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

Reserved on: 07.12.2023
Pronounced on: 09.01.2024

+ **MAC.APP. 515/2017 & CM APPL. 15959/2019**

SUBHASH CHANDER SACHDEVA & ANR Appellants
Through: Mr.Sunil Malhotra and Mr.Lalit
Choudhary, Advs.

versus

BOCHU VENKATESHWAR RAO & ORS (UNITED INDIA
INSURANCE CO LTD) Respondents
Through: Mr.Pradeep Gaur, Ms.Sweta
Sinha, Advs. for Insurance Co.
(through VC)

+ **MAC.APP. 524/2017 & CM APPL. 22822/2017**

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr.Pradeep Gaur, Ms.Sweta
Sinha, Advs. (through VC)

versus

SUBHASH CHANDER SACHDEVA & ORS Respondents
Through: Mr.Sunil Malhotra and Mr.Lalit
Choudhary, Advs. for
claimants.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These appeals have been filed challenging the Award dated 28.02.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, South-East District, Saket Courts, New Delhi



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(hereinafter referred to as the 'Tribunal') in MACT No. 4245/2016 titled as ***Shri Subhash Chander Sachdeva & Anr. v. Shri Bochu Venkateshwar Rao & Ors..***

2. To avoid confusion, in the subsequent part of the judgment, the United India Insurance Company Ltd. shall be referred to as the 'Insurance Company', while the Claimants before the learned Tribunal, who are the appellants in MAC.APP. 515/2017, shall be referred to as the Claimants.

3. The above-mentioned Claim Petition was filed by the Claimants under Sections 166 and 140 of the Motor Vehicles Act, 1988 (in short, the 'Act') claiming that on 09.08.2013, at about 4:30 AM, the deceased Shri Abhimanyu Sachdeva was driving his Verna car and was traveling from RGI Airport, Cyberabad, to Gachi Bowli along with Ujwal Verma and Gautham Reddy C. When the car reached at Outer Ring Road, near Chennamma Hotel, a Cement Tanker bearing registration no. AP-16TY-7598 (hereinafter referred to as the 'Offending Vehicle'), which was being driven by Sh.Bochu Venkateshwar (Respondent No. 1 in MAC. APP. 515/2017), in a rash and negligent manner, hit the car of the deceased. As a result thereof, the deceased suffered fatal injuries and was immediately shifted to the Trident Hospital, where he was examined by the Doctors, but the deceased's condition kept deteriorating, and around 8 AM on the same day, he succumbed to his injuries and was declared dead by the doctors.

4. The learned Tribunal, based on the evidence led before it,



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has concluded that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner, resulting in the deceased suffering fatal injuries. The learned Tribunal has awarded compensation of the following amounts in favour of the claimants:-

<u>S.No.</u>	<u>Description</u>	<u>Amount</u>
1.	Loss of Dependency	Rs.18,57,900/-
2.	Loss of love & Affection	Rs.1,00,000/-
3.	Funeral Expenses	Rs.25,000/-
4.	Loss of Estate	Rs.10,000/-
5.	Total	Rs.19,92,900/-

CHALLENGE OF THE INSURANCE COMPANY

5. As far as the Insurance Company is concerned, it challenges the Impugned Award by contending that the Claimants have received a total sum of Rs.40,89,188/- from the employer of the deceased, namely, M/s Infosys Limited, on account of '*Death Benefits Settlement*', and the learned Tribunal has erred in not deducting the same from the compensation payable under the Impugned Award.

6. The learned counsel for the Insurance Company, placing reliance on the judgments of the Supreme Court in *Helen C. Rebello (Mrs) & Ors. v. Maharashtra State Road Transport Corporation & Anr.*, (1999) 1 SCC 90; *United India Insurance Co. Ltd. & Ors. v. Patrica Jean Mahajan And Ors.*, (2002) 6 SCC 281; and *Reliance General Insurance Ltd. v. Shashi Sharma & Ors.*, (2016) 9 SCC 627, submits that the amount



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received by the Claimants on account of '*Death Benefits Settlement*' from the employer of the deceased should be deducted from the compensation payable to the Claimants for the death of the deceased in the motor vehicular accident.

