

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

MA No. 60/2009
IA No. 897/2009
IA No. 86/2009

Pronounced on:- 3.06.2020

National Insurance co. Ltd.

...Appellant(s)

Through: Mr. Baldev Singh, Advocate

vs.

Anju Gupta and others

...Respondent(s)

Through: Mr. M. K. Bharadwaj, Sr. Advocate with
Mr. Gagan Kohli, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

- 01.** Appellants challenge the award dated 30.09.2008 passed by the Motor Accident Claims Tribunal, Udhampur (hereinafter to be referred to as 'the Tribunal') awarding a sum of Rs. 14,29,000/- alongwith 7.5% annual interest from the date of institution of the claim petition till payment is made.
- 02.** Two real brothers, namely, Sanjay Kumar and Sohal Lal both S/o late. Perma Nand R/o Udhampur while Sanjay Kumar was a Graduate in Civil Engineering and his younger brother Sohan Lal was B.Sc in Agriculture. While Sanjay Kumar having failed to secure a job, he set up his own business in the name of M/s Hennery Collection, the younger brother had taken up a job with M/s Ambika Textiles whole sale cloth merchant, Udhampur. That on the morning of fateful day both the brothers left for Amritsar on 28.04.2003 because Sanjay Kumar used to visit Amritsar weekly for making purchases, as deposed by PW-Ravi Kumar a cloth

merchants of Amritsar. They reached Amritsar by Maruti Car bearing registration No. JK14-7373 and after making purchases of the garments they started return journey at about 3.00 PM. On reaching Talwandi Ghuman GT Road near Katahunangal District Majithe about 2 KM short of Police Station Kathua, Truck bearing registration No. PB-05F/9560 coming from the opposite direction loaded with Toori(Bhoosa) suddenly swerved to the wrong side and rammed into the car killing both the brothers on spot because of his rash and negligent driving. The driver of the offending vehicle ran away. PW-Ravinder Khanna accompanied by PW-Vikas Gupta were following Car which was being driven by Sohal Lal in which deceased Sanjay Kumar was also travelling both of them stopped the car and extracted both the brothers from the Maruti Car after the occurrence of.

03. Be that as it may, the appellant-Company is against the quantum of the award because the owner and driver did not appear after filing of the claim petition and the appellant has not contested the case on the ground mentioned in section 170 of the Motor Vehicle Act.

04. The appellant challenges the award passed by the MACT, Udhampur on the following ground:-

- “(a) The multiplier has not been reduced for improbabilities and uncertainties of the life and the Tribunal appears to have treated the application under Section 163-A though it is under section 166 of the Motor Vehicle Act, 1988.
- (b) The Tribunal has awarded a sum of Rs. 14,29,000/- by taking the gross annual income of the deceased as Rs. 1,08,000/- which is not even pleaded or proved.
- (c) The award founded on assumptions and presumptions as such is arbitrary.

- (d) The monthly income of the deceased has been considered at Rs. 9000/- which is wrong as such the award is bad. The Tribunal has awarded Rs. 15000/- as loss of Consortium and loss of Estate, which is against the law laid down by the Courts.
- (e) The amount awarded for funeral expenses is more than prescribed in schedule II under section 163-A of the Motor Vehicle Act.”

05. After objections were filed to the claim petition by the owner and the appellant, the following issues were framed by the Tribunal by an order dated 06.07.2006:-

- “(i) Whether the L.Rs are legally entitled to claim compensation u/s 166 MVA? PPs.
- (ii) On proof, whether respondent No. 3 alone is under an obligation to compensate the L.Rs of deceased Sohan Lal who died in a road accident due to rash and negligent driving of Inder Singh driver of truck No. PB-05F/9560 on 27.4.03 near Talwand? OPPs
- (iii) If issue No. 1 is proved, whether defendant No. 3 is entitled to compensate all the defendants? OPP
- (iv) Relief.

06. The issue No. 1 has been decided in favour of the claimants and the finding has not been challenged by the appellant. While deciding issue No. 2, the Tribunal relied upon the judgment of the Hon’ble Apex Court in **Sarla Dixit V. Balwant Yadav, reported in 1996(3) SCC 179 and State of Kerala Vs. General Manager Southern Railway Madras, 2005 (6) SCC 236.** According to Mr. Baldev Singh, the Tribunal has not correctly assessed the annual income and the loss of future income. However, the issue of loss of future compensation has been reconsidered by three Judges’ Bench in case

Reshma Kumari and others V. Madan Mohan and another, 2013 (9) SCC 65, the conclusion of findings of are summarized in paras 43.1 to 43.7 of the said judgment. Para 43.5, being relevant in this case in which their lordships directed that:

“43.5. While making addition to income for future prospects, the Tribunal shall follow para 24 of the judgment in **Sarla Verma** for determination of compensation.

