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

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Reserved on: 14.10.2022
Pronounced on: 17.11.2022

+ **MAC.APP. 289/2013**

NATIONAL INSURANCE COMPANY LTD..... Appellants

Through: Mr. Manoj Ranjan Sinha,
Advocate.

versus

MEENA DEVI AND ORS Respondents

Through: Mr. S.N. Parashar, Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant has preferred the present Appeal challenging the award dated 21.12.2012 (“**impugned award**”) passed by the learned Presiding Officer, Motor Accidents Claims Tribunal-II, Dwarka Courts, New Delhi whereby the learned Claims Tribunal was pleased to award a compensation of Rs. 21,44,916/- in favour of the Claimants (Respondent Nos.1-5) with an interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation.
2. On 25.05.2011, Mr. Krishnan Nandan Kumar, the deceased, was travelling in a motorcycle as a pillion rider with his friend Mr. Yatender Kumar when a Maruti car bearing number DL-9CQS-0498 driven by Mr. Arvind Kumar Jain (Respondent No.6) collided with the motorcycle, as a result of which the motorcycle

toppled and Mr. Krishnan Nandan Kumar came under the fore wheel of the offending vehicle. The owner of the offending car was Elecon Cargo Pvt. Ltd. (Respondent No. 7) and the car was insured by National Insurance Company Ltd.

3. Mr. Krishnan Nandan Kumar was taken to AIIMS Trauma Centre where he succumbed to his injuries. He was 25 years old at the time of his death and was employed with T. M. Inputs & services Private Ltd. as a shop demonstrator/promotor where he was receiving a CTC of Rs. 11,778/-. He was survived by his mother, father, two unmarried sisters and a minor brother.
4. The Tribunal has awarded compensation under the following heads:-

S.No	Head	Compensation
1.	Loss of Dependency	Rs. 20,99,916
2.	Loss of Love and Affection	Rs. 25,000
3.	Loss of Estate	Rs. 10,000
4.	Cremation Charges	Rs. 10,000
	TOTAL	Rs. 21,44,916

SUBMISSION ON BEHALF OF THE APPELLANT

5. Mr. Manoj Ranjan Sinha, learned counsel appearing on behalf of the Appellant seeking setting aside of the impugned Award on 3 major grounds. Firstly, the learned counsel submits that the calculation of ‘*Loss of Dependency*’ was inapposite on several levels due to the complete lack of congruence with the prevailing law as substantiated in *Sarla Verma & Ors vs Delhi Transport*

Corp.& Anr. reported as 2009 (6) SCC 121. Learned counsel for the Appellant further submits that the father and the siblings of the deceased were not his dependents by virtue of which they will not be entitled to any compensation. It was further contended that only the mother of the deceased was his dependent as the other members of the family would be dependent on their father.

6. Secondly, the learned counsel for the Appellant argued that the learned Claims Tribunal had erred in its appraisal of the income of the deceased. It was averred that the learned Claims Tribunal had assessed the income from the Income Tax Return for the assessment year 2010-2011, which constitutes his previous income instead of the income earned at the time of death. Learned counsel for the Appellant challenged the income assessment by the learned Claims Tribunal to state that the previous income of the deceased is extraneous to the income of the deceased at the time of his demise.
7. Thirdly, the learned counsel for the Appellant contended that in view of the dicta of the Hon'ble Supreme Court in *Sarla Verma (Supra)*, the learned Claims Tribunal ought to have deducted 50% of the income towards personal expenses as the deceased was a bachelor. In order to buttress this contention, learned Counsel relied upon the following Para of *Sarla Verma (Supra)*:-

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions.

Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living

expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

15. 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 dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

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 family of the bachelor is large and dependant 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.

8. With these submissions, learned counsel for the Appellant prays for the modification of the impugned Award.

SUBMISSION ON BEHALF OF THE RESPONDENTS

9. Mr. S.N. Parashar, learned counsel for Respondent Nos.1-5 submitted that in view of the law laid down by the Hon'ble Supreme Court in *National Insurance Company Limited vs Pranay Sethi* reported as (2017) 16 SCC 680, the Respondents are entitled for the future prospects. In order to substantiate his

argument, relied upon the following para of *Pranay Sethi (Supra)*:-

“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.”

10. With this submission, learned counsel for Respondent Nos.1-5 prays for the modification of the impugned Award as per the prevailing law of the land.

LEGAL ANALYSIS

11. Learned counsel for the Appellant submitted that the learned Claims Tribunal erred in considering the father, 2 unmarried sisters and one minor brother as dependents of the deceased. According to the Appellant, only the mother can be treated as dependent of the deceased.
12. PW-1/Mr. Rajender Singh (Respondent No.2), the father of the deceased, in his chief examination categorically stated that *‘I say that my son used to pay his entire earning to me for household expenses. We were fully dependent on the income of the deceased and have no any other source of income. After the untimely death of*

my son the entire family has been rendered shelterless and the unmarried sister and Brother have been deprived of the guidance for their future prospects'. In his cross-examination, PW-1 reiterated that *'Presently I am jobless. Earlier I was an agriculturist'*. This fact was not rebutted or disproved by the Appellant. The younger brother of the deceased, Aditya Raj, was a class 10 student at the time of the demise of Mr. Krishna Nandan Kumar. The school ID card of Aditya Raj and a letter from the school management attesting to the fact that he was a bonafide student of the school was exhibited before the learned Claims Tribunal. The college library ID card of his unmarried sister Anupam Kumari and the college ID card of the other sister/Anjali Kumari were also exhibited.

13. It is thus cardinal to determine the contours of 'dependency' in relation to all the legal representatives of the deceased. The Hon'ble Supreme Court in the case of ***Magma General Insurance Co. Ltd. Vs Nanu Ram Alias Chuhru Ram & Ors.***, Civil Appeal No. 9581 of 2018 decided on 18.09.2018, held as follows:-

"8.2. With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been 1/2, and not 1/3rd, since the deceased was a bachelor.

This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that 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, as contribution to the family will be taken as two-third.

Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No. 2 - an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count.”

(emphasis supplied)

14. In the present case, the father of the deceased was approximately aged 52 years at the time of the accident and claimed to be unemployed. The deceased left behind his mother, unemployed father, 2 unmarried sisters and one minor brother, who was studying at the time of the unfortunate demise of the deceased. Since there is no proof adduced to the contrary, this Court is inclined to accept the contention of the Claimants that the father and siblings were also dependents of the deceased. Thus, entitling Respondent Nos. 1-5 to claim compensation as the dependents of the deceased.
15. The second argument raised by the Appellant was that the learned Claims Tribunal had erroneously taken the income of the deceased based on the ITR filed by him during the Assessment year 2010-2011. According to the Appellant, the said figure does not depict the correct salary of the deceased.
16. From the perusal of the record, it is evident that the deceased was under the employment of TM Inputs Services Private Limited at the time of his demise. The letter of appointment (Ex. PW3/2) issued by TM Inputs Services Private Limited specifies the joining date of the deceased as 13.05.2011, i.e, just 12 days prior to his

unfortunate death. As per the said appointment letter, the salary of the deceased was Rs.11, 778/- with Rs.2,000/- variables. The father of the deceased, PW-1 in his evidence categorically stated that '*On the one hand he was employed with M/s. TM Inputs & Service Pvt Ltd, Gurgaon, where he was getting salary Rs. 11,778/- p.m., which was given against salary slip and besides this he was running coaching classes at home from which source, he had a set income of Rs. 12000/- to Rs. 15000/- per month. Thus he was earning Rs. 24,696/- per month at an average.*' There is no evidence adduced by the Appellant to controvert the fact that the deceased was conducting the coaching classes and earning from that source also.

17. In any case, the learned Claims Tribunal has taken the income of the deceased from the ITR filed by him during the assessment year 2010-2011. The deceased in his ITR for the assessment year 2010-2011 categorically disclosed that his total income of Rs. 1,55,550/- was from '*Private job + Tuition & Coaching*'. He joined his new job on 13.05.2011, just 12 days prior to his unfortunate death. His father categorically stated that the deceased was working with M/s. TM Inputs & Service Pvt Ltd, Gurgaon, where he was getting a salary of Rs. 11,778/- p.m., and in addition, he was running coaching classes at home from which he used to earn Rs. 12000/- to Rs. 15000/- per month. Hence it is very much evident that after his new job, his actual income would have been much more than the income of the previous year. However, since the deceased met with his unfortunate death on 25.05.2011, the learned Tribunal has

rightly taken his income from his previous assessment year 2010-2011.

18. The annual income of the deceased as per the ITR for the assessment year 2010-2011 was Rs.1,55,550/-. Since his income was less than the taxable limit, there is no income tax to be paid. Hence the actual income of the deceased was rightly taken by the learned Claims Tribunal as Rs.1,55,550/- p.a. and monthly income as **Rs. 12,962.5/- p.m.**
19. The next submission of the learned counsel for the Appellant is that the learned Claims Tribunal erred in making 1/4th deduction towards the personal expenses. Relying upon *Sarla Verma (Supra)*, learned counsel for the Appellant submitted that 50% of the income of the deceased to be deducted towards personal expenses.
20. This court is conscious of the dicta of Hon'ble Supreme Court in *Sarla Verma (Supra)*, wherein the Hon'ble Apex Court held that *if the deceased who is a bachelor 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.* The Hon'ble Supreme Court in *Sarla Verma (Supra)* further held that *where family of the bachelor is large and dependant 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.*

21. In the present case, the mother of the deceased is not widowed. Yet it cannot be ignored that his father was unemployed and dependent on the earnings of his son. Further, he had 3 younger siblings to support. A similar stance can be observed in the judgement of *N. Jayasree and ors Vs Cholamandalam MS General Insurance Company Ltd, Civil Appeal No. 6451 OF 2021* decided on 25.10.2021, wherein it was held as follows:-

“17. It is settled that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. It also does not depend upon the basis of relationship of the claimant with the deceased. In some cases, the father may have his own income and thus will not be considered as dependent. Sometimes, brothers and sisters will not be considered as dependents because they may either be independent or earning or married or be dependent on the father. The percentage of deduction for personal expenditure, thus, depends upon the facts and circumstances of each case.”

22. In the present case, the Respondents have established their dependency on the deceased before the learned Claims Tribunal. Thus, by applying the inferences in *Sarla Verma (Supra)* and *N. Jayasree (Supra)*, it is pragmatic to deduct 1/3rd of the income of the deceased towards personal expenses.

23. This Court noticed that the learned Tribunal in the instant case while calculating the ‘*Loss of Dependency*’, failed to consider the future prospects of the deceased. The decision in *Sarla Verma (Supra)* was examined by the Hon’ble Supreme Court in *Pranay Sethi (Supra)*, where the following was affirmed:-

“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.”

24. The deceased was 25 years at the time of his death and was on a fixed salary. Thus, future prospects of 40% have to be added to arrive at the future income of the deceased. Hence the future income of the deceased for the purpose of the calculation of Loss of Dependency would be Rs. 12,962.5/- p.m + 40% of Rs.12,962.5/- = Rs. 18147.5/- p.m
25. The other arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** and in the case of ***Sarla Verma (Supra)***
26. In the case of ***Pranay Sethi (Supra)***, the Hon'ble Supreme Court has held that for the conventional heads, namely, 'Loss of Estate', 'Loss of Consortium' and 'Funeral Expenses' the amount of compensation is fixed at Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/-, respectively with an increase of 10% after a period of 3 years.
27. The Hon'ble Supreme Court, in the case of ***United India Insurance Company Ltd Vs Satwinder Kaur*** reported as (2021) 11 SCC 780, by taking cognisance of the holdings in ***Pranay Sethi***

(*supra*) and *Magma General Insurance Co. Ltd. (Supra)* held that the sum towards *Loss of Consortium* must be enured to the benefit of the dependents of the deceased. Since compensation towards *Loss of Love and Affection* is subsumed in *Loss of Consortium*, no separate sum shall be awarded under such a head. In view of the law laid down by the Hon'ble Apex Court in *Magma General Insurance Co. Ltd. (Supra)*, this Court is of the considered view that even the siblings of the deceased are entitled for the compensation under the head 'Loss of consortium'.

28. In view of the above discussion, the impugned Award dated 21.12.2012 is modified to the following extent:

i. 'Loss of dependency' is calculated as

1. Rs. 12,962.5/- + 40% (Rs. 5185/-) = Rs. 18,147.5/-

2. Rs. 18,147.5/ - less 1/3 deduction (Rs. 6,049.16/-) =
Rs. 12,098.34/-

3. Rs. 12,098.34/- X 12 X 18 = **Rs. 26,13,241.44/-**

ii. 'Loss of Consortium' Rs. 44,000 X 5 = **Rs. 2,20,000/-**

iii. 'Loss of Estate' = **Rs. 16,500/-** .

iv. 'Funeral Expenses' = **Rs. 16,500/-**

v. Compensation under the head 'Care and Guidance' i.e. 'Love and Affection.' = Nil.

vi. Total compensation to be paid to claimants is;

Rs. 26,13,241.44/- + Rs. 2,20,000 + Rs. 16,500/- + Rs. 16,500/- =

Rs. 28,66,241.44/- rounded as Rs.28,66,241/- .

29. Accordingly, the compensation awarded by the learned Claims Tribunal is enhanced from Rs. 21,44,916/- to Rs.28,66,241/-.

30. This Court, vide order dated 01.04.2013 while staying the operation of the impugned Award in the present Appeal, directed the Appellant/Insurance Company to deposit the entire decretal amount with the Registrar General of this Court. This Court further directed for the release of the 60% of the decretal amount to the Claimants. Balance 40% was to be kept in an interest-bearing FDR with UCO Bank, Delhi High Court Branch.
31. The Appellant/Insurance Company is directed to deposit the entire enhanced amount with interest @ 7.5% p.a. from the date of filing of the present Appeal till the date of deposit with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire enhanced amount with interest thereon, the said enhanced amount along with the balance 40% of the earlier deposited amount with up to date interest shall be released to the Respondents within a period of two weeks thereafter. The statutory deposit shall also be released to the Appellant.
32. The appeal stands disposed of. No order as to costs.

NOVEMBER 17, 2022

GAURANG KANTH, J.