7. Without prejudice to the above, he submits that out of the above amount, an amount of Rs.15,00,000/- has been received by the Claimants from the employer of the deceased on account of '*Accident Death Insurance Claim Settlement*'. He submits that since this amount is directly related to the death of the deceased which occurred in a motor vehicular accident, therefore, the same is liable to be deducted from the compensation awarded to the Claimants. He submits that the Claimants cannot enjoy a double benefit of compensation.

8. The learned counsel for the Insurance Company further submits that the learned Tribunal has erred in taking the Future Prospects of the increase in income of the deceased at 50% of the established income. He submits that the deceased was working in a private job and was aged about 24 years on the date of accident, therefore, by applying the ratio of the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, future prospects of only 40% of the established income should have been considered by the learned Tribunal.

9. He further submits that the non-pecuniary damages awarded in favour of the Claimants are also not in accordance with the judgment of the Supreme Court in *Pranay Sethi*



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(Supra).

CHALLENGE OF THE CLAIMANTS

10. On the other hand, the learned counsel for the Claimants submits that the amount received by the Claimants towards ‘*Death Benefits Settlement*’ from the employer of the deceased cannot be deducted from the compensation awarded by the learned Tribunal in favour of the Claimants.

11. He submits that in terms of the Employment Contract of the deceased with its employer - M/s Infosys Limited, the deceased was to contribute Rs.250/- as One-Time payment for becoming a member of the Infosys Welfare Trust, and to make further periodical contribution of Rs.150/- per month towards the Group Life Insurance Scheme. The perks of this Group Life Insurance Scheme included a Risk Cover of Rs.40,00,000/-, out of which Rs.25,00,000/- was towards Natural Death and an additional Rs.15,00,000/- was towards Accidental Death. He submits that the deceased, having made the necessary contribution towards the insurance scheme, in terms of the judgments which have been referred by the learned counsel for the Insurance Company, and also in terms of the judgment of the Supreme Court in *Sebastiani Lakra & Anr. v. National Insurance Company Ltd. & Ors.*, (2019) 17 SCC 465; and *National Insurance Co. Ltd. v. Mannat Johal*, (2019) 15 SCC 260, the amount received by the Claimants towards the ‘*Death Benefits Settlement*’ from the employer of the deceased cannot



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be deducted from the compensation payable to the Claimants.

12. He submits that even Rs.15,00,000/- received towards Accidental Death cannot be deducted from the amount receivable by the Claimants, as under the Insurance Policy, the Accidental Death could have been due to any cause and not particularly confined only to a motor vehicular accident. He submits that for a deduction of the amount to be made, the same has to be relatable only to a motor vehicular accident.

13. The learned counsel for the Claimants further submit that as the deceased was in a permanent job, the learned Tribunal has rightly considered future prospects of income as 50%. He submits that, therefore, the challenge of the Insurance Company to the Impugned Award is liable to be rejected by this Court.

14. On the own challenge of the Claimants to the Impugned Award, the learned counsel for the Claimants submit that the learned Tribunal has erred in determining the multiplier to be applied, based on the age of the mother of the deceased. He submits that it is the age of the deceased, which is the determinative factor for determining the relevant multiplier to be applied. He submits that it is evident from the copy of the 10th Class Mark-sheet and the PAN Card of the deceased, that the deceased was aged between 24 and 25 years at the time of the accident. He submits that in terms of the judgment of the Supreme Court in *Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121; and *Pranay Sethi* (supra), therefore, a multiplier of 18 should have been



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applied by the learned Tribunal for determining the compensation payable to the claimants towards the loss of dependency.

15. I may herein itself note that the learned counsel for the Insurance Company does not seriously dispute the above challenge of the Claimants.

