

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.236 of 2015

1. Sangita Devi, W/o Late Prabhat Kumar,
2. Ansu, D/o Late Prabhat Kumar
3. Anubha, D/o Late Prabhat Kumar
Appellant No. 2 is minor under the guardianship of her mother, Appellant no- 1. All resident of Village- Pahetiya, P.S.- Sadar Hajipur, District- Vaishali

... .. Appellant/s

Versus

1. Rajesh Kumar, S/o Girja Prasad, District- Muzaffarnagar, Uttar Pradesh
2. Raj Narayan Singh, S/o Suman Bahadur Singh, Resident of Village- Dingur Patti, District- Mirzapur
3. United India Insurance Company Ltd. through Branch Manager, District- Hajipur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Alok Kumar @ Alok Kr. Shahi, Advocate
For the Respondent no.3 : Mr.Durgesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 09-01-2023

Heard Mr. Alok Kumar Shahi, learned counsel for the appellants and Mr. Durgesh Kumar Singh, learned counsel for the respondent no.3.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') has been filed for enhancement of the compensation allowed to the claimants-appellants by the learned Motor Accident Claim Tribunal, Hajipur, Vaishali (hereinafter referred to as 'the learned Tribunal') in Claim Case No.82 of 2003. By the order dated 02.08.2014 and award dated 02.03.2015, the learned Tribunal has



been pleased to allow a sum of Rs.4,99,500/- towards the claim with simple interest at the rate of 6% per annum. The Insurance Company (respondent no.3) has been directed to pay the claimants the award amount.

Brief facts of the case

3. The facts of the case as revealed from the records are that on 15.06.2002 at about 8.00 PM the husband of the claimant no.1 was going to Mirzapur after finishing his office work on a jeep bearing Reg.No.UP3A 6198. The said jeep met an accident with a Tata Sumo and in the said accident husband of the claimant no.1 died. In connection with the said accident Case No.26 dated 16.06.2002 was registered in Chilh police station, Janpad Mirzapur and police submitted a charge-sheet against the driver Pappu Sonkar under Sections 279, 304A, 338 and 427 of the Indian Penal Code. According to the claimant no.1 her husband was working in the Electro Jecknow at Mirzapur and his monthly salary was Rs.4100/-. At the time of accident and death he was 30 years old. The employer of the deceased certified the fact that the deceased was working in the said establishment and his monthly salary was Rs.4100/-.

4. The Insurance Company opposed the claim before the learned Tribunal on only ornamental grounds. Since the Insurance Company has not come in appeal and has not challenged the



findings of the learned Tribunal, this Court need not go into any detail discussion on those ornamental grounds of the Insurance Company.

5. The learned Tribunal framed as many as six issues which are as under:-

- “1. क्या यह दावा वाद पोषणीय है?
2. क्या आवेदक को मुआवजा दावा वाद दाखिल करने का अधिकार और कारण था?
3. क्या आवेदक द्वारा प्रश्नगत वाहन पर दुर्घटना के लिए जिम्मेवाद होने का कारण सत्य और सही है?
4. क्या आवेदकगण दावा आवेदन के अनुसार मुआवजा पाने के हकदार है?
5. क्या विपक्षीय दुर्घटना और मुआवजे के भुगतान के लिए जिम्मेवार है?
6. क्या आवेदक दावा आवेदन के अनुसार अनुतोषों को पाने का अधिकार है?”

Findings of the Tribunal

6. The learned Tribunal held that on the basis of the evidences on the record, it is proved that the husband of the claimant/applicant no.1 died in the accident due to fault of the driver. The learned Tribunal accepted the income of the deceased at Rs.4100/- per month but while calculating the total loss of dependency, no future prospect was added to arrive at the correct multiplicand. The learned Tribunal allowed only Rs.2500/- on account of funeral expenses and Rs.5000/- as spousal consortium. The learned Tribunal further deducted 1/3rd of the income towards personal living expenses of the deceased. In this manner, the total claim amount was calculated at



Rs.4,99,500/- and the respondent no.3 has been directed to pay interest thereon at the rate of 6% per annum from the date of filing of the application till the date of payment.

Submissions on behalf of the appellants

7. Learned counsel for the appellants has assailed the impugned order/award as regards quantum on various grounds. Learned counsel submits that the deceased left behind his widow and two minor daughters. He was in employment of a private company and his salary was duly proved in course of evidence before the Tribunal. The Tribunal accepted the salary amount of Rs. 41,00/- per month but did not add future prospect at the rate of 40 % of the same while calculating the total dependency loss. He has relied upon the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.** reported in (2017) 16 SCC 680.