43.7. The above propositions *mutatis mutandis* shall apply to all pending matters. Where the above aspects are under consideration.”

- 07.** This controversy stands resolved by the law laid down by the Constitutional Bench in **National Insurance Company Ltd. V. Pranay Sethi & ors, 2017 (16) SCC 680**, because the main ground of challenge in this appeal is that annual income of the deceased was wrongly assessed and the multiplier of 13 was also wrongly applied. One of the grounds of challenge in fact is, that Tribunal had wrongly assessed gross income of Rs. 9000/- per month, which is neither pleaded nor proved. In para 7 of the appeal, it has been pleaded that the Hon'ble Apex Court and this Court have held in various cases that mere assertion that the deceased was earning Rs. 12,000/- per month is not sufficient and cannot be accepted. The appellant has also questioned the award of Rs. 10,000/- as loss of consortium.
- 08.** The argument is that the Tribunal has wrongly assessed monthly income is not correct because future loss of earning has also been included. As a matter of fact, the Tribunal has assessed the monthly income at Rs. 9000/- in para 31 of the award and applied the law laid down in **Saral Dixit V. Balwant Yadav, 1996(3), SCC 179**.

09. In Para 34 of the award the relevant portion of which is reproduced below:

“34. The Hon’ble Supreme Court has held that expectancy of loss of future income has also to be considered for the purpose of grant of compensation. In other words, increase in future income of the deceased is a factor required to be considered and in this regard liberal view has to be adopted. This is what is laid down in Sushma Thamoas case and another case reported in 1970 ACJ 110, C.K. Subramania Iyer vs. T. Kunhi Kuttan Nair.

35.Keeping this formula into consideration the average future monthly income, of which the petitioners have been deprived comes to Rs. 6000/- + 12,000= Rs. 18,000 divided by 2 = Rs. 9000/- and Rs. 1,08,000/- per years.”

10. It is not the challenge to the formula laid down in para 6 of the judgment in Sarla Dixit’s case (supra) or its application but only that there was neither a plea nor evidence regarding monthly income of the deceased. However, this income was assessed after calculating future loss of earnings. Whether the Tribunal was justified in holding the monthly income of the deceased at Rs. 9,000/- is to be considered.

11. In claim petition, the claimant widow of the deceased has stated that his monthly income was Rs. 12,000/- approximately. In her statement as witness recorded by the Tribunal she deposed that the monthly income was between Rs. 12,000 and Rs. 13,000 while she was cross-examined regarding the age and the payment of Income Tax but the statement about the monthly income of the deceased remain unchallenged. It is also in her cross-examination that she has been living separately with her only child, this means that she has been living separate with her husband, so an amount of Rs. 12,000/- would be bare minimum required to lead her life.

12. Similarly, PW-Vikas Gupta brother of Anju Gupta, the claimant, who is brother-in-law of the deceased has made a statement that monthly income of the deceased was Rs. 13,000/Rs.14,000 per month. He has also deposed that before starting his own business he was employed in some firm again there is no challenge to this statement, regarding income in cross-examination, there has not even a suggestion to him about this knowledge.
13. PW-Subash Chander is the eldest brother of the deceased he says that the date of birth of the deceased Sanjay Kumar Gupta is 15.05.19971 according to him he was earlier working in a company on a monthly salary of Rs. 8,500/- but after the death of their mother, the deceased resigned his job in 1996 and thereafter started his own business known as Hennery collection. According to him his monthly income was between Rs. 15,000 to Rs. 16000, he according to witness was also an Income Tax assessee. He further stated about the death of his younger brother also in the same accident. He produced secondary certificates of both his brothers to prove their date of birth as recorded in the certificates. He has also produced their qualification certificates and as per the same, the deceased was a Graduate in Civil Engineering while his younger brother was B.Sc in Agriculture. In reply to a question in cross-examination by the counsel for the appellant, the witness stated that at the time of his death his monthly income was about Rs. 20,000/- even this statement regarding monthly income remain unchallenged.
14. Since the deceased is not the author of the return, which were filed by his widow after his death so no reliance can be placed either on the return or on the statement of PW-Sanjeev Kumar, the Income Tax Assistant. The learned Tribunal ignored the unchallenged evidence of Anju Gupta, PW-Vikas Gupta and Subash Chander and preferred to rely on the statement of Sanjay Kumar,

