$~27 & 28

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

% ***Date of decision: 28th November,2024***

\+ **MAC.APP. 479/2016**

UNITED INDIA INSURANCE CO LTD

DRO-II, Crore-III, 1st Floor,
Scope Minar, District Centre,
Laxmi Nagar, Delhi .....Appellant

Through: Mr. Pankaj Sethi, Advocate.

versus

1. **NISHA YADAV**
W/o Late Shri Satypal Singh .....Respondent No. 1

2. **MASTER ANKIT KUMAR**
S/o Late Shri Satyapal Singh,
Through his mother/natural guardian
Smt. Nisha Yadav .....Respondent No. 2

3. **MASTER ANUJ**
S/o Late Shri Satypal Singh
Through his mother/natural guardian,
Smt. Nisha Yadav .....Respondent No. 3

4. **BISHAMBHAR DAYAL** .....Respondent No. 4

5. **RAJBALA**
W/o Bishambhar Dayal .....Respondent No. 5

All R/o Village Khatela,
Rewari, Haryana

6. **VIRENDER SINGH**
S/o Shri Ved Pal,

R/o 195, M.C. Primary School Road,
Khaira Village, Delhi .....Respondent No. 6

7. **KALYAN SINGH**
S/o Shri Khem Singh,
R/o Village Sugri,
P.S. Gangoli, Distt. Pithoragarh,
Uttarakhand .....Respondent No. 7

Through: Mr. Arun Yadav, Advocates for R-1 to 5.

28

\+ **<u>MAC.APP. 110/2018, CM APPL. 3401/2018, CM APPL. 3402/2018, CM APPL. 9292/2023</u>**

1. **NISHA YADAV**
W/o Late Shri Satypal Singh .....Appellant No. 1

2. **MASTER ANKIT KUMAR**
S/o Late Shri Satyapal Singh,
Through his mother/natural guardian
Smt. Nisha Yadav .....Appellant No. 2

3. **MASTER ANUJ**
S/o Late Shri Satypal Singh
Through his mother/natural guardian,
Smt. Nisha Yadav .....Appellant No. 3

4. **BISHAMBHAR DAYAL** .....Appellant No. 4

5. **RAJBALA**
W/o Bishambhar Dayal .....Appellant No. 5

All R/o Village Khatela,
Rewari, Haryana

Through: Mr. Arun Yadav, Advocate.

versus

1. **VIRENDER SINGH**

S/o Shri Ved Pal,
R/o 195, M.C. Primary School Road,
Khaira Village, Delhi .....Respondent No. 1

2. **KALYAN SINGH**

S/o Shri Khem Singh,
R/o Village Sugri,
P.S. Gangoli, Distt. Pithoragarh,
Uttarakhand .....Respondent No. 2

3. **UNITED INDIA INSURANCE CO LTD**

17-18, SCO HUDA Market,
Sector-7, Gurgaon-237614,
Haryana .....Respondent No. 3

Through: Mr. Pankaj Seth, Advocate for the 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 on behalf of the Insurance Company against the Impugned Award dated 05.02.2016 *vide* which a compensation in the sum of Rs. 58,99,000/- along with interest @ 9% has been granted to the Claimants/Respondent Nos. 1 to 5 on account of demise of Shri Satypal Singh in a road accident on 04.11.2014.

2. The ***basic grounds of challenge*** are: -

(i) that while calculating the *income* of the deceased who was a constable in Delhi Police, *benefit of Rs.20,217/- per annum* and of

Bonus in the sum of Rs.3454/- has been added, which was liable to be deducted;

(ii) that admittedly the family of deceased received *ex-gratia* payment of Rs.10,00,000/-, which was liable to be deducted while computing the income;

(iii) that *family pension of Rs. 7050/-* has been granted to the family members, which was liable to be deducted while calculating loss of income;

(iv) that the compensation under the *non-pecuniary heads* needs to be revised in the light of judgment of *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680; and

(v) that the *interest granted @ 9% per annum* is on the higher side.

3. **The cross Appeal *MAC.APP. 110/2018* under Section 173 of the Motor Vehicle Act, 1988** has also been filed by the Claimants who have sought enhancement of the compensation on the ground that various allowances like Washing, Transport, etc. forms part of the salary and the same have been incorrectly deducted while calculating the salary of the deceased.

4. It is further submitted that *PW-2/Shri Satpal, ASI* had been examined by the Claimants who has proved not only the annual payment of Rs.20,217/-, but also of the Bonus to all the Constables in Delhi Police.