16. The learned counsel for the Claimants further submit that the learned Tribunal has erred in taking the income of the deceased as only Rs.18,765/- per month. He submits that the learned Tribunal has deducted allowances like the Medical Allowance, Transport Allowance, Leave Travel Allowance, and Bonus, while determining the income of the deceased. Placing reliance on the judgment of the Supreme Court in *National Insurance Company Ltd. v. Indira Srivastava & Ors.*, (2008) 2 SCC 763, he submits that these allowances cannot be deducted.

17. He further submits that the Claimants, being unaware of all facts, had pleaded before the learned Tribunal that the deceased was earning a sum of Rs.32,058/- per month, which was, in fact, the earlier salary of the deceased. In the course of the present appeal, the witness from M/s Infosys Limited, Mr. Kumaraswamy (Associate Manager, Infosys), was examined, who has produced before this Court the salary computation of the deceased at the time of his death in form of a letter dated 24.07.2013 (Ex.C-3), which shows that the deceased was earning a gross salary of Rs.35,870/- at the time of his death. He submits that the income of the deceased should, therefore, be



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taken as Rs.35,870/- per month and the compensation towards loss of dependency should be awarded accordingly.

REPLY OF THE INSURANCE COMPANY TO CHALLENGE OF THE CLAIMANTS

18. To the above submission of the learned counsel for the Claimants, the learned Counsel for the Insurance Company submits that the salary certificate/letter produced by M/s Infosys Limited also shows that the deceased was earning fixed salary of only Rs.34,077/-, the same also included a 'basket of allowances', which included House Rent Allowance, Leave Travel Allowance, Children's Education and Transport Allowance. He submits that these allowances, as also the variable salary in form of performance linked incentives and performance bonus, ought not to be added to the income of the deceased.

ANALYSIS AND FINDINGS

19. I have considered the submissions made by the learned counsels for the parties.

Deduction of Ex-Gratia Amount Received By The Claimants

20. Before considering the factual aspect that arises in the present appeals, it would be useful to make a reference to the principles that are applicable on the deduction of the ex-gratia or insurance amount that may be received by the claimants on account of the death of a person in a motor vehicular accident.



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21. The landmark judgment in this regard is ***Helen C. Rebello*** (supra), wherein the Supreme Court, considering the provisions of the Motor Vehicles Act, 1939 and specifically Section 110-B thereof, has observed as under:

“19. It is true that the aforesaid two English decisions were cases of injuries, but the principle as spelt out is equally applicable in cases of death. The English Court held that for any money coming under the contract of insurance, it would be unjust and unreasonable to hold that the money which he prudently spent on premiums, the benefit from it should enure to the benefit of the tortfeasor. This, we fully endorse. Under life insurance, in case one lives up to the time of maturity, after paying full premium he receives the assured money back, based on the terms of the contract. In fact, he receives less than the total premium paid. It is for this gain to the insurer it is obliged to pay to the extent the sum assured to the claimant in case of injury or death under the contract. In other words, payable only on the contingency as referred, if the contingency of injury or death does not happen, the insurer is the gainer as it receives more under premium than to pay on maturity of the policy, and in case a contingency occurs the claimant is the gainer as he receives the amount even before paying the full premium and the gain is to the proportion of the balance unpaid premium, whether it is injury or death. A large number of persons under the policy may live up to the maturity of policy by paying full premium and the contingency of injury or death may not happen. On each of such matured policies, the Life Insurance Corporation having its gain in mind enters into its business, to offer to the policy-holders in terms, in case of happening of the said contingency to pay the full amount assured, if it takes place earlier, without paying the full premium. It is this game of gain or loss the



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Life Insurance Corporation enters into the contract. This fact is revealed by the Preamble of the Life Insurance Corporation Act, 1956 (Act 31 of 1956), quoted hereunder:

“An Act to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto.”

20. Many invest through this policy for a variety of reasons, maybe, to secure the sum for himself as forced saving, maybe, as in India, for deduction towards his income tax liability, to secure loan by himself in case needed on a meagre interest for building his residence or to secure a sum in case of happening of the said contingencies etc. He enters into this contract with an open eye, as an act of wisdom, of course, not towards gain to the tortfeasor. The English Court expressing concern on this aspect in the aforesaid decision recorded: “Why should the plaintiff be left worse off than if he had never insured.” Thus, the interpretation of deduction of life insurance would result into gain to the wrongdoer in proportion to the higher scale of premium paid by the insured for no contribution of his and loss to the claimant in proportion to the higher scale of premium paid, as he would have received the compensation amount without payment of any premium. Before we proceed to decide the question raised, it is necessary to refer to the decision of this Court in Gobald Motor. The passage relied upon is quoted hereunder:

“... only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance



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of loss and gain to a dependant by the death must be ascertained.”

xxxx

32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the “pecuniary advantage” which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words “pecuniary advantage” from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the “pecuniary advantage” resulting from death means pecuniary advantage coming under all forms of death



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then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

“... for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, ...”.

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the “pecuniary advantage”, liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction.



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However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.



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35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any



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corelation. The insured (deceased) contributes his own money for which he receives the amount which has no corelation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.

36. As we have observed, the whole scheme of the Act, in relation to the payment of compensation to the claimant, is a beneficial legislation. The intention of the legislature is made more clear by the change of language from what was in the Fatal Accidents Act, 1855 and what is brought under Section 110-B of the 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of the 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides that where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to the claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is in addition to any other right to claim compensation in respect whereof (sic thereof) under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit on the claimant. Interpretation of such



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beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute, then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have been given of this statute, evidenced by two distinct sets of decisions of the various High Courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount, should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these considerations, we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving a restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intents of the legislature under various provisions of the Motor Vehicles Act, 1939.”

22. A reading of the above would show that the general principle of estimating the damages under the common law cannot be applied to determine the ‘just compensation’ under the Act. The provisions of the Act are to be interpreted in accordance with its objects. The Act being a beneficial legislation aimed to provide relief to the victims of motor vehicular accidents, an interpretation which is beneficial to such victims must be adopted and preferred by the courts. It was further held that the deceased may have taken an Insurance Policy for various reasons, and perhaps with a different motivation, and would have paid premium towards the same. Any amount received by the claimants, who are the legal heirs



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of the deceased, would therefore, receive such amounts under the contract entered into by the deceased and the insurer, and not only due to the death of the insured in a motor vehicular accident. Such an amount can have no co-relation with the compensation computed as against the tort-feasor on account of the accident.

23. The above principles were followed by the Supreme Court in the case of ***Patrica Jean Mahajan*** (supra), wherein the Court held that the amount received under the Social Security Scheme cannot be deducted from the compensation payable. The Court *inter-alia* observed that for availing the benefit of Social Security Scheme, the contribution comes from the different sources for constituting the fund out of which payment on account of Social Security Scheme is made; one of the constituents of the fund is tax which is deducted from the income for the said purpose. Deducting amount received under the Social Security Scheme, therefore, would only defeat the purpose of the Act, which is to provide 'just compensation' on account of death that occurred due to a motor vehicular accident. I may quote from the judgment as under:

“36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would



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be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on



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account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.”

24. In ***Shashi Sharma*** (supra), the Supreme Court was considering a case where legal heirs of the deceased received compensation under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 (hereinafter referred to as ‘2006 Rules’). In terms of the Rules, the legal heirs of a deceased government employee were entitled to financial assistance, equivalent to the pay and other allowances that were last drawn by the deceased employee in the normal course, concessions of retaining the occupation of the government residence on specific terms, family pension and other allowances. The Court held that while the other allowances and concessions cannot be deducted from the claim amount for determination of the ‘just compensation’ under the Act, as the legal heirs continue to receive the same pay and allowances which were receivable by the employee from the employer, that is, the State, even post the death of the employee, the same would have to be deducted. I may quote from the judgment as under:

