



2025:DHC:11698



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

Decided on 19.12.2025

+ MAC.APP. 708/2013

NATIONAL INSURANCE CO. LTD.

.....Appellant

versus

VIJAY SHANKER MISHRA & ORS.

.....Respondents

+ MAC.APP. 804/2025

VIJAY SHANKER MISHRA AND ANR.

.....Appellants

versus

NATIONAL INSURANCE CO. LTD. AND ORS.Respondents

Appearances:

Ms. Shruti Jain, Advocate for appellant in item No. 5.

Mr. Vineet Tayal, Ms. Nishtha Wadhwa, Mr. Jitendra K. Singh, Mr. Nilesh Deep, Advocates for R-1&2 in item No. 5

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J (ORAL)

1. These cross-appeals arise out of an award dated 03.03.2013, passed by the Motor Accident Claims Tribunal ["the Tribunal"] in Suit No. 41/2012.
2. The proceedings before the Tribunal arose from a motor accident which occurred on 20.11.2011 at about 5:45 a.m. near Ghitorni Village on the Mehrauli-Gurgaon Road, New Delhi. At the relevant time, Mr. Ravi Shankar was riding a motorcycle bearing Registration No. DL-3S-



BN-8388, with Mr. Ram Sunder Mishra travelling as a pillion rider. The motorcycle was hit from behind by a Mahindra Xylo car bearing Registration No. DL-1YC-0433, as a result of which both riders were thrown off the motorcycle, and landed at some distance.

3. As a consequence of the accident, Mr. Ram Sunder Mishra suffered grievous injuries, and was immediately taken to the Trauma Centre, All India Institute of Medical Sciences, where he was declared dead. In relation to the said accident, FIR No. 251/2011 was registered at PS: Fatehpur Beri against the driver of the offending Mahindra Xylo, who has been arrayed as respondent No. 3 in the present appeals, and a charge-sheet was subsequently filed against him.

4. A composite claim petition was thereafter instituted before the Tribunal by Mr. Ravi Shankar, as the injured claimant, alongwith the father and brother of the deceased, Mr. Ram Sunder Mishra, seeking compensation on account of the injuries sustained, and the death caused in the accident.

5. The Tribunal returned a finding that the accident had occurred due to the rash and negligent driving of the Mahindra Xylo car by its driver [respondent No.3 herein]. The said finding of negligence has not been assailed in the present appeals.

6. By the impugned award, the Tribunal awarded compensation of Rs. 12,92,100/-, alongwith interest at the rate of 9% per annum, in respect of the death of Mr. Ram Sunder Mishra, and a sum of Rs. 10,000/- in favour of the injured claimant, Mr. Ravi Shankar. These appeals are only with respect to the first of these two awards.

7. The Tribunal awarded compensation to the legal representatives of



the deceased under the following heads:

S.No.	Heads	Amount
1.	Loss of dependency	Rs.12,47,100/-
2.	Loss of Love and affection	Rs. 25,000/-
3.	Funeral Expenses	Rs. 10,000/-
4.	Loss of Estate	Rs. 10,000/-
Total		Rs. 12,92,100/-

8. I have heard Ms. Shruti Jain, learned counsel for appellant – National Insurance Company Ltd. [“Insurance Company”] in MAC.APP. No. 708/2013, and Mr. Vineet Tayal, learned counsel for respondent Nos. 1 and 2 in MAC.APP. No. 708/2013.

9. Learned counsel have confined their submissions in the present cross-appeals to the question of the quantum of compensation awarded by the Tribunal. They have advanced the following submissions:

- Ms. Jain submits that the Tribunal computed the loss of dependency on the basis that the deceased was earning a monthly income of Rs. 12,597/-, as reflected in the salary slip placed on record, without deduction of expenses and allowances.
- As far as loss of future income is concerned, Ms. Jain also submits that future prospects have been granted at the rate of 50%. However, in terms of the law laid down by the Constitution Bench of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi*¹, the applicable rate of future prospects ought to have been

¹ (2017) 16 SCC 680 [hereinafter, “*Pranay Sethi*”].



limited to 40%.

- c) She contends that the Tribunal erred in deducting only 50% of the deceased's income towards personal and living expenses, and that the deduction ought to have been higher, since the mother of the deceased had predeceased him, and the father had an independent source of livelihood, sufficient to support both himself and the deceased's brother. On the other hand, Mr. Tayal argues that the appropriate deduction ought to have been one-third, as the evidence on record establishes the dependency of both the father and the brother, on the deceased.
- d) Mr. Tayal also submits that the Tribunal committed an error in applying a multiplier of 11 on the basis of the age of the father of the deceased, instead of applying the multiplier corresponding to the age of the deceased himself.
- e) Learned counsel appearing for both sides have also addressed submissions with respect to the quantum of non-pecuniary compensation awarded by the Tribunal.