Income Tax Assistant and certificate issued by the Income Tax Officer on the basis of the death of Sanjay Kumar. Since the returns were not filed by the deceased, therefore, this evidence could not be considered. Moreover, even while doing private job he was getting Rs. 8,500/- as monthly salary and being a Civil Engineering, he must have been leading a comfortable life. The oral evidence having not been challenged as referred earlier. Therefore, his monthly income would in no case be less than Rs. 12,000/- if not more. However, taking his monthly income Rs. 9,000/- as found by the Tribunal, 1/3rd has rightly been deducted as personal expenses so the dependency was only Rs. 6,000/-. The deduction of 1/3rd and addition of future income was made by the Tribunal as per the law laid down in **Sarala Dixit's case (supra)**.

15. There was a cleavage of opinion in respect of deduction towards personal and living expenses on the ground of loss of estate, loss of consortium and funeral expenses. On adding of future prospect to determine the multiplier, this was settled by the Constitution Bench in National Insurance Company V. Pranay Sethi & ors.(supra), wherein the then Chief Justice prefaced the judgment by observing:-

“Perceiving cleavage of opinion between Reshma Kumari & ors. vs. Madan Mohan & anr. and Rajesh & ors. Vs. Rajbir Singh & ors. both three Judges’ bench decision, a two Judges bench of this Court in National Insurance Company vs. Pushpa & ors thought it appropriate to refer the matter to a larger Bench for authoritative pronouncements and that is how the matter is placed before us.”

16. Appellant has challenged the award of Rs. 15,000/- as loss of consortium, but there is not ground to reduce in view of the law laid down by the Constitution Bench in case Pranay Sethi (Supra) fixing the minimum at Rs. 40,000/- to be

enhanced by 10% after every three years. So the Tribunal could have validly awarded even higher amount for loss of consortium. The appellant has also challenged the award of Rs. 10,000/- as funeral expenses but the Constitution Bench fixed at Rs. 15,000/-, therefore even this amount was reasonable. Although it is the case in which multiplier was wrongly awarded by reducing the period of three years for uncertainties of life which is not proper in view of law Laid down in **Sarla Verma and others Vs. Delhi Transport Corporation and another., 2009 (6) SCC 121**. But since the claimant is not aggrieved of the same, therefore, no interference is being made even though the petitioner is entitled to the same.

17. The Constitution Bench in Para 55 of Pranay Sethi's case (supra) while dwelling upon Section 168 observed that, "section 168 of the Act deals with concept of just compensation and same has to be determined on the foundation of fairness, reasonableness and equitability on an acceptable legal standard because such determination can never be an arithmetical exactitude it can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of material brought on record in individual cases. The concept of 'just compensation' has to be viewed through prism of fairness, reasonableness and not violation of the principles of equitability, in case of death the legal heirs of the claimant cannot accept a windfall. Simultaneously, compensation granted cannot be an apology for compensation". Their lordship further held the age and income as stated earlier have to bear in mind the basic principle lies in pragmatic computation which is in proximity to reality. It is well accepted norm that money cannot substitute a life lost but the effort has to be made for grant of just compensation having uniformity to approach. The Constitution Bench further

held as future prospects are concerned, there has been standardization keeping in view principles of constant stability and consistency and approved the principles of standardization so that specific and certain multiplicand is determined in applying the multiplier on the basis of age. Reference is obviously to **Sarla Verma and others Vs. Delhi Transport Corporation and another., 2009 (6) SCC 121.**

- 18.** Unfortunately, the claimant who married a young engineering graduate for both prospects of life who earned Rs. 8,500/- per month even in 1996 when he resigned due to mothers' death and opted for self-employment hoping of better prospects to little knowing that he will die in such a ghastly accident leaving behind a wife and a little child of 5 years at that time. Money alone could not be a substituted but despite having proof of deceased's substantial income, the Tribunal looked for the evidence of Income tax Assistant, though his evidence could not be index of the real income specially when he never filed any return during his life time. But since claimants are not aggrieved of the same, therefore, there is no ground for interference in the amount of compensation which the claimants are found entitled to.
- 19.** Thus, there is no merit in the appeal and the same is dismissed and there is no valid ground to reduce the interest. Amount deposited may be released in favour of the claimants less the amount already received.
- 20.** Record of the case be remitted back to the court below forthwith.

(Sindhu Sharma)
Judge

JAMMU
3.06.2020
SUNIL-II

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes