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

% **Date of Decision: 25th May, 2021**

+ MAC. APP. 1075/2018

SUKHDEV PRASAD

..... Appellant

Through: Mr. Rajesh Dabas, Advocate

versus

SUNIL KUMAR & ORS (IFFCO
TOKIO GENERAL INSURANCE CO. LTD)..... Respondents

Through: Mr. A. K. Soni and Mr. Pavan
Kumar Vashishth, Advocates
for respondent No.3.

**CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA**

J U D G M E N T (O R A L)

1. The petitioner has challenged the award dated 02nd August, 2018 passed by the Claims Tribunal whereby the Claims Tribunal awarded compensation of Rs.4,49,004.48 along with interest @ 9% per annum to the appellant.
2. The accident dated 16th April, 2016 resulted in death of Avdhesh Kumar. The deceased was aged 25 years at the time of accident and was survived by his father who claimed compensation. According to the claimant, the deceased was earning Rs.15,000/- per month. However, in the absence of any documentary proof of

income, the Claims Tribunal took the minimum wages of Rs.9,568/- per month as income of the deceased, added 40% towards future prospects and deducted 85% towards personal expenses. The Claims Tribunal awarded 15% towards loss to the estate to the appellant on the ground that the father was not dependent upon the deceased. The Claims Tribunal assessed the loss of estate as Rs.4,34,004.48. The Claims Tribunal awarded Rs.15,000/- towards funeral expenses. The total compensation is Rs.4,49,004.48 along with interest @ 9% per annum.

3. Learned counsel for the appellant submits that the appellant was dependent upon the deceased and entitled to loss of dependency according to principles laid down in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680. Reliance is placed on *Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130 in which the Supreme Court awarded the compensation to the parents of the deceased according to the principles laid down in *Pranay Sethi* (supra). Reliance is also placed on the recent judgment of this Court in *Indrawati v. Ranvir Singh*, (2021) 276 DLT 415.

4. Learned counsel for the respondent submits the compensation awarded by the Claims Tribunal is just, fair and reasonable.

5. This case is squarely covered by the recent judgment of this Court in *Indrawati* (supra) in which this Court had held that the parents of the deceased are considered in law as dependent on their children, considering that the children are bound to support their parents in their old age, when the parents would be unable to maintain themselves and the law imposes a responsibility on the

children to maintain their parents. Even if the parents are not dependent on their children at the time of the accident, they will certainly be dependent, both financially and emotionally, upon their children at the later stage of their life, as the children were dependent upon their parents in their initial years. It would be unfair as well as inequitable to deny compensation for loss of dependency to a parent, who may not be dependent on his/her child at the time of accident per se but would become dependent at his/her later age. Relevant portion of the said judgment is reproduced hereunder: -

“11. The first question arises for consideration is whether appellant No. 1 (mother of the deceased) is entitled to compensation for death of her son. Appellant No. 1 is the mother of the deceased and she has no independent source of income. She deposed that she was dependent upon the deceased as well as on her husband.

12. This Court is of the view that the parents of the deceased are considered in law as dependent on their children, considering that the children are bound to support their parents in their old age, when the parents would be unable to maintain themselves and the law imposes a responsibility on the children to maintain their parents. Even if the parents are not dependent on their children at the time of the accident, they will certainly be dependent, both financially and emotionally, upon their children at the later stage of their life, as the children were dependent upon their parents in their initial years. It would therefore be unfair as well as inequitable to deny compensation for loss of dependency to a parent, who may not be dependent on his/her child at the time of accident per se but would become dependent at his/her later age.

13. Section 125 of Code of Criminal Procedure, 1973; Section 20 of Hindu Adoption and Maintenance Act, 1956, and Maintenance and Welfare of Parents and Senior Citizens Act, 2007 cast an obligation on the children to maintain their

parents. These legislations recognize the legal rights of parents to be maintained by their children.

14. In *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*, (1987) 2 SCC 278, the Supreme Court noted the moral obligation of children to maintain their parents. Relevant portion of the judgment is as under:—

“6. There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.”

15. In *Mahendrakumar Ramrao Gaikwad v. Gulabbai Ramrao Gaikwad*, 2001 Cri LJ 2111, the Bombay High Court referred to the ancient scripture of Manu which recognizes the right of the aged parents to be maintained by their children even if the children are unable to maintain themselves. Relevant portion of the said judgment is reproduced hereunder: —

11. It is not out of place to remember the mandate of Manu in the matter of maintenance of parents, wife and child. Manu said, “the aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds” Manu does not speak of solitary duty. It is moral duty of a person to maintain aged parents, virtuous wife and infant child. In discharge of this pious duty, Manu went to such an extent that he made hundred misdeeds pardonable. During course of time, this moral duty assumed a legal character. The need was felt to introduce an enactment in this behalf.

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13. Under the circumstances, son is legally bound to maintain his mother if it is shown that mother is unable to maintain herself. It is not at all desirable that an earning son, who is well placed in the society, having possessed of sufficient means, shall allow his penniless mother to face starvation. The Indian Society casts a moral obligation on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is bounden duty of a son to look after his parents when they become old and infirm.

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25.....Because of his mother, he has seen this beautiful world. Parents give each child name, places the child in a social class and gives national and religious identity. Parent plugs child into society in which he or she will live and grow.”

16. In *Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130, the Supreme Court held that parents are entitled to Filial consortium as compensation for accidental death of a child. Relevant portion of the said judgment is reproduced hereunder: —

“21. A Constitution Bench of this Court in *Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680]* dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse: [*Rajesh v. Rajbir Singh, (2013) 9 SCC 54*]

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21.3. *Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

23. *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74]. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.”*

17. *In United India Insurance Company Ltd. v. Satinder*

Kaur, SLP (C) No. 28548/2014 decided on 30th June, 2020, the Supreme Court re-affirmed Magma General Insurance Co. Ltd. (supra) with respect to the rights of parents to compensation in case of accidental death of a child. Relevant portion of the said judgment is reproduced hereunder: —

“In Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130, this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing

relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.”

