



2025:DHC:3881



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:16.05.2025

+ **MAC.APP. 70/2023 & CM APPL. 22382/2023**

DEVKI DEVI & ANR. Appellants

versus

**SAGIR & ORS. (NEW INDIA ASSURANCE
CO. LTD.)** Respondents

Advocates who appeared in this case:

For the Appellants : Appellants in person.

For the Respondents : Ms. Kanchan Kaur, Advocate.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present appeal is filed against the award dated 19.10.2022 (hereafter '**impugned award**') passed by the learned Presiding Officer, MACT, South District, Saket Courts, New Delhi in MACT No. 32/20.

2. By the impugned award, the learned Tribunal allowed the claim petition filed by the appellants who are the mother and the father of the deceased, and awarded compensation for a sum of ₹50,10,056/-



along with interest @7% per annum from the date of filing of the claim petition.

3. Briefly stated it is claimed that on 03.08.2019 at about 6:30 PM, Manoj Kumar (hereafter 'the deceased') was travelling towards Pahari, Gurugram on his motorcycle when suddenly one Heavy Goods Tractor bearing registration number HR-38-W-4446 driven by Respondent No. 1 struck the motorcycle of the deceased as a consequence of which the deceased came under the side wheel of the truck, and was dragged for a considerable distance. During the course of the treatment, the deceased succumbed to his injuries.

4. The learned Tribunal, by the impugned award, noted that the factum of the manner of the accident had not been denied. The respondents only contended that no eye witness had been examined by the petitioners to establish that the accident had occurred on account of the rash and negligent driving of the driver of the offending vehicle. The learned Tribunal noted that it was not imperative to examine the eye witness in each and every case particularly when the chargesheet had been filed against Respondent No. 1. It was noted that as per the contents of the FIR, an eye witness who was a security officer employed in the same company and was going along with the deceased on his respective motorcycle, had narrated the entire sequence of events to the police. It was noted that nothing had been brought on record to contend that the accident had not occurred for the



lack of the rash and negligent act of the driver of the offending vehicle.

5. The appellants were present in person and submitted that the compensation awarded to them is on the lower side. They submitted that the learned Tribunal failed to award medical expenses for a sum of ₹70,000/- incurred by the deceased. They submitted that the learned Tribunal erred in considering the income of the deceased to be ₹35,000/- per month while noting that no appointment letter, attendance record and salary slip from the employer office of the deceased had been placed on record. They submitted that a certificate dated 06.09.2019 endorsing the employment of the deceased as Office Manager in M3M Foundation had been placed on record, and the same evidenced that the deceased had been working in M3M Foundation for the last four months from 01.04.2019.

6. They submitted that the deceased received salary through cheques for a sum of ₹45,000/-, and that the same had been placed on record. They submitted that PW-2/Assistant Manager, Finance and Administration had been summoned as a witness, who upon being cross examined, stated that the certificate dated 06.09.2019 had been issued by the authorised signatory of the company, and that the same had been signed by one Sarvesh Kumar Tiwari. PW-2, in his cross examination, stated that at the time of the accident, no bifurcation of salary was given, and only cheques were issued to the employees.



7. The appellants have also placed on record the ITR for the financial year 2019-2020 to contend that the deceased was earning a sum of ₹45,000/- per month at the time of his death. It was consequently argued that the monthly income of the deceased prior to his death was at least ₹45,000/-.

8. It was further contended that since the deceased had a permanent job, future prospects @30% of actual salary should have been granted as opposed to @25% as erroneously awarded by the learned Tribunal. They submitted that while the deceased had divorced with his wife, the deceased still had a minor child at the time of his death (now major). They submitted that for this reason, loss of consortium should also have been awarded to the son of the deceased. It is also contended that the amount awarded under the head of “loss of consortium” be made to increase by 10% after every few years.

9. They submitted that the rate of interest @7% is on the lower side, and ought to be increased to @9% per annum from the date of filing of claim petition.

