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

Reserved on: 12.10.2023
Pronounced on: 07.11.2023

\+ **MAC.APP. 166/2021**

SMT. SURAKSHA PAL & ORS. ..... Appellants

Through: Mr.Manish Maini, Ms.Yashika Miglani and Mr.Vibhor Jain, Advocates

versus

NATIONAL INSURANCE COMPANY LTD AND ORS ..... Respondents

Through: Mr.C.S. Parasher and Ms.Vidubeni, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This appeal has been filed challenging the Award dated 11.01.2021 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-02, West-District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in Petition No. 77490/2016 titled ***Smt. Suraksha Pal & Ors. v. Vipin Kumar & Ors.***.

2. It was the case of the claimants before the learned Tribunal that on 25.01.2015 at about 2:30 PM, the deceased-Shri Tirath Ram Pal, aged around 76 years, was going to C-4E Market, Janak Puri on his scooter. When he reached in front of the BSES office, C-3 Janak Puri, suddenly the offending

vehicle, that is, a car bearing registration no. UP-13V-8776, being driven by the respondent no.2 herein in a rash and negligent manner and at a high speed, hit the left side of the scooter of the deceased. Resultantly, the deceased fell on the road and sustained grievous injuries. He was removed to the Orchid Hospital by the driver of the offending vehicle, however, he succumbed to his injuries on 25.04.2015.

3. The challenge of the appellants to the Impugned Award is on the following:

a. deduction of half of the pension received by the deceased at the time of the accident towards his personal expenses for determining the loss of dependency;

b. the refusal of the learned Tribunal to apply a multiplier for determining the loss of dependency; and,

c. the loss of consortium being confined only to a consolidated sum of Rs.44,000/-.

Deduction towards Personal and Living Expenses:

4. As far as the deduction towards personal expenses is concerned, the learned counsel for the appellants submits that the deceased was a pensioner, having retired from the office of the Chief C.D.A. (Pensions) Allahabad, Uttar Pradesh, and was drawing a pension of Rs.12,632/- per month. He submits that at this age, an elderly person would not be spending half of his

pension on himself. He submits that, in any case, the learned Tribunal has deducted half of the pension towards likely Family Pension that would be received by the appellant no.1, wife of the deceased, even after the death of the deceased. By placing reliance on the judgment of this Court in ***Oriental Insurance Co. Ltd. v. Pushpa Devi & Ors.***, Neutral Citation No.2016:DHC:2641, he submits that, therefore, the deduction has been made twice over.

5. On the other hand, the learned counsel for respondent no.1 submits that the deduction towards personal expenses has rightly been made by the learned Tribunal. He submits that, in fact, at the age of the deceased, the expenses would be much more than half of the pension. He submits that as the Family Pension would be received by the appellant no.1, the same cannot be considered towards the loss of the dependency.

6. I have considered the submissions made by the learned counsels for the parties.

7. It is not in dispute that the deceased was drawing a pension of Rs.12,632/- per month. The appellants do not deny that upon the death of the deceased, the appellant no.1 would be entitled to receive 50% of the pension as a Family Pension. The same, therefore, cannot be added to the loss of dependency. Therefore, the learned Tribunal has rightly held that the loss of financial dependency shall be only Rs.6,316/- per month, that is, 50% of Rs.12,632/-.

8. Keeping in view the age of the deceased and also the fact that only the appellant no.1 can be stated to be financially dependent on the deceased, the learned Tribunal has rightly deducted half of the income/pension received by the deceased towards his personal expenses.

9. In ***Pushpa Devi*** (Supra), the Court found that there were five dependents and, therefore, directed a deduction of 1/4th of the income towards personal and living expenses. The same, therefore, can have no application to the facts of the present case.

10. I, therefore, find no fault in the Impugned Award on the above challenge of the appellant. The same is, accordingly, rejected.

Multiplier:

11. As far as the challenge of the appellants to the multiplier is concerned, the learned counsel for the appellants, by placing reliance on the judgment of the Supreme Court in ***New India Assurance Co. Ltd. v. Vinish Jain & Ors.***, (2018) 3 SCC 619; and of this Court in ***New India Assurance Company Ltd. v. Col. Lalit Chander Idani & Ors.,*** Neutral Citation No.2012:DHC:6593; and of the Karnataka High Court in ***Puttamma & Ors. v. Managing Director, BMTC***, 2023 ACJ 1427, and in ***Rathnamma & Ors. v. Chandraiah & Anr.,*** 2021 ACJ 1119, submits that the learned Tribunal has erred in not

applying the multiplier of 5 while determining the loss of financial dependency.

12. On the other hand, the learned counsel for respondent no.1 has drawn my attention to paragraph 42 of the judgment of the Supreme Court in ***Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.***, (2009) 6 SCC 121, to submit that where the deceased is aged beyond 70 years, a multiplier is not to be used.

