* IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 4th February 2025

\+ **MAC.APP. 934/2015**

THE ORIENTAL INSURANCE CO. LTD.
Regional Office-I,
F-14/20,1st and 3rd Floors,
United India Life Building,
Connaught Circus,
New Delhi-110 001 .....Appellant

Through: Mr.Pankaj Seth, Adv.

versus

1) SH. DALVIR SINGH (HUSBAND OF DECEASED)
2) MS. SAVITRI - DAUGHTER
3) MASTER KISHAN - SON
4) MASTER VISHNU - SON
5) MS. GOMATI - DAUGHTER
(Respondent nos. 2 to 5 are minor, represented
Through respondent no. 1 being father / Natural guardian)
All R/o 263/A, Begumpur, Delhi- 86.
Also at:-
A-97, Rajiv Nagar, Near Begumpur,
Delhi.

6) MR. CHETAN PRAKASH (DRIVER)
S/o Sh. Chander Prakash,
R/o A-12, Ramesh Enclave,
Sector-21, Rohini, Delhi.

7) MR. MUKESH KUMAR (OWNER)
S/o Sh. Kartar Singh,
R/o H. No. 98/1, Sukhvir Nagar,
Karala, Delhi.

...Respondents

Through: Mr. Jatinder Kamra, Advocate for R1 to R5.

\+ **MAC.APP. 532/2023**

1. DALVIR SINGH

2. SAVITRI
D/O Sh. Dalvir Singh

3. KISHAN
S/O Sh. Dalvir Singh

4. VISHNU
S/O Sh. Dalvir Singh

5. GOMATI
D/O Sh. Dalvir Singh
All r/o. A-97, Rajiv Nagar, Near Begumpur,
Delhi.

Also at 263/A Begumpur, Delhi-86
(Claimants/Cross objectors 1 to 5) ......Appellants

Through: Mr. Jatinder Kamra, Advocate.

Versus

1. CHETAN PRAKASH
s/o. Chander Prakash
r/o A-12 Ramesh Enclave, Sec-21 Rohini,
Delhi
(Deleted by MACT on 31-10-2013) (Driver)

2. MUKESH KUMAR
s/o. Kartar Singh
r/o H.No. 98/1, Sukhvir Nagar, Karala,
Delhi.

3. THE ORIENTAL INSURANCE CO. LTD.
Through its Manager
R.0-1,
F-14/20,1st and 3rd Floors,
United India Life Building
Connaught Circus, New Delhi-110001.

.....Respondents

Through: Mr.Pankaj Seth, Adv.

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present appeal bearing ***MAC.APP. 934/2015*** *under Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the ***Appellant/Insurance Company,*** to assail the Award dated 24.09.2015 *vide* which the Compensation in the sum of Rs.12,25,480/- along with interest @9% has been granted to the Claimants on account of the demise of Smt. Asha, aged 35 years old, in a road accident on 12.05.2009.

2. ***Briefly stated,*** on 12.05.2009, at about 10:30 pm, while the deceased was returning from Begumpur, Delhi from Budh Vihar-ll, the offending vehicle *TATA 407 bearing registration no. DLILG 5102,* which was being driven rashly and negligently at very high speed by its driver/Mr. Chetan, hit the deceased from behind in front of Mange Ram Extension, Rithala Road, Delhi, resulting in injuries She was taken to hospital but was declared "***Brought Dead"*** *vide MLC no. 2763/09.*

3. *FIR no. 143/2009* under *Section 279/304-A IPC, 1860,* was registered against the Driver/Chetan, at P.S. Vijay Vihar.

4. The Claim Petition u/s. 166 and 140 of Motor Vehicles Act, 1988 was filed by the Claimants i.e. the 4 children and husband of the deceased seeking compensation on account of demise of Smt. Asha in the road accident dated 12/05.2009.

5. The Ld. Tribunal v*ide* the impugned Award dated 24.09.2015, granted compensation in the sum of Rs. Rs.12,25,480/- along with interest @9% *p.a.*

6. The ***Insurance Company has challenged the Award on the following grounds:***

i. The deceased was not gainfully employed and there is no proof of her *income*. Thus, the Ld. Tribunal has erred in taking the Minimum Wages of non-matriculate for calculating the loss of dependency; *rather,* Rs.15,000/- p.a., should have been taken in accordance with the Second Schedule to Section 163A of the Act, 1988;

ii. No *future prospects* could have been granted in absence of any cogent evidence; and

iii. No amount has been *deducted towards personal and living expenses*.