10. Each of the aforesaid issues is dealt with hereinafter.

A. QUANTUM OF INCOME:

11. It is not in dispute that the deceased was employed with M/s Easy Source HR Solutions Pvt. Ltd., which had entered into a contractual arrangement with Kendriya Bhandar for the supply of manpower, pursuant to which the deceased was deployed at Kendriya Bhandar in the capacity of a Data Entry Operator.

12. In support of the claim regarding the income of the deceased, his father entered the witness box as PW-1, and deposed with respect to the



salary drawn by the deceased. The relevant portion of his testimony reads as under:

*“That from Ravi Shankar I come to know about his working place i.e. Kendriya Bhandar Puspa Bhawan, Puspa Vihar, New Delhi. I along with my brother went to Kendriya Bhandar Puspa Bhawan, and got salary slip. **The salary slip is Ex 1/7 (Colly). The salary of the deceased was Rs. 12448/- (Rupees twelve thousand four hundred forty eight only) per month.**”²*

13. PW-1 was cross-examined by learned counsel for the Insurance Company. In cross-examination, the quantum of salary reflected therein was not substantively disputed, save for a suggestion that the salary slip was forged and fabricated, which suggestion was categorically denied by the witness.

14. The evidence of two other witnesses is also relevant to the determination of the income of the deceased. PW-2, Mr. Sumit Kumar Sharma, was working as an Assistant with M/s Easy Source HR Solutions Pvt. Ltd., the employer of the deceased. He proved on record the salary slips of the deceased for the months of October 2011 and November 2011, which were exhibited as Ex. PW-2/B and Ex. PW-2/C, respectively.

15. In his cross-examination, PW-2 was questioned primarily with respect to the nature of the relationship between M/s Easy Source HR Solutions Pvt. Ltd. and Kendriya Bhandar, as well as on the ground that only computer-generated copies of the salary records had been produced, and not attested originals. PW-2 categorically denied the suggestion that the documents produced and exhibited by him were forged or fabricated.

16. PW-3, Mr. Ashwani Kumar, a System Analyst with Kendriya

² Emphasis supplied.



Bhandar, was thereafter examined. He deposed that the deceased had been working under his supervision as a Data Entry Operator at Kendriya Bhandar, from 26.04.2010 until the date of his death. He further confirmed the existence of a contractual arrangement between M/s Easy Source HR Solutions Pvt. Ltd. and Kendriya Bhandar, and stated that the deceased was an employee of M/s Easy Source HR Solutions Pvt. Ltd.

17. The Tribunal concluded that the monthly income of the deceased was Rs. 12,597/-, relying upon the salary slip exhibited as Ex. PW-2/B. The said salary slip reflects three components under the head “earnings”, namely, basic pay of Rs. 8,502/-, expenses of Rs. 2,245/-, and allowances of Rs. 1,850/-, aggregating to Rs. 12,597/-. From the said amount, a sum of Rs. 149/- was deducted towards ESI, resulting in a net payable amount of Rs. 12,448/-.

18. Ms. Jain submits that the components described as “*expenses*” and “*allowances*” ought to have been excluded while computing the last drawn income of the deceased for the purposes of assessment of compensation, and the income should have been assessed at a lower figure.

19. The submission is devoid of merit. It is a well-settled position that all allowances forming part of the salary of the deceased, and which were available for the benefit and maintenance of the family, are liable to be included while determining the income for the purposes of computation of compensation. The Supreme Court in its decision in *Kavita Devi v. Sunil Kumar*³, the Court noted as follows:

“17. *This Court has consistently held in case of the allowances*

³ 2025 SCC OnLine SC 1639.



*which are included in the component of salary of the deceased, **Tribunal has to take into consideration these allowances as they were used for supporting the family. The claimants have to show that these allowances were regularly received and used for the family's benefit.** Further, while determining whether the allowances form a part of the salary or not, the Tribunal by looking into the facts of each case and **by considering the extent of dependency of the claimants on the salary of the deceased including the allowances, have to determine whether these allowances should be excluded from determination of the income of the deceased. If the answer of the Tribunal is in affirmative, then the allowances may be excluded for determination of loss of dependency.** If the Tribunal answers the above point in negative, then the Tribunal has to include the allowances for computation of income of the deceased, thus determining the loss of dependency.*

*18. Applying the above principle to the case on hand, it can be seen that it is the consistent plea of the claimant that the deceased was earning Rs. 6,500/- and the same is evidenced by producing Ex. P6. **No contrary evidence is produced by the Respondents to dispute the fact that the allowances which is about 50% of the salary of the deceased should be excluded from determination of the actual income.** Further, it can be seen that after the accident, the entire burden of taking care of two minor children and herself fell on Appellant No. 1. **Therefore in view of the changing economic situation of the family after the death of the deceased, we are of the opinion that income which the deceased was earning at the time of the accident was Rs. 6,500/- p.m and same ought to have been taken into consideration.**"⁴*