13. I have considered the submissions made by the learned counsels for the parties.

14. In ***Sarla Verma*** (Supra), the Supreme Court explained the steps to be adopted by the learned Tribunal for determining the compensation payable in cases of death. As far as the selection of a multiplier is concerned, it held as under:

> *"19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by following well-settled steps:*
>
> *xxxx*
>
> *Step 2 (Ascertaining the multiplier)*
>
> *Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased."*

15. The Supreme Court further held that the multiplier to be used should be as mentioned in Column (4) of the table

reproduced by it in paragraph 40 of the judgment. The Supreme Court then went on to explain the said table, as under:

> *"**42.** We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie"), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 e for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

16. It is important to note that in the table mentioned in paragraph 40 of the judgment in ***Sarla Verma*** (Supra), the last row is for a case where the age of the deceased is "*Above 65 yrs*". However, in paragraph 42 of the judgment, the Supreme Court explains the table only till "*M-5 for 66 to 70 years*". Did the Supreme intend to say that where the deceased is beyond the age of 70 years, a multiplier is not to be adopted?

17. In my view, the answer to the above question would have to be in the negative. The Supreme Court, in paragraph 42 of its judgment, was only explaining the working of the table mentioned by it in paragraph 40 of its judgment. The table advocates the adoption of a multiplier of 5 where the age of the deceased is beyond 65 years. In paragraph 42 of the judgment, the Supreme Court stopped till *'M-5 for 66 to 70 years'* as it was breaking down the rows to every 5-year period. The

Supreme Court does not state that where the deceased is beyond the age of 70 years, a multiplier is not to be adopted or that the table in paragraph 40 of the judgment would stand modified. In fact, in explaining the said table, the Supreme Court states that beyond the age of 50 years, the multiplier gets reduced by two units for every five years. If this reasoning is to be applied, then also, the multiplier should be 3 for the age bracket of 71 to 75 years.

18. In my view, therefore, the Supreme Court did not confine the adoption of the multiplier of 5 only till the age of 70 years, nor did it hold that a multiplier is not to be applied for the age beyond 70 years. Paragraph 42 of the judgment was not to override paragraph 40 of the judgment, but to explain it.

19. As explained in ***Kerala SRTC v. Susamma Thomas,*** (1994) 2 SCC 176, the multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter, and the capital feed also to be spent away over the period of dependency is to last, etc..

20. Keeping the above purpose of the multiplier in mind, where the court is accepting the existence of a multiplicand/income even where the deceased is aged beyond 70 years, in my opinion, there is no warrant for not applying a

multiplier. The multiplier of 5 being the minimum, therefore, should be applied even where the age of the deceased is beyond 70 years.

21. In fact, different Courts in the country, including the Supreme Court, have been applying the multiplier of 5 even where the age of the deceased was beyond 70 years. Some of the cases cited by the learned counsel for the appellants in this regard are as under:-

JUDGEMENT	**Age of the Deceased (in yrs.)**
New India Assurance Company Ltd. v. Vinish Jain & Ors., (2018) 3 SCC 619	78
New India Assurance Company Ltd. v. Col. Lalit Chander Idani & Ors., Neutral Citation No.2012:DHC:6593 (this Court)	72
Puttamma & Ors. v. Managing Director, BMTC, 2023 ACJ 1427 (Karnataka High Court)	80
Rathnamma & Ors. v. Chandraiah & Anr. 2021 ACJ 1119 (Karnataka High Court)	90

22. In the present case, the deceased was aged 76 years. Therefore, the learned Tribunal should have adopted a multiplier of 5 (five) for determining the loss of financial dependency. The Impugned Award shall stand modified and the compensation shall, accordingly, be enhanced to the above extent.

23. In view of the above, compensation on account of loss of dependency is re-calculated as under:

Rs. 3,158/- x 12 x 5 = ***Rs. 1,89,480/-***

Loss of Consortium:

24. The next challenge of the appellants to the Impugned Award is on the compensation awarded towards the loss of consortium.

25. The learned counsel for the appellants, placing reliance on the judgments of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680, and ***United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Others***, (2021) 11 SCC 780, submits that the loss of consortium is to be awarded at Rs.40,000/- for each of the claimants.

26. I have considered the submissions made.

27. In terms of the judgment of the Supreme Court in ***Pranay Sethi*** (supra) as explained in ***Satinder Kaur*** (supra), the parents, spouse and children of the deceased, are all entitled to the loss of consortium in their own right, be it as '*parental consortium'*, '*spousal consortium'* or '*filial consortium'*.

28. In the present case, there are three claimants, that is, the wife and the two children of the deceased. They all shall be entitled to the spousal and parental consortium in their own right. At the same time, as the accident has taken place on 25.01.2015, the loss of consortium has to be awarded at Rs.40,000/- each, as the 10% increase was granted in ***Pranay***

Sethi (supra) only with effect from three years after the date of the said judgment.

29. Accordingly, the appellants are held entitled to compensation of Rs.1,20,000/- towards the loss of the consortium.

30. The learned Tribunal has already awarded Rs.44,000/- on this head. The enhancement would, therefore, be as under:

Rs.1,20,000 – Rs.44,000 = ***Rs.76,000/-***

CONCLUSION AND DIRECTIONS

31. The enhancement of compensation granted by the present judgment shall carry interest at the rate and for such period as was awarded by the learned Tribunal in the Impugned Award.

32. The appeal is partly allowed in the above terms.

33. The respondent no.1 shall release the enhanced amount of compensation, alongwith interest accrued thereon, to the appellant no.1, the widow of the deceased, within a period of eight weeks from today. The above direction for releasing the enhanced compensation only in favour of the appellant no. 1 is being passed on the request of the learned counsel for the appellants, who has instructions in this regard from all the appellants.

34. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 7, 2023/*rv/ss*/AS