“24. Rule 5 broadly deals with two aspects. Firstly, to compensate the dependants of the deceased government employee by granting ex gratia financial assistance on compassionate grounds for the loss of pay and other



allowances for a specified period. The second part of Rule 5 is to compensate the dependants of the deceased government employee by way of allowances and concessions—of retaining occupation of the government residence on specified terms, of family pension and other allowance. As regards the second part, it deals with income from other source which any way is receivable by the dependants of the deceased government employee. That cannot be deducted from the claim amount for determination of a just compensation under the 1988 Act.

25. The claimants are legitimately entitled to claim for the loss of “pay and wages” of the deceased government employee against the tortfeasor or insurance company, as the case may be, covered by the first part of Rule 5 under the 1988 Act. The claimants or dependants of the deceased government employee (employed by the State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5—“pay and allowances”, which are receivable by them from employer (the State) under Rule 5(1) of the 2006 Rules. In that, if the deceased employee was to survive the motor accident injury, he would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of “pay and wages” of the deceased government employee entailing in grant of bonanza, largesse or source of profit to the dependants/claimants. Somewhat similar situation has been spelt out in Section 167 of the Motor Vehicles Act, 1988 which reads thus:

“167. Option regarding claims for compensation in certain cases.— Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a



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claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

(emphasis supplied)

26. Indeed, similar statutory exclusion of claim receivable under the 2006 Rules is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has already been or will be compensated by the employer in the form of ex gratia financial assistance on compassionate grounds under Rule 5(1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of "pay and allowances" in the form of ex gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the 2006 Rules would come into play if the government employee dies in harness even due to natural death. At the same time, the 2006 Rules do not expressly enable the dependants of the deceased government employee to claim similar amount from the tortfeasor or insurance company because of the accidental death of the deceased government employee. The harmonious approach for determining a just compensation payable under the 1988 Act, therefore, is to exclude the amount received or receivable by the dependants of the deceased government employee under the 2006 Rules towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased government employee in the normal course. This is not to say that the amount or payment receivable by the dependants of the deceased government employee under Rule 5(1) of the Rules, is the



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*total entitlement under the head of “loss of income”. So far as the claim towards loss of future escalation of income and other benefits is concerned, if the deceased government employee had survived the accident can still be pursued by them in their claim under the 1988 Act. For, it is not covered by the 2006 Rules. Similarly, other benefits extended to the dependants of the deceased government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, life insurance, provident fund, etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependants of the deceased government employee, applying the principle expounded in *Helen C. Rebello* [*Helen C. Rebello v. Maharashtra SRTC*, (1999) 1 SCC 90] and *Patricia Jean Mahajan* [*United India Insurance Co. Ltd. v. Patricia Jean Mahajan*, (2002) 6 SCC] cases.*

27. A priori, the appellants must succeed only to the extent of amount receivable by the dependants of the deceased government employee in terms of Rule 5(1) of the 2006 Rules, towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the period specified.”

25. The above judgment was therefore, rendered in the peculiar facts of that case and due to the application of the 2006 Rules. The above distinguishing fact has also been highlighted by the Supreme Court in its subsequent judgment in ***Sebastiani Lakra*** (supra) and ***Mannat Johal*** (supra).

26. In ***Sebastiani Lakra*** (supra), the Court held that the amount received by the claimant under the Employees Family Benefit Scheme cannot be deducted from the compensation that



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is otherwise payable under Section 168 of the Act. The Court further held that the amount received under any insurance policy is also payable not only because of the death of the deceased, but because of the contract entered into between the deceased and the Insurance Company from where he took the policy. The deceased has paid the premium of such Life Insurance, and this amount would have accrued to the Estate of the deceased either on the maturity of the policy or on his death; irrespective of the manner of his death. I may quote from the judgment as under:

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is



added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in Parry v. Cleaver [Parry v. Cleaver, 1970 AC 1] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account



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of death of the deceased in a motor vehicle accident.