8. It is further submitted that the Tribunal could not appreciate that the deceased had three dependents upon him and in such circumstance, he could not have spent 1/3rd of his income on his own, the correct approach would have been to deduct 1/4th of his income as personal expenses.

9. Learned counsel has further assailed the impugned order on the ground that the learned Tribunal has failed to



follow the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121**. As regards payments of claims on conventional heads, referring to the judgment of the Hon'ble Constitution Bench of the Supreme Court of India in the case of **Pranay Sethi** (supra), learned counsel submits that the appellants are entitled to get claim on account of funeral expenses at Rs. 15,000/-, estate loss at Rs. 15,000/-, spousal consortium at Rs. 40,000/- to appellant no. 1 and parental consortium at the rate of Rs. 40,000/- to each of the two minor children.

10. Learned counsel further submits that since the age of the deceased was found to be 30 years, in his case, the multiplier of '17' would be applicable. In this connection, learned counsel has drawn the attention of this Court towards the table of multiplier drawn by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) which applies in case of a claim filed under Section 166 of the Act of 1988. The Hon'ble Constitution Bench in the case of **Pranay Sethi** (supra) has approved the table read with paragraph '42' of **Sarla Verma** (supra). Learned counsel further submits that the claimants should be entitled for interest on enhanced amount payable to



the claimants.

11. Learned counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors.** reported in (2022) 1 SCC 198 to submit that in the said case, the Hon'ble Supreme Court has relied upon the judgments in the case of **Sarla Verma (supra) and Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram and Others** reported in (2018) 18 SCC 130 to hold that the appellants were entitled for parental consortium of Rs. 40,000/- each. It is submitted that in terms of the judgment in the case of **Pranay Sethi (supra)** a 10% increase is to be provided on the conventional heads, therefore, in this case, the claims on the conventional heads be allowed with an increase of 10%.

Submissions on behalf of the Insurance Company

12. Mr. Durgesh Kumar Singh, learned counsel for the Insurance Company has opposed this appeal on certain grounds. It is his submission that even as in view of **Pranay Sethi (supra)** future prospects may be allowed at the rate of 40% of the income, but no interest may be allowed on future prospect. In this connection, he has relied upon a judgment of the Hon'ble



Guwahati High Court in the case of Oriental Insurance Company Ltd. vs. Smiti Rumi Barman & Ors. (Case No.MACApp./77/2017) decided on 11.02.2021 to submit that in the said case, the amount paid under the head of future prospect shall not carry further interest of 6%.

Consideration

13. Having heard learned counsel for the appellants and respondent no. 3 and upon perusal of the records as also the judgments of the Hon'ble Supreme Court, this Court finds that there is no dispute on applying multiplier of '17' in the instant case. Further there is no dispute on providing future prospects and claims on conventional heads. The insurance company has, however, opposed the submission of the appellants that the living expenses be calculated at 1/4th of the income and that the claimants are entitled for spousal consortium and parental consortium at the enhanced amount. Further the insurance company has claimed that no interest be allowed on future prospects.

14. On adding the future prospect, in view of the judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra), this Court has no iota of doubt that in this case 40% of the salary amount of the deceased would be entitled to be added



while calculating total loss of dependency. Paragraph '57' of the Hon'ble Apex Court judgment in **Pranay Sethi** (supra) inter-alia reads as under:-

“57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act....”

15. Further in paragraph 59.4, their Lordships laid down the law on this aspect as under:-

“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.”

16. On the point of deduction of living expenses, in **Sarla Verma** (supra) the Hon'ble Supreme Court has observed in Paragraph 30, 31 and 32 as under:-

“**30.** 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* [(1996) 4 SCC 362], the general practice is to apply standardised 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 dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

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 dependent 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 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.”

17. The judgment in the case of **Sarla Verma** (supra) was approved in the case of **Reshma Kumari Vs. Madan Mohan** reported in (2013) 9 SCC 65. In the case of **Pranay Sethi** (supra), the Hon’ble Constitution Bench of the Supreme Court has taken note of the views expressed by the Apex Court in **Reshma Kumari** (supra) in Paragraph ‘43.6’. In this connection, Paragraph ‘39’ and ‘40’ of the judgment of the Hon’ble Supreme Court in **Pranay Sethi** (supra) are quoted hereunder for a ready reference:-

“39. In *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65, the three-Judge Bench, reproduced paras 30, 31 and 32 of *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 and approved the same by stating thus :

“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 dependents.

42. In our view, the standards fixed by this Court in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] 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.”

40. The conclusions that have been summed up in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65] are as follows : (SCC p. 91, para 43)

“43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to



seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] .

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* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] subject to the observations made by us in para 41 above.”

18. In the light of the aforementioned judgment of the Hon’ble Supreme Court when the facts of the present case are looked into it may be found that the deceased left behind his widow and two minor daughters. Considering the number of dependents it cannot be said that he would have been in a possession to spend 1/3rd of his income upon himself. This Court is, therefore, of the considered opinion that the deductions of 1/4th of the income on account of personal expenses would be appropriate.

19. As regards the claims under the conventional heads, in **Pranay Sethi** (supra), the Hon’ble Supreme Court has



in paragraph '48' held as under:-

“48. This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule to the Act. The said Schedule has been found to be defective as stated by the Court in *Trilok Chandra* [*UP SRTC v. Trilok Chandra*, (1996) 4 SCC 362]. Recently, in *Puttamma v. K.L. Narayana Reddy* (2013) 15 SCC 45 it has been reiterated by stating : (SCC p. 80, para 54)

“54. ... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.”

20. The same view has been reiterated in **Magma General Insurance Company Ltd.** (supra) and in the case of **United India Insurance Company Limited Vs. Satinder Kaur @ Satwinder Kaur and Others** reported in (2021) 11 SCC 780.

21. In **Pranay Sethi** (supra) the Hon'ble Supreme Court has recognized three categories of confessional heads; (i) Funeral expenses at Rs. 15,000/-, (ii) Estate loss at Rs. 15,000/- and (iii) loss of consortium at Rs.40,000/-. While discussing the meaning of word 'consortium' the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) though did not approve **Rajesh v. Rajbir Singh** (2013) 9 SCC 54 but revisited the principles on fixation of conventional heads, after



quoting para-17 of **Rajesh** as under:-

“17. ... In legal parlance, “consortium” is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

22. After fully analyzing the earlier judgments of the Apex Court, ultimately their Lordship in **Pranay Sethi** (supra)

held in paragraph 59.8 as under:-

“**59.8.** Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs



15,000, Rs 40,000 and Rs 15,000 respectively.
The aforesaid amounts should be enhanced at
the rate of 10% in every three years.”

23. By the judicial pronouncements, now it is well settled that the widow of the deceased would be entitled for a spousal consortium and the minor children would get parental consortium. In case of the parents if dependent on the deceased, they would be entitled for filial consortium. The amount under the consortium head shall increase at the rate of 10% at the end of every three years. In the present case, the widow (appellant no. 1) would be entitled for Rs. 44,000/- as spousal consortium whereas appellant nos. 2 and 3 would be entitled for Rs. 44,000/- each on account of parental consortium. They would also be entitled for the claim on account of funeral expenses at Rs. 15,000/- and Estate loss at Rs. 15,000/-.

24. As regards payment of interest on the future prospect amount, this Court is of the opinion that since the future prospect is added as per the judgment of the Hon'ble Supreme Court while calculating the total loss of dependency, in absence of there being any mandate of the Hon'ble Apex Court on this point, there is no reason as to why the same being part of the claim to be allowed to the claimants/applicants will not earn interest. This Court regrets its inability to agree with the views expressed by the Hon'ble Gauhati High Court on this issue.



25. In result, this appeal is allowed. The claimants are found entitled for the following amounts:-

(i)	Monthly Income	Rs.4100.00
(ii)	Add Future Prospect @40%	Rs.1640.00
	Total	Rs.5740.00
(iii)	Less Personal Expenses 1/4th of Rs.5740.00	Rs.1435.00
(iv)	Loss of Dependency: Rs.4305.00 x 12 x17	Rs.8,78,220.00
(v)	Funeral Expenses	Rs.15,000.00
(vi)	Loss of Estate	Rs.15,000.00
(vii)	Loss of Spousal Consortium	Rs.44,000.00
(viii)	Loss of Parental Consortium to both of the minor children at the rate of 44,000.00 each	Rs.88,000.00
	Total compensation to be paid	Rs.10,40,220.00
	Less amount already paid	Rs.4,99,500.00
	Balance payable with interest @ 6% per annum from the date of filing of the claim till payment	Rs.5,41,720.00

26. Thus, a sum of Rs. 5,41,720.00 together with interest at the rate of 6% per annum from the date of filing of the claim till the date of payment be made available to the claimants within a period of two weeks from the date of receipt/communication of a copy of this order.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2023
Transmission Date	