5. It is further argued that neither the ex-gratia payment nor the allowances or the pension amounts are liable to be deducted while calculating the salary of the deceased.

6. **Submissions heard and the record perused.**

7. *Briefly stated,* on 04.11.2014, Shri Satypal Singh was returning after completion of his duties at Police Station Prasad Nagar, Delhi on his motorcycle bearing No. JH-02-4259. When he reached near Kirbi Place Red Light, Delhi Cantt., Kalyan Singh who was driving the offending Bus bearing No. DL-1PL-0397 in rash and negligent manner, hit the Motorcycle of Shri Satypal Singh. The motorcycle came under the Bus and got stuck to it and the bus caught fire. Shri Satypal Singh was taken to Base Hospital, Delhi Cantt. where he succumbed to his injuries.

8. The *FIR bearing No. 654/2014 under Sections 279/338/304A* of the Indian Penal Code, 1860 at Police Station Delhi Cantt. was registered against the Driver/Kalyan Singh.

9. The DAR got filed before the Tribunal, The Claim Petition under S.166 Motor Vehicle Act was also filed by the Claimants.

10. Learned Tribunal granted the compensation in the sum of Rs. 58,99,000/- along with interest @ 9% to the Claimants/Respondent No. 1-5.

Loss of Dependency : -

11. The First ground of Challenge raised is in regard to calculation of Loss of Dependency.

Assessing the Income of the Deceased: - **save this for future reference????**

12. The Insurance Company and the Claimants have challenged the additions and the deductions made by the Learned Tribunal while assessing the salary of deceased Shri Satypal Singh.

13. To ascertain the same, it would be apposite to refer to the Salary Slip

of deceased/ Shri Satypal Singh for the month of October, 2014, *Ex.PW2/1* which reflects that the gross salary of deceased Shri Satypal Singh as R***s. 33,315/- per month.*** The salary break up of deceased Shri Satypal Singh is as under: -

Basic Pay	*8810*
Grade Pay	*2400*
D.A.	*11995*
H.R.A.	*3363*
Tran. Allow.	*3312*
Wash. Allow.	*75*
Comp. H.R.A.	*260*
Metro. P. Allow	*150*
Ration Money	*2665*
Con. Allow	*75*
Total	***33315/-***

14. In the case of *Oriental Insurance Company v. Jashuben and Ors* (2008) 4 SCC 162, the Apex Court has discussed the aspect of inclusion of allowances and has observed that the amounts which were paid to the deceased as *perks,* should be included for computation of his monthly income as the same would have constituted a part of his monthly income by way of contribution to the family. However, the *allowances which were for personal benefit* were liable to be deducted.

15. This aspect was further explained by the Supreme Court in the case of *Shyamwati Sharma v. Karam Singh,* (2010) 12 SCC 378. It was observed that while ascertaining the net monthly income of the deceased, any deductions shown in the Salary Certificate as deductions towards GPF, Life Insurance premium, repayments of loans, etc. *should not be excluded from the income*. The deduction towards Income Tax/Surcharge alone should be

considered to arrive at the net income of the deceased.

16. Relying upon the above judgment, Co-ordinate Bench of this Court has observed in the case of *Ram Charan & Ors. vs The New India Assurance Co. Ltd. & Ors.,* 2022 SCC OnLine Del 5146, that including all Incentives, Bonuses or Allowances would be available to the Legal heirs regardless of the demise of the deceased or not. Thus, exclusion of personal expenses like Travel and Washing Allowances while calculating the deceased's income, was validated as being solely for the personal benefit of the deceased, in order to have the actual economic salary loss by excluding job-specific transient benefits.

17. *Thus, the nature of the allowance/perk becomes a decisive factor for determining whether such allowance/perk would constitute a part of the actual income of the deceased.*

18. In the present case, as per the salary slip of deceased/Shri Satypal Singh, certain allowances were being paid on account of Transport, Washing, Metro Pass, Ration Money and Conveyance which are consumable perks in the nature of reimbursements. ***Therefore, these have been rightly deducted from the gross salary while calculating the Income of deceased Shri Satypal Singh.***

19. Thus, the Income of the deceased is calculated as under: -

Basic Pay	*8810*
Grade Pay	*2400*
D.A.	*11995*
H.R.A.	*3363*
Comp. H.R.A	*260*
Total Income	Rs. 26,828 /-

20. After deducting the Income tax payable on the above income, the Ld. Tribunal has rightly assessed the Income of the deceased as **Rs. 26,000/- p.m i.e. Rs. 3,12,000/- p.a .**

21. It has been further argued by the Insurance Company that the *annual bonus* of Rs. 3454/-and the *Compensatory Pay* i.e. Rs. 20,217/- should not have been added while calculating the annual income of deceased Shri Satypal Singh.