17. The issue before us is whether we should deduct the amount being received by the family members under the EFB Scheme while calculating the loss of income.

18. The EFB Scheme is totally different from the rules which were under consideration of this Court in Shashi Sharma case [Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627] . Under this Scheme, the nominee or legal heir(s) of the deceased employee have to deposit the entire amount of gratuity and all other benefits payable to them on the death of the employee.

19. In the present case, it stands proved that the claimants have deposited a sum of Rs 27,43,991 received by them on the death of the deceased with the employer and are now getting about Rs 50,082 per month. This amount of Rs 50,082 is to be paid to the legal heirs under the EFB Scheme only till date of retirement of the deceased. Even if an interest @ 12% p.a. is calculated on the amount of Rs 27,43,991, that would amount to Rs 3,30,000 per year or Rs 27,500 per month. The appellants claimants are getting about Rs 50,000 per month i.e. about Rs 22,500 per month more, but this is only to be paid for a period of about 7 years till 30-4-2021. This payment will cease thereafter.

20. The aforesaid payment is totally different to the payment made by the employer in Shashi Sharma case [Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627] which was statutory in nature. Therefore, we hold that this amount cannot be deducted.”

27. In **Mannat Johal** (supra), the Supreme Court was considering whether the ex-gratia payment received from the



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employer of the deceased, being one year's gross salary, which was not shown to be under any Rules or Service Conditions, can be set off against the compensation payable under the Act. The Court held that the same cannot be deducted.

28. In the present case, the claimants have received the following amount from the employer, that is, Infosys Limited, as part of the death benefits settlement:

S.No	Description	Amount
1	Infosys Employees Welfare Trust Settlement	Rs.23,00,000
2	Infosys Accident death Insurance Claim Settlement	Rs.15,00,000
3	Employees Depository Link Insurance (EDLI)	Rs.2,00,000
4	Provident Fund Settlement	Rs.70,876
5	Gratuity Settlement	Rs.18,312
	Total Amount settled	Rs.40,89,188

29. The insurance company claims a deduction of Rs.23 lakhs received by the claimants towards "*Infosys Employees Welfare Settlement*" and Rs.15 Lakhs received towards "*Infosys Accident Death Insurance Claim Settlement*". The above two amounts have been received by the claimants under the terms of employment between the deceased and M/s Infosys Limited. Applying the above principles, the same, therefore, cannot be deducted from the compensation payable to the Claimants under Section 166 of the Act.

30. Clause 9 of the Terms of Employment is reproduced hereunder:



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“09. Group life insurance scheme

You will be covered under the Group Life Insurance Scheme managed by Infosys Welfare Trust that provides you with the total life insurance cover of Rs. 40,00,000 of which Rs.25,00,000 is covered towards natural death, an additional ₹15,00,000 towards an accidental death. All Infosys employees become member of Infosys Welfare Trust, by one-time payment of Rs.250 and fixed monthly contribution of Rs.150”

31. From a bare reading of the above clause, it is apparent that for availing the above benefits, the deceased has contributed not only a one-time payment of Rs.250/- for becoming a member of the Infosys Welfare Trust, but was also contributing a fixed monthly contribution of Rs.150/-. The amounts were received under the ‘Group Life Insurance Claim’ managed by the Infosys Welfare Trust.

32. In light of the above mentioned judgments of the Supreme Court, clearly the amount of Rs.23 lakhs received by the claimants under the Infosys Employees Welfare Trust Settlement cannot be deducted.

33. As far as the amount of Rs.15 lakhs received under the ‘Infosys Accident Death Insurance Claim Settlement’ towards Accidental Death is concerned, in my opinion, the amount again cannot be deducted. As has been held by the Supreme Court in ***Helen C. Rebello*** (supra), this amount has been received under the contract of insurance by the deceased for which he was paying regular and monthly premium. These amounts, therefore, cannot enure to the benefit of tort-feasor and



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vicariously to the Insurance Company.