7. ***Cross Appeal bearing No. MAC.APP. 532/2023*** has been filed on behalf of the Claimants, who have asserted that they are ***entitled to enhanced compensation*** on the following grounds: -

i. the Income of the deceased has been incorrectly assessed on the basis of the minimum wages of a non-matriculate;

ii. An addition of 40%, instead of 25%, should have been granted towards Future Prospects.

iii. The amount towards Loss of Consortium should have been given @ Rs.40,000/- per Claimant.

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

9. Opportunity given to the Insurance Company, to address the arguments.

Loss of Dependency: -

<u>Assessment of Income of the deceased: -</u>

10. The *main ground of challenge* by both the parties is in regard to the assessment of income of the deceased Smt. Asha who was aged 35 years and 4 months, at the time of the accident.

11. To prove the income of the deceased, *PW-1/Sh. Dalvir Singh,* husband of the deceased, has deposed that the deceased used to perform all the services starting from housekeeping, cooking, laundry, maintaining relationship, buying grocery etc. The services performed by her were not less than of a seasoned Manager of a Body Corporate who had to do multi-tasking. She performed her services 24x7x365 and the pecuniary value of her services were not less than Rs. 15,000 per month, of which the Claimants have been deprived on account of her demise. It is further deposed that in addition to her household activities she was also gainfully employed as a ladies Tailor and was earning Rs.5000/- per month. She used to put in extra efforts in discharging her duties as housewife and ladies Tailor. The income of deceased from tailoring was on a rise rapidly but due to rising economy, her income was getting doubled every 3-4 years.

12. However, in the cross examination he admitted that he had no documentary proof of the deceased being a Ladies Tailor or her earnings there from.

13. *Thus, the question for consideration arises that what should be the notional income of a housewife, who was rendering gratuitous services to the family?*

14. In the case of <u>*A. Rajam v. M. Manikya Reddy 1989*</u> ACJ 542 the scope of the term `*services'* was broadened to include services rendered by the mother/wife in the household, in cases relating to grant of compensation on

account of demise of a wife/mother. It was observed that: -

> *"The loss to the husband and children consequent upon the death of the housewife or mother* ***has to be computed by estimating the loss of 'services' to the family,*** *if there was reasonable prospect of* ***such services being rendered freely in the future,*** *but for the death.* ***It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife.*** *Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.*
> *While estimating the* ***`services' of the housewife, a narrow meaning should not be given to the meaning of the word `services' but it should be construed broadly and one has to take into account the loss of `personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife.*** *The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."*

15. In the case of <u>*Lata Wadhwa v. State of Bihar,*</u> (2001) 8 SCC 197 while addressing the issue of payment of compensation on account of demise of victim housewives in a fire accident, the Apex Court acknowledged that the services rendered by them in the household need to be quantified and the compensation was granted accordingly.

16. While referring to the above judgment, the Apex Court in <u>*Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218,*</u> emphasised the crucial role of a housewife in managing the household, and observed:-

> *"26. In India the courts have* ***recognised that the***

contribution made by the wife to the house is invaluable and cannot be computed in terms of money. *The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the* ***household affairs cannot be equated with the services rendered by others…****….*

27. ***It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother.*** *In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife.* ***They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased.*** *The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."*

17. In the landmark Judgment of *Kirti & Anr. v. Oriental Insurance Company Ltd.*, (2021) 2 SCC 166, ***Apex Court*** opined that there are two categories of cases wherein the Court usually determines notional income of a victim- *first category* of cases where the victim was employed, but the claimants are not able to prove her actual income; and the *second category* of cases wherein the Court has to determine the income of a nonearning victim, such as a child, a student or a homemaker.

18. While emphasizing upon the contribution made by a homemaker and the services rendered by a woman in a household, the Apex court observed that there can be no exact calculation or formula that can ascertain the actual value provided by an individual gratuitously. Thus, to streamline the

calculation of notional income for homemakers and the grant of future prospects with respect to them for the purposes of grant of compensation, the following general principles were laid: -

> "**a**. *Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.*
>
> ***b***. *Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all;*
>
> ***c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case;***
>
> ***d***. *The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.*
>
> ***e***. *The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation."*

19. In the case of *Rajendra Singh and Ors. v. National Insurance Company Ltd. and ors.* (2020) 7 SCC 256, the Apex Court ascertained the *Notional Income of the deceased housewife*, who expired in a motor vehicle accident dated 25.12.2012, as Rs. 5,000/-.

20. Recently, in the judgment of *Arvind Kumar Pandey and Ors. v. Girish*

Pandey, Civil Appeal No. 2515 of 2024, decided on 16.02.2024, the Apex Court has settled ***that the direct or indirect income of a homemaker cannot be less than the prevailing Minimum Wages of the State at the time of the accident***.