22. The Claimants had examined *PW4/HC Sandeep, CR Branch, PHQ, who* proved the *Circular of Ministry of Home Affairs dated 10.12.1979, Ex.PW4/A* which provides that the *"basic pay, dearness allowance and the additional allowance for 30 days in respect of the service rendered in a calendar year and the payment shall be made after the closure of the concerned calendar year".* Thus, *Compensatory pay of 30 days as additional Dearness Allowance will be payable* to the non-gazetted personnel of the Delhi Police.

23. The Deceased Shri Satypal Singh was working as a Constable and therefore, he was entitled to the payment equivalent to 30 days additional salary. Therefore, a sum of **Rs. 20,217/-** which is the compensatory pay for the year 2014 as per Ex. PW-2/3 has been rightly included in the annual salary of deceased Shri Satypal Singh.

24. Likewise, *PW5/Daftari Shri Arvind Kumar,* Accounts Branch, PHQ had been examined who proved the letter No.7/24/2007/E.lli(A), GOI, Ministry of Finance, Department of Expenditure, E.iil(A) Branch, dated 16.10.2015, according to which the Delhi Police personnel of all ranks upto Inspector was entitled to bonus **of Rs. 3,454/- every year**. Thus, the said annual bonus amount has to be added in the annual income of deceased Shri

Satypal Singh.

25. Thus, the **actual Income p.a.** of the Deceased has been correctly calculated as : -

Rs. 3,12,000 + Rs. 3454/- + Rs. 20,217/- = Rs. 3,35,671/- p.a.

Ex-Gratia payment of Rs. 10,00,000:

26. It has been argued that Rs. 10,00,000/- was paid to the family of deceased Shri Satypal Singh as *ex-gratia* amount as per the Document, Ex.PW3/2. Further, the Insurance Company had produced the Letter Ex. PW3/1, wherein it was certified that the family pension has been at Rs. 7,050/- per month and these, are liable to be deducted from the income of the deceased.

27. In the case of *Helen C. Rebello Vs. Maharashtra State Road Transport* 1999 (1) SCC 90, the issue before the Apex Court was whether the amounts received by the deceased by way of Provident Fund, Pension, Life Insurance Policies and similarly, cash, bank balance, shares, fixed deposits etc. received by the heirs on account of death of deceased, are liable to be deducted from the compensation. The Apex Court held that none of these amounts have any correlation with the compensation receivable by the dependants under the Motor Vehicles Act, which is on account of injury or death without making any contributions towards it. The fruits of the amount received through contribution of the insured, cannot be deducted out of the amount receivable under the Motor Vehicles Act. Only the amount under the Motor Vehicle Act which are those which are payable without any contribution, as it is statutory in the nature, are liable to be considered. The amount receivable under the Insurance Policy and such like documents is contractual on account of premium paid by the deceased and are not

deductable.

28. Similarly, the Apex Court in _Union of India Insurance Company Limited Vs. Petricia jean Mahajan_ 2002 (6) SCC 281 observed that the principle of balancing of losses and gains or benefits of death, has to be done in order to arrive at the amount of compensation but what is more important is that such receipts of the amount by the claimants must have correlation with the accidental death by reason of which alone the claimants have received the amount. The amounts received must have a nexus or relation with the accidental death or injuries, to be deducted from the amount of compensation. Such gains which may be on account of savings or other investment made by the deceased, would not go to the benefit of wrong doer and the Claimant should not be left worse of, if he had never taken any Insurance policy or had not made investments for future returns.

29. Similarly, in the case of _Reliance General Insurance Co. Ltd. Vs. Shashi Sharma_ AIR 2016 SC 4465, the deceased was an employee of Haryana Government and under the Government rules, the family was to continue to receive the financial assistance equal to pay and other allowances that were drawn by the deceased. It was held that only such pecuniary addition or advantage from whatever source which co-relate to the injury or death caused on account of motor accident, should be considered while claiming the compensation.

30. In the case of _Sebastiani Lakra vs. National Insurance Company Ltd._ AIR 2018 SC 5034, the Apex Court observed that advantage which accrues to the legal heirs of the deceased or to his dependents as a result of some Contract or act which the deceased performed in his lifetime, cannot be considered to be the outcome or result of the death of the deceased, even

though these amounts may into the hands of the dependents only after his demise.

31. Similar observations have been made in the case of *National Insurance Company Ltd. vs. Mannat Johal & ors.* AIR 2019 SC 2079, wherein it was reiterated that while making the assessment of pecuniary loss, the *ex-gratia* amount received by the claimants from the employer is not to be deducted from the total compensation amount.

32. In *Reliance General Insurance Company Ltd. Vs. Manjula Kabiraj Das,* decided by the High Court of Bombay in First Appeal Stamp No. 31832/2019, the ex-gratia amount received by the claimants was held to be non deductable. Similar are the observations in Punjab and Haryana High Court's decision in *Rekha Devi and Ors. Vs. Shridhar N Mukri and Ors.,* FAO No. 4341/2018, decided on 14.05.2018.

33. In view of the above, in the present case, the *ex-gratia* payment is not connected to the payment of compensation under the Motor Vehicles Act, 1988 on account of the accident; rather it is a *ex-gratia* payment received by the family members by virtue of the service conditions and statutes and therefore, the said amount is not liable to be deducted.

34. Similarly, the Tribunal has rightly observed that the amount of Rs. 7,050/- per month, which the family members of deceased Shri Satypal Singh would continue to get, has no co-relation with the Compensation to be granted under the Motor Vehicle Act, 1988.

35. Therefore, the ***Total Loss of Dependency*** has been correctly calculated by the Ld. Tribunal as **Rs. 56,64,450/-,** as under: -

i. Rs. 3,35,671/- p.a. + Rs.1,67,835/- *(i.e. 50% towards future prospects)* = Rs. 5,03,506.5/-

ii. Rs. 5,03,506.5 - Rs. 1,125876.6/- (i.e. 1/4th towards personal expenses) = Rs. 3,77,630/-

iii. Rs. 3,77,630 x 15 = **Rs. 56,64,450/-**

Non-Pecuniary Heads: -

36. The Claimants have sought the enhancement of the amount under the Non-Pecuniary Heads.

37. The Claimants have been granted *Loss of Love and Affection* in the sum of Rs. 1,00,000/-, *Loss of Consortium* in the sum of Rs. 1,00,000/- which both add-up to Rs. 2,00,000/-. It is well settled that the Loss of Love and Affection is subsumed in the Loss of Consortium.

38. There are 5 Claimants and, therefore, they were entitled to ***Loss of Consortium*** in the sum of Rs. 40,000/- each, i.e. Rs. 2,00,000/- which is the amount that has been granted conjointly on account of Loss of Love and Affection and Loss of Consortium ***and the same be read accordingly.***

39. The *Loss of Estate* has been given in the sum of Rs. 10,000/- and the Funeral Expenses in the sum of Rs. 25,000/-.

40. In view of the decision in *Pranay Sethi*, (supra), the Loss of Estate and Funeral Expenses, is revised in the sum of Rs. 15,000/- each.

Rate of Interest: -

41. The Insurance Company has claimed that interest @ 9% per annum so granted by the learned Claim Tribunal is on the higher side. However, the accident is of 2014 and the learned Claim Tribunal in its Award has granted interest @ 9% per annum which is just and fair. Therefore, the same does not warrant any interference.

Relief:-

42. The compensation is, therefore, re-calculated as under: -

S.No.	Heads	Compensation by the Tribunal	Modified by this Court
1.	Total loss of Dependency	**Rs. 56,64,000/-**	**Rs. 56,64,000/-**
2.	Loss of Consortium	Rs. 1,00,000/-	Rs. 2,00,000/-
3.	Loss of Love and Affection	Rs. 1,00,000/-	
4.	Loss of Estate	Rs. 10,000/-	**Rs. 15,000/-**
5.	Funeral expenses	Rs. 25,000/-	**Rs. 15,000/-**
6.	Total Compensation	Rs. 58,99,000/-	**Rs. 58,94,000/-**
7.	Interest	9%	9%

43. Thus, the total compensation granted to the Claimant is modified to **Rs. 58,94,000/-** along with interest @ 9% per annum from the date of the Claim till the disbursal of the amount, in terms of the Impugned Award dated 05.02.2016 of the Tribunal.

44. The excess amount, be returned to the Insurance Company, along with the Statutory deposit.

45. The Appeals stand disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024
va