10. *Per contra*, the learned counsel appearing on behalf of the Insurance Company/Respondent No. 3 opposed the enhancement of compensation. She submitted no amount should be granted to the appellants in relation to the medical expenses. She submitted that no cogent evidence has been brought forth to substantiate that a sum of



₹70,000/- was incurred by the appellants towards medical expenses, and that the same is based on mere speculation.

11. She submitted that the learned Tribunal assessed the monthly income of the deceased at ₹35,000/- per month on the ground that the income of the deceased had not been proved. She submitted that the ITR documents have been filed only in appeal and that the same should not be considered.

12. She submitted that the deceased had already divorced with his wife, and had paid a one-time settlement amount for the maintenance of the wife and child. She consequently submitted that no amount under the head of loss of consortium should be awarded to the child. She further submitted that since the age of the deceased was below 50 years, future prospects were rightly awarded @25% of the actual salary.

Medical expenses

13. The appellants have claimed a sum of ₹70,000/- as medical expenses incurred by the appellants in the treatment of the deceased. The learned counsel for the Insurance Company has opposed the grant of any sum towards medical expenses on the ground that no bill has been produced to show the amount incurred by the appellants in the hospitalisation/treatment of the deceased.



14. It is pertinent to note that whenever a tribunal or Court is tasked with determining an amount of compensation, it inevitably involves some degree of estimation/guesswork and a measure of compassion. Even though no bills have been adduced to show the extent of medical expenses that were incurred in the treatment of the deceased, however, it is not disputed that the victim was hospitalised. There is no reason to doubt the deposition of the father of the deceased who stated that the deceased succumbed to his injuries during the course of treatment. It is only reasonable that some money would have been spent in the treatment of the deceased. In such circumstances, this Court considers it apposite to grant a sum ₹50,000/- to the appellants towards cost incurred on medical expenses.

Assessment of Income

15. In the present case, the learned Tribunal has assessed the income of the deceased to be ₹35,000/- while noting that no appointment letter or salary slip or bifurcation of salary had been produced to substantiate the salary of the deceased at ₹45,000/- per month.

16. It is pertinent to note that the cheques issued to the deceased and bank statement of the deceased have been annexed with the present petition to highlight that the income of the deceased prior to his death was ₹45,000/-. Further, PW2 in his cross examination, consistently maintained that the deceased was permanently employed,



and that at the time of the accident of the deceased, the company did not provide any bifurcation of salary and that only cheques were directly issued by the company for the payment of the salary. The appellants have also placed on record the ITR for the financial year 2019-2020 to contend that the monthly salary of the deceased prior to his death was ₹45,000/-

17. The only ground raised to oppose the enhancement of salary is that the ITR documents were not produced before the learned Tribunal, and have been placed by the appellants only in appeal before this Court. It is pertinent to note that there is no embargo on this Court to entertain documents during the course of the appeal. From a perusal of the ITR for the financial year 2019-2020, the salary of the deceased prior to his death is arrived at ₹45,000/-. The ITR of the deceased is a statutory document, and no worthy ground has been pleaded to not consider the same at this stage. It is not urged by the Insurance Company that the ITRs were fabricated. The same is corroborated with the cheques as well as the certificate issued by the employer of the company which were produced before the learned Tribunal.

18. Consequently, upon a consideration of the cheques, the bank statement, the deposition of PW-2, and the ITR of the deceased, this Court deems it apposite to assess the monthly salary of the deceased @ ₹45,000/- per month.



Loss of Consortium

19. The appellants have also sought payment under the head of loss of consortium to the son of the deceased (now major). It is pertinent to note that while awarding compensation under the head of loss of consortium, the learned Tribunal awarded a sum of ₹40,000/- per head to the mother and father of the deceased. No amount under this head was awarded to the son of the deceased. It has been contended by the learned counsel for Respondent No. 3 that the deceased had divorced with his wife, and had paid a settlement amount to the wife and child, hence no amount should be payable to the son of the deceased.