34. It is also relevant to note that the said amount would be payable on any manner of accidental death of the deceased. The accident may be due to Air accident, an accident in the Sea, or a Train accident. It cannot, therefore, be said that the amount is payable to the claimants only due to the death of the deceased in a motor vehicular accident. In terms of the judgment of ***Helen C. Rebello*** (supra), such compensation is therefore, not receivable only on account of death of the deceased in a motor vehicular accident and is, therefore, not deductible from the compensation.

35. In view of the above, I find no merit in the challenge of the Insurance Company on the above account. The amounts received by the claimants as Death Benefits Settlement cannot be deducted from the compensation that is found just and payable under Section 168 of the Act.

Future Prospects

36. The learned counsel for the Insurance Company submits that as the deceased was working in a private employment, Future Prospects only at the rate of 40% should have been awarded by the learned Tribunal. I find no merit in the said challenge.

37. As has been noted by the learned Tribunal, from the evidence led by the claimants in form of the Income Tax Returns of the deceased, there was a steady increase in the



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income of the deceased year after year. The same is also evident from the letter dated 24.07.2013 (Ex.C-3) from M/s Infosys Limited, which shows the increase in the salary of the deceased with effect from 01.07.2013, from Rs.33,213/- to Rs.35,870/-. He was also in a permanent job.

38. In **Pranay Sethi** (supra), the Supreme Court on grant of future prospects has held as under:

“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. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

39. A reading of the above would show that where the deceased had a permanent job and was below age of 40 years, 50% of the actual salary is to be added to the established income of the deceased towards future prospects, whereas the addition is to be of 40% only where the deceased was self-



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employed or on a fixed salary. As the deceased, in the present case, is shown to be in a permanent job, and keeping in view his age, in my view, the learned Tribunal has rightly granted future prospects as 50% of the actual salary of the deceased.

40. In view of the above, the Impugned Award warrants no interference from this court on this account.

Multiplier

41. It is not disputed that the deceased was aged about 24 years at the time of the accident. In view of the judgment of the Supreme Court in ***Pranay Sethi*** (supra), the multiplier has to be determined on the basis of the age of the deceased. In the present case, the learned Tribunal has erred in determining the multiplier on the basis of the age of the mother of the deceased. The same is clearly erroneous and is liable to be modified.

42. Accordingly, it is held that the multiplier to be adopted would be of 18.

43. The Impugned Award is liable to be modified to this extent.

Income Of the Deceased

44. The learned counsel for the claimants submits that as the claimants were not aware of the actual income of the deceased at the time of the accident, before the learned Tribunal they had pleaded that the income of the deceased was Rs.32,058/- per month, not realizing the same has been revised by the employer.

45. In ***Ningamma v. United India Insurance Co. Ltd.***,



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(2009) 13 SCC 710, the Supreme Court held as under:

“34. Undoubtedly, Section 166 of the MVA deals with “just compensation” and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting “just compensation” in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award “just compensation” irrespective of the fact whether any plea in that behalf was raised by the claimant or not.”

(Emphasis supplied)

46. In my view, therefore, as the Act is a beneficial piece of legislation and aims to provide ‘just compensation’ to the victims of the motor vehicular accidents, the claimants cannot be denied the just compensation to which they are in law entitled to, only because of their lack of knowledge of full facts. Rules of *estoppel* would not apply against them. If they are entitled to an increase in the compensation, the Court must grant it without being bogged down by the technicalities of law.

47. From the letter dated 24.07.2013 (Ex.C-3), it is clear that the deceased was drawing a Total Gross Salary of Rs.35,870/- per month. The same, therefore, has to be taken into account while determining the compensation payable to the claimants towards the loss of dependency.

48. The Impugned Award is liable to be modified on this aspect.



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Deduction of Allowance From The Gross Salary

49. The learned Tribunal, in its Impugned Award, has deducted allowances, other than the House Rent Allowance and Dearness Allowance, from the income of the deceased. In my view, the said approach of the learned Tribunal is erroneous.