18. *In New India Assurance Company v. Somwati, (2020) 9 SCC 644, the Supreme Court awarded Filial compensation in terms of principles laid down in Magma General Insurance Company Ltd. (supra) and United India Insurance Company Ltd. v. Satinder Kaur (supra).*

19. *In Sarla Verma v. D.T.C., (2009) 6 SCC 121, the Supreme Court held that the mother of the deceased bachelor is entitled to compensation by taking 50% of his income as loss of dependency on the premise that the deceased would not contribute more than 50% to his mother after marriage. The Supreme Court further observed that the mother would be considered as dependent even if the father was employed and earning. In Sarla Verma (supra), the Supreme Court has laid down clear principles for computation of compensation in respect of death of a parent as well as a spouse by applying the multiplier method and the application of those principles have not been made subject to any condition meaning thereby that no further evidence is required to prove the dependency in the aforesaid cases.*

20. *In view of the law well settled by the Supreme Court in the aforesaid judgments, this Court holds that the parents of the deceased child are considered as dependents for computation of compensation. The principles laid down in Keith Rowe (supra) and Dinesh Adhlak v. Pritam Singh, ILR (2010) 5 Del 463, would not apply to the claim for compensation by the parents in respect of their child, as it is in the present case. The principles relating to the loss to the estate referred to in Keith Rowe (supra) and Dinesh Adhlak (supra) would also not apply in respect of the claim of a*

spouse for compensation in respect of death of his/her spouse, as well as children's claim for compensation in respect of death of their parents. In that view of the matter, the principles relating to the loss to the estate shall apply only to claimants other than parents, children and spouse.

21. *Applying well settled principles enunciated above, this Court holds that appellant No. 1 (mother of the deceased) is entitled to the compensation for loss of dependency according to the multiplier method.*

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29. *The Claims Tribunals shall note that the principles relating to the loss to the estate in Keith Rowe (supra) and Dinesh Adhlak (supra) are not applicable to the claim of the parents in respect of the death of their child, claim of children in respect of death of their parents and claim of a spouse in respect of death of his/her spouse in a motor accident.”*

6. In ***Magma General Insurance Co. Ltd. v. Nanu Ram*** (supra) the Supreme Court held that the parents are entitled to the loss of dependency according to the principles laid down in ***Pranay Sethi*** (supra).

7. This case is squarely covered by the ratio laid down in ***Pranay Sethi*** (supra), ***Magma General Insurance Co. Ltd. v. Nanu Ram*** (supra), ***Indrawati v. Ranvir Singh*** (supra). In that view of the matter, this Court is of the view that that the parents of the deceased are always considered as dependent upon their children and are entitled to compensation according to the principles laid down in ***Pranay Sethi*** (supra).

8. Taking the income of the deceased as Rs.9,568/- per month, adding 40% towards future prospects, deducting 50% towards the personal expenses and applying the multiplier of 18, the loss of

dependency is computed as Rs.14,46,681.6. The appellant is also entitled to compensation of Rs.15,000/- for loss of estate, Rs.40,000/- for loss of love and affection and funeral expenses of Rs.15,000/-. The total compensation is computed as Rs.15,17,000/- (Rs.15,16,681.6 rounded off).

9. The appeal is allowed and the compensation awarded by the Tribunal is enhanced from Rs.4,49,004.48 to Rs.15,17,000/- along with interest @ 9% from the date of filing of DAR i.e. 06th June, 2016.

10. Respondent No.1 is directed to deposit the entire enhanced award amount along with interest with DSLSA within four weeks. Respondent No.1 shall also file the computation of interest on affidavit with DSLSA within one week of deposit. Respondent No.1 shall send the written intimation of deposit of the enhanced award amount to the claimants within one week of deposit.

11. Upon the aforesaid amount being deposited, the DSLSA shall disburse the amount to the appellant in terms of the principles laid in ***Rajesh Tyagi v. Jaibir Singh***, judgment dated 08th January, 2021, MANU/DE/0051/2021.

12. After deposit of the award amount, the claimants shall appear before DSLSA along with the passbooks of their savings bank accounts near the place of their residence as well as PAN card and Aadhaar card. The concerned banks of claimants are directed not to issue any cheque book or debit card to the claimants and if the same have already been issued, the banks are directed to cancel the same and make an endorsement on their passbooks to this effect. The

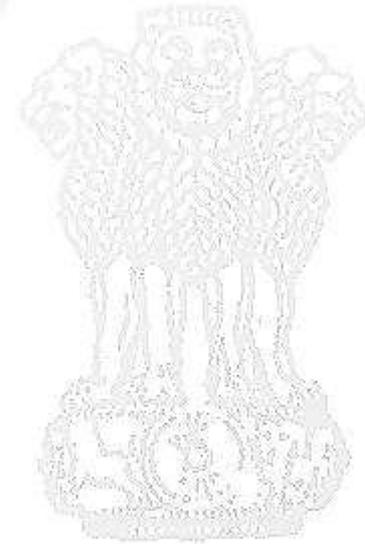
claimants shall produce the copy of this order to the concerned bank, whereupon the bank shall make an endorsement on the passbooks of claimants that no cheque book and/or debit card shall be issued to claimants without the permission of this Court.

13. After the disbursement of the award amount of disbursement, DSLSA shall send the compliance report to this Court, within four weeks of disbursement of award amount.

14. Copy of this judgment be sent to DSLSA.

MAY 25, 2021
ds/dk

J.R. MIDHA, J.



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