20. The salary slip in the present case, does not specifically delineate the nature of the expenses or allowances reflected therein. However, it is significant that none of the three witnesses was cross-examined on this aspect by learned counsel for the Insurance Company. Keeping in view that proceedings before the Tribunal are governed by the standard of preponderance of probabilities, and that the Tribunal is not bound by strict rules of pleadings or evidence, there is no basis to presume that the



amounts shown as expenses or allowances did not form part of the income of the deceased, which contributed towards maintenance of his family. In the absence of any evidence to substantiate such a contention, the computation of loss of dependency by the Tribunal on the basis of a monthly income of Rs. 12,597/- calls for no interference and, is accordingly, sustained.

B. FUTURE PROSPECTS:

21. As regards future prospects, the judgment in *Pranay Sethi* categorically provides that, for a person on a fixed salary below the age of 40 years, the appropriate addition towards future prospects is 40%⁵. The Tribunal's award for future prospects at 50%, is therefore, modified to 40%.

C. DEDUCTION FOR PERSONAL EXPENSES

22. In the case of an unmarried victim of a road accident, the principles governing deduction towards personal and living expenses for the purpose of computing loss of dependency have been laid down by the Supreme Court in paragraphs 31 and 32 of *Sarla Verma v. DTC*⁶, as under:

“31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the

⁴ Emphasis supplied.

⁵ Paragraph 59.4.

⁶ (2009) 6 SCC 121 [hereinafter, “*Sarla Verma*”].



contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

23. This position has been further clarified by the Supreme Court in *Reshma Kumari v. Madan Mohan*⁷, wherein it was held as follows:

“41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man’s net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

42. In our view, the standards fixed by this Court in Sarla Verma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out.

43. In what we have discussed above, we sum up our conclusions as follows:

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43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above.”

24. The principles enunciated in *Sarla Verma* and *Reshma Kumari* have been reaffirmed by the Constitution Bench of the Supreme

⁷ (2013) 9 SCC 65 [hereinafter, “*Reshma Kumari*”].



Court in *Pranay Sethi*.

25. It emerges from these authorities that, as a general rule, a deduction of 50% is applied in the case of an unmarried victim, treating the mother as the sole dependent. This principle, however, is not of rigid application, and is subject to modification based on the evidence adduced in each case. Where it is established on record that additional family members were dependent upon the income of the deceased, appropriate adjustments in the quantum of deduction are permissible.

26. In the present case, the evidence regarding dependency, as led by the father of the deceased, was as follows:

*“3. That the deceased was my eldest son of about 25 years of age. After passing matriculation Exam, he got admitted in College. School Certificate pertaining to age is Ex AW1/2. **He could not continue his study due to financial constrains and started earning to contribute in maintaining family.** In the year 2006 the deceased shifted to Delhi to earn. He was earning well. **He helped in education of his younger brothers namely Shyam Sunder Mishra and Purusottam Kumar. For last two years, the deceased used to give the amount of Rs. 5000.00 per month for house expenses because my income was not sufficient from pittance I get in performing Pooja in Village house-hold. The deceased also used to give about Rs. 3000/- per month to Purusottam Kumar,** youngest among my sons, who was studying in A N College Patna Bihar. JEE ,2011 Admit Card of Purusottam Kumar is Ex. AW1/3. He also used to maintain Shyam Sunder Mishra (my second son aged about 20 years) who was studying the Delhi University in Commerce. Admission slip of Delhi University of Shyam Sunder Mishra (Respondent No.4 herein) is Ex.AW1/4 (colly). It is submitted that Shyam Sunder Mishra is not traceable for last one year.”⁸*

27. From the cross-examination, it is apparent that certain suggestions were put to the father of the deceased regarding dependency, all of which were denied.

28. On a consideration of the evidence, I find no reason to disbelieve

⁸ Emphasis supplied.



the claim that both the father and the brother of the deceased were, at least partially, dependent upon him. The mother of the deceased had predeceased him, the father was engaged as a village priest, and the younger brother was pursuing studies at a college. Although there was a second younger sibling, his case need not be taken into account, as he had been untraceable for approximately one year prior to the accident and, therefore, cannot be regarded as a dependent.

29. In view of the evidence, I am satisfied that the deceased had more than one dependent, and that the appropriate deduction towards personal expenses should be one-third of his income.