50. In ***National Insurance Company Limited v. Manoj Prasad & Ors.***, Neutral Citation No.2023:DHC:5086, this court has dealt with a similar issue and, relying on the judgment of the Supreme Court in ***Indira Srivastava*** (supra), has held as under:

“13. I have considered the submissions made by the learned counsels for the parties. The pay slips produced on record before the learned Tribunal shows that the Claimant was being paid conveyance allowance of Rs.800/- per month and medical allowance of Rs. 1250/- per month. It is not shown by the Insurance Company that these allowances required the Claimant to actually spend any amount on such heads. These were clearly the benefits that the Claimant took home from the employer irrespective of any expenditure incurred by him on these heads. These were not incidental to the employment, but emoluments received by the Claimant for his employment and for his service.

14. In Sunil Sharma & Ors. (Supra), the Supreme Court, placing reliance on the earlier judgment in National Insurance Co. Ltd. v. Indira Srivastava & Ors., AIR 2008 SC 845, has held that having regard to the change in societal conditions, the Court must consider the question of determination of the income not only having regard to the pay package the employee carries home at the end of the month, but also other perks which are beneficial to the members of the entire family.



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The Court held that taking into account the said principle, payments made on account of house rent allowance, medical allowance, etc., are to be added to the income of the deceased/injured. The same view has been expressed by this Court in its judgment in Kamlesh Kumari & Ors. (Supra).”

51. The income is not only the pay package that an employee takes back home, but also includes the perks/allowances which are beneficial to the members of the entire family and hence, such allowances cannot be deducted from the total income of the deceased as they were not personal to him.

52. The Impugned Award, insofar as it deducts various allowances from the income of the deceased, is accordingly set aside.

CONCLUSION AND DIRECTIONS

53. In view of the above, the appeal filed by the Insurance Company is dismissed. As far as the appeal filed by the claimants is concerned, the compensation payable to the claimants towards loss of dependency is re-assessed as under:

<u>S.No.</u>	<u>Particulars</u>	<u>Amounts</u>
1.	Income	Rs.35,870/-
2.	Months	12
3.	Future Prospects	50%
4.	Deduction towards personal and living expenses	1/2
5.	Multiplier	18
	<u>Total</u>	=Rs.35,870 x 150/100 x 12 x 18 x 1/2 <u>=Rs.58,10,940/-</u>



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54. By way of the *interim* order dated 03.07.2017 passed by this Court, the Insurance Company was directed to deposit the entire awarded amount with upto date interest with the learned Tribunal. It was further directed that the learned Tribunal shall, on an application being made by the claimants in this regard, release 50% of the awarded amount in favour of the claimants in terms of the schedule of disbursal as prescribed in the Impugned Award. The balance amount was directed to be kept in an interest-bearing account, initially for a period of one year to be renewed from time to time till further orders from this Court.

55. Now that the compensation amount has been enhanced, the Insurance Company shall deposit the balance/enhanced compensation alongwith interest at the rate of 9% per annum, with the learned Tribunal from the date of the filing of the Claim Petition till the date of its deposit, within a period of four weeks from the date of this judgment. The compensation amount, including the enhanced compensation, upon deposit, and interest accrued thereon, shall be released in favour of the claimants in accordance with the schedule of disbursal as prescribed by the Impugned Award.

56. The appeal of the claimants, that is, MAC.APP.515/2017 succeeds in the above terms. The appeal filed by the Insurance Company, that is, MAC.APP. 524/2017, stands dismissed. The pending applications also stand disposed of.



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57. There shall be no orders as to costs.

58. The statutory amount deposited by the Insurance Company be released to the Insurance Company alongwith interest accrued thereon.

NAVIN CHAWLA, J

JANUARY 9, 2024/ns/Arya/SS/am

Click here to check corrigendum, if any