerala High Court in the case of Master Jyothis Raj Krishna, Represented by His Next Friend and Father Rajesh Kumar vs. Sunny George, 2024 SCC OnLine Ker 6875 held, “*This Court is conscious of the*



fact that by referring to the provisions of the Minimum Wages Act, 1948, for the purpose the notional income of a minor child, this Court has never ignored the future of a blooming young mind nor has closed its eyes over the bright future of the child and the prospects which he may have secured but for this fatal accident.”

26. The Minimum Wage criteria has been adopted by Supreme Court in the recent judgment of Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr., SLP (C) No. 10996/2018, wherein the Apex Court applied the approach taken in Kajal (supra) and Master Ayush (supra) and ascertained the *notional income of a 7-year-old injured child* on the basis of the **‘Minimum Wages paid to a skilled worker on a fulltime basis’**.

27. In light of the aforementioned Judgements, it emerges that the Minimum Wage criteria guarantees a dignified and a uniform standard for compensation calculation. *The most reasonable basis for estimating the child’s income, would be to refer to the Minimum Wages established by the State Government.*

28. **The compensation in the present case, thus, has to be calculated on the basis of Minimum Wages of a Skilled Person in Delhi in 2020, i.e. Rs. 18,797/- p.m.**

Future Prospects and Multiplier:-

29. The Counsel for the Appellants has contended that the learned Tribunal has wrongly granted future prospects of 40%.

30. In this regard, it is pertinent to refer to the case of Master Ayush



(supra), wherein the Apex Court held as under:

“9. In addition to the skilled minimum wages, the appellant would be also entitled to 40% for future prospects in view of the judgment of this Court in National Insurance Company Limited v. Pranay Sethi & Ors; (2017) 16 SCC 680.

10. Thus, the compensation works out to be Rs.3700/- plus 40%, which amounts to Rs.5180/- per month. The multiplier of 18 would be applicable in view of the age of the appellant. The loss of future earnings due to the Permanent Disability for life thus works out to be Rs.11,18,880/-, i.e., (3700+1480=5180) x 12 x 18.”

31. Thus, as per the principles laid down in the case of National Insurance Company Limited vs. Pranay Sethi And Others, (2017) 16 SCC 680 and Master Ayush (supra), it is appropriate to add future prospects to income at the rate of 40% along with the **appropriate multiplier of ‘18’**.

32. Thus, the loss of dependency is re-calculated accordingly.

- i. Rs. 18,797/- p.m. + 40% (Future Prospects) = Rs. 26,315.8/-;
- ii. Rs. 26,315.8 - 50% (personal expenses) = Rs. 13,157.9/-;
- iii. Rs. 13,157.9 x 12 x 18 = **Rs. 28,42,106.4/-**.

Penal Interest:-

33. ***The second ground of challenge*** is that the penal interest has been imposed in case of non-deposit of the Award amount within one month, which is contrary to the Act and the Judgements of the Apex Court.

34. The learned Tribunal has directed the Appellant/Insurance Company to deposit the Award amount with SBI, Rohini Courts branch within 30 days of the Award failing which the Insurance Company shall be liable to pay



interest @ 12% p.a. for the period of delay.

35. It has been rightly contended that the time for filing the Appeal is 90 days and no penal interest should be imposed prior to this period. *Thus, in the facts of the present case, the imposition of penal interest for delay, is hereby set aside.*

Conclusion:-

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

S. No.	Heads	Compensation granted by the Tribunal	Final Amount / Enhanced Compensation
1.	Income of Deceased	Rs. 15,492/-	Rs. 18,797/-
2.	Add-Future Prospects	40%	Rs. 7518.8
3.	Less-Personal Expenses of Deceased	1/2	1/2
4.	Monthly loss of Dependency	Rs. 10,844.4	Rs. 13,157.9
5.	Annual loss of Dependency	Rs. 1,30,132.8	Rs. 1,57,894.8
6.	Multiplier	15	18
7.	Total loss of Dependency	Rs. 19,52,000/- (rounded off)	Rs. 28,42,106.4
8.	Medical Expenses	Nil.	Nil.
Non - Pecuniary Heads			
9.	Compensation for loss of Consortium	Rs. 96,800/-	Rs. 96,800/- (same)
10.	Compensation for loss of Estate	Rs. 36,300/-	Rs. 36,300/- (same)



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11.	Compensation towards funeral expenses		
12.	Total Compensation	Rs. 20,85,000/- (rounded off)	Rs. 29,75,206.4 (rounded off to Rs.29,76,000/-)

Relief:-

37. *The Appeal is allowed and the compensation is enhanced to Rs.29,76,000/- along with the interest @ 9% p.a., from the date of institution of the Petition till the date of disbursement. The enhanced compensation be deposited within three months, to be disbursed in terms of the Award dated 23.10.2024.*

38. The Appeal is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024/RS