D. MULTIPLIER:

30. The Tribunal applied a multiplier of 11, having regard to the age of the father of the deceased. However, paragraphs 55 and 59.7 of *Pranay Sethi* make it clear that the multiplier is to be determined based on the age of the deceased. In the present case, the deceased was 25 years old at the time of the accident. Accordingly, the correct multiplier to be applied would be 18.

E. COMPUTATION OF LOSS OF DEPENDENCY

31. Consequently, the compensation awarded for loss of dependency is re-computed as follows:

Heads	Amount
Annual income (Rs.12,597/- x 12)	Rs. 1,51,164/-
Addition of future prospects (Rs. 1,51,164/- + 40%)	Rs. 1,51,164/- + Rs.60,465.6/- = Rs. 2,11,629.6/-



Deduction of personal expenses [1/3 rd]	Rs. 2,11,629.6/- (-) Rs. 70,543.2/- = Rs. 1,41,086.4/-
Multiplier [18]	Rs. 1,41,086.4/- x 18
Total	Rs. 25,39,555.2/- (Rounded off to Rs. 25,39,555/-)

The compensation for loss of dependency, thus, stands enhanced from Rs.12,47,100/- to Rs. 25,39,555/-, i.e. by Rs. 12,92,455/-.

F. NON-PECUNIARY DAMAGES:

32. In the cases of fatal accidents, the judgment of the Supreme Court in *Pranay Sethi* recognises three elements of non-pecuniary compensation – loss of consortium, funeral expenses, and loss of estate.

33. The Supreme Court has clarified that compensation for loss of consortium is payable under three distinct heads, namely, spousal consortium, parental consortium, and filial consortium, corresponding respectively to the spouse, children, and parents of the deceased. This position was laid down in the judgments of the Supreme Court in *Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Ors.*⁹, *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur & Ors.*¹⁰.

34. In the present case, the father of the deceased is the sole claimant entitled to compensation under the head of filial consortium. He is, therefore, entitled to an award of Rs. 40,000/- under the said head. The Tribunal erred in not awarding any compensation towards loss of

⁹ (2018) 18 SCC 130.

¹⁰ (2021) 11 SCC 780 [hereinafter, “*Satinder Kaur*”].



consortium, and instead granted a sum of Rs. 25,000/- towards loss of love and affection. In view of the law laid down in *Satinder Kaur*, compensation towards loss of love and affection stands subsumed within the head of loss of consortium. Accordingly, the award of Rs. 25,000/- under the head of loss of love and affection is set aside.

35. In addition, the other non-pecuniary damages to be awarded include Rs.15,000/- each, under the heads of loss of estate and funeral expenses. The award is modified accordingly to reflect this adjustment.

G. CONCLUSION:

36. The compensation awarded to the claimants is, accordingly, enhanced as per the following table:

Heads	Awarded by the Tribunal	Awarded by the Court	Difference
Loss of dependency	Rs.12,47,100/-	Rs. 25,39,555/-	(+)Rs.12,92,455/-
Loss of consortium	NIL	Rs.40,000/-	(+) Rs. 40,000/-
Loss of love and affection	Rs. 25,000/-	NIL	(-) Rs. 25,000/-
Funeral Expenses	Rs.10,000/-	Rs.15,000/-	(+) Rs. 5,000/-
Loss of estate	Rs.10,000/-	Rs.15,000/-	(+) Rs. 5,000/-
Total	Rs. 12,92,100/-	Rs. 26,09,555/-	(+)Rs.13,17,455/-

37. By order dated 13.08.2013 in MAC.APP. No. 708/2013, execution of the award was stayed, subject to the deposit of the awarded amount



along with up-to-date interest with the Registrar General of this Court, with 60% of the awarded amount directed to be released in favour of the claimants. The Insurance Company is hereby directed to deposit the balance amount in terms of this judgment, together with interest at the rate of 9% per annum, as awarded by the Tribunal, calculated from the date of filing of the claim petition, with the Registrar General of this Court within a period of eight weeks from today.

38. The Tribunal awarded Rs. 10,92,100/- to the father of the deceased and Rs. 2,00,000/- to his brother. A portion of the award in favour of the father had been kept in fixed deposit for a period of five years, which period has now elapsed. There is no impediment to the release of the entire amount to the claimants. The balance amount lying with this Court, alongwith proportionate accrued interest, be released to the claimants, in accordance with the apportionment awarded by the Tribunal, after adjusting the amounts already released. The sum deposited pursuant to this judgment, shall be released in the proportion of 80% to the father and 20% to the brother, together with accrued interest, if any.

39. The appeals are disposed of in the above terms.

40. The statutory deposit made by the Insurance Company shall be released upon compliance of the Insurance Company with the directions in paragraph 37 hereinabove.

PRATEEK JALAN, J

DECEMBER 19, 2025/ 'Bhupi' /SD/