21. Similar view was taken by the Coordinate Benches of this Court in the judgments of *National Insurance Co. Ltd. v. LRs of Sukhbir Singh,* MAC APP 518/2013 decided on 13.07.2023 and *Oriental Insurance Company Ltd. v. Sandeep Kumar and ors.* MAC APP 246/2022 decided on 01.08.2023 that the Minimum Wages of an unskilled worker, of the State where the deceased homemaker was residing, can be used to determine the notional income.

22. ***It is therefore, now well established that notional income of the deceased housewife, who has been rendering gratuitous services to the household, may be taken not less than prevailing Minimum Wages as notified by the State, depending upon the facts and circumstances of the case.***

23. In the present case, though the Claimants have not been able to prove that the deceased was a Ladies Tailor having professional income, it cannot be overlooked that the deceased was rendering her gratuitous services to the family members of which they have been deprived on account of her demise.

24. Considering the extensive contribution of the deceased/Smt. Asha in the household and in absence of any evidence regarding the educational qualification, the Minimum wages of a skilled worker which was **Rs.** ***4358/- per month is taken as*** the income of the deceased.

Addition of Future Prospects : -

25. The *second ground of challenge* is that the future prospects should have been 40% though the learned Tribunal has granted only 25%.

26. The deceased was 35 years 4 months old at the time of her demise as per the Elections Id. Ex. *PW1/3*.

27. In terms of the Judgment of *National Insurance Company Limited v. Pranay Sethi And Others*, (2017) 16 SCC 680, she is entitled to ***40% of enhancement in her income on account of future prospects.***

Deduction towards personal and living expenses: -

28. The *next aspect for consideration* is the deduction towards personal expenses and the no. of dependants upon the deceased.

29. The deceased-Smt. Asha, was survived by two minor daughters and two minor sons namely, Ms. Savitri, Ms. Gomti, Master Kishan, Master Vishnu and her husband Dalvir Singh.

30. Considering that the four minor children as dependants on their deceased mother's gratuitous services, a deduction of ***1/4th is liable to be made towards personal*** and living expenses where the number of dependent family members is 4 to 6 as per the judgment of *Sarla Verma v. DTC,* (2009) 6 SCC 121.

31. Thus, the **Total Loss of Dependency** is calculated as under: -

i. Rs. 4358 p.m. + 40% (future prospects) = Rs. 6,102/-

ii. Rs. 6,102 – ¼ (personal expenses) = Rs. 4,577/-

iii. Rs. 4,577 x 12 x 16 (multiplier) = **Rs. 8,78,784/-**

32. In view of the above, the **Total Loss of Dependency** to the family of the deceased comes to Rs. 8,78,784/- which is rounded off to **Rs 8,80,000/-.**

***Non-Pecuniary Heads*:-**

33. A plea has been taken that each claimant was entitled to Rs. 40,000/- each i.e. a total Rs. 2,00,000/- towards loss of Consortium.

34. In the present case, the learned Tribunal has granted Rs. 1 lakh towards loss of Consortium and Rs. 1 lakh towards loss of Love and Affection.

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

36. Thus, it is evident that loss of love and affection is encompassed in loss of consortium.

37. In the present case, the claimants were entitled to Rs, 2,00,000/- i.e. Rs. 40,000/- x 5, towards compensation of Loss of Consortium/Love and Affection, which has already been granted by the learned Tribunal and ***the same does not warrant any further modification.***

Relief:-

38. Thus, the Total compensation is re-calculated as under: -

S.No.	Heads	Compensation granted by the Tribunal	Compensation modified by this court

1.	Income of Deceased	**Rs. 4127**	**Rs. 4,358**
2.	Add-Future Prospects	25%	**40%**
3.	Less-Personal Expenses of Deceased	-	**1/4th**
4.	Total loss of Dependency	Rs. 9,90,480	**Rs. 8,80,000/-**
5.	Compensation for loss of Consortium + Loss of Love and Affection	Rs. 1,00,000/- Rs. 1,00,000/-	Rs. 2,00,000/-
6.	Compensation for loss of Estate	Rs. 10,000/-	Rs. 10,000/-
7.	Compensation towards funeral expenses	Rs. 20,000/-	Rs. 20,000/-
8.	Total Compensation	Rs. 12, 25, 480/-	**Rs. 11,10,000/-**
9.	Rate of Interest Awarded	9%	9%

39. Thus, the total compensation granted to the Claimants is **revised as Rs. 11,10,000/- along with interest @9% per annum** from the date of the Claim till deposit of the amount, in terms of the Impugned Award dated 24.09.2015 of the learned Tribunal.

40. The excess amount, if any and the statutory deposit be returned to the Insurance Company.

41. **Both the Appeals are accordingly disposed of accordingly, along with the pending Application(s), if any.**

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 04, 2025/rk

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