20. In the case of ***United India Insurance Co. Ltd. v. Satinder Kaur*** : (2021) 11 SCC 780, the Hon'ble Apex Court while delineating the scope of the term "consortium" observed as under:

31. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

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*33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. **Parental consortium is awarded to the***



children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] .

21. It is pertinent to note that compensation under the head of “*loss of consortium*” is granted to the child on account of the agony and the loss of parental aid and affection that the child suffers on account of the premature death of a parent. Merely because the deceased had divorced from his wife, and had paid a settlement amount to the wife and child, does not wipe out the fact that the deceased was the father and that his son was entitled to receive compensation on account of the loss of affection and parental aid on the premature death of his father.

22. The term consortium encapsulates within its fold the care and protection that a parent provides to his/her child. This Court therefore deems it apposite to grant compensation under the head of “*loss of consortium*” to the son of the deceased.

23. The learned Tribunal awarded loss of consortium at ₹40,000/- per head to the mother and the father of the deceased. In line with the decision of the Hon’ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi : 2017 16 SCC 680***, 10% increase must be made in the compensation granted on account of loss of consortium.

24. By that metric, with the amount standing at ₹40,000/- in 2020, the amount as of this date would stand at ₹44,000/- (the amount



having been enhanced by 10% once). Hence, the learned Tribunal is directed to award a sum of ₹44,000/- per head to the father, the mother and the son of the deceased under the head of loss of consortium.

Loss of future prospects

25. In the present case, the learned Tribunal has awarded loss of future prospects @25% of the actual salary of the deceased. In accordance with ***National Insurance Company Limited v. Pranay Sethi (supra)***, where the deceased has a permanent job and the age of the deceased is between the age of 40-50 years, an addition of 30% is to be made to the actual salary towards the loss of future prospects.

26. Admittedly, the age of the deceased was above 42 years at the time of the accident. Further, based on the deposition of PW-2, the deceased also had a permanent job at the time of his death.

27. Consequently, considering the age of the deceased being between 40-50 years, and in accordance with ***National Insurance Company Limited v. Pranay Sethi (supra)***, the addition of 30% of actual salary as opposed to 25% should be considered while computing future prospects.

Rate of Interest

28. The learned counsel for the appellant contended that the award of interest @7% by the learned Tribunal is on the lower side, and ought to be enhanced to @9%.



29. It is pertinent to note that this Court in the case of ***United India Insurance Company Ltd v. Smt. Mithlesh Kumari and Ors*** : MAC. APP. 161/2025 had noted that the award of interest was a matter of judicial discretion, and that the same found its genesis in the forbearance of the claimants who were kept out of the money that they were entitled to at the time of filing of the claim petition. It was consequently noted that the award of @9% interest is a reasonable assessment.

30. Considering the peculiar facts and circumstances of the present case, this Court deems it appropriate to enhance the rate of interest from @7% to @9% from the date of filing of the claim petition.

Conclusion

31. Keeping in view the facts and circumstances of the case, the appeal is partly allowed. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the amount of compensation by (i) awarding a sum of ₹50,000/- towards cost incurred in medical expenses (ii) assessing the monthly income of the deceased at ₹45,000/- per month (iii) awarding a sum of ₹44,000 per head to the appellants (that is mother and the father of the deceased) and the son of the deceased under the head “*loss of consortium*” (iv) addition of 30% of the actual salary of the deceased towards loss of future prospects (v) enhancing the rate of interest to @9% from the date of filing of the claim petition.



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32. The findings of the learned Tribunal on all other issues *inter alia* the multiplier, deduction towards personal expenses shall remain undisturbed.

33. The learned Tribunal shall undertake the re-compensation expeditiously, preferably within a period of six weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 23.05.2025.

34. The compensation amount so determined, on remand, shall be released in favour of the petitioners in accordance with the schedule for disbursal stipulated by the learned Tribunal in the impugned award.

35. The present petition is partly allowed